

THIRD DIVISION

[G.R. No. 165060, November 27, 2008]

**ALBINO JOSEF, PETITIONER, VS. OTELIO SANTOS,
RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the November 17, 2003^[1] Resolution of the Court of Appeals in CA-G.R. SP No. 80315, dismissing petitioner's special civil action of certiorari for failure to file a prior motion for reconsideration, and the May 7, 2004^[2] Resolution denying the motion for reconsideration.

Petitioner Albino Josef was the defendant in Civil Case No. 95-110-MK, which is a case for collection of sum of money filed by herein respondent Otelio Santos, who claimed that petitioner failed to pay the shoe materials which he bought on credit from respondent on various dates in 1994.

After trial, the Regional Trial Court of Marikina City, Branch 272, found petitioner liable to respondent in the amount of P404,836.50 with interest at 12% per annum reckoned from January 9, 1995 until full payment.^[3]

Petitioner appealed^[4] to the Court of Appeals, which affirmed the trial court's decision *in toto*.^[5] Petitioner filed before this Court a petition for review on certiorari, but it was dismissed in a Resolution dated February 18, 2002.^[6] The Judgment became final and executory on May 21, 2002.

On February 17, 2003, respondent moved for issuance of a writ of execution,^[7] which was opposed by petitioner.^[8] In an Order dated July 16, 2003,^[9] the trial court granted the motion, the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, the motion for issuance of writ of execution is hereby granted. Let a writ of execution be issued commanding the Sheriff of this Court to execute the decision dated December 18, 1996.

SO ORDERED.^[10]

A writ of execution was issued on August 20, 2003^[11] and enforced on August 21, 2003. On August 29, 2003, certain personal properties subject of the writ of execution were auctioned off. Thereafter, a real property located at Marikina City and covered by Transfer Certificate of Title (TCT) No. N-105280 was sold on October 28, 2003 by way of public auction to fully satisfy the judgment credit.

Respondent emerged as the winning bidder and a Certificate of Sale^[12] dated November 6, 2003 was issued in his favor.

On November 5, 2003, petitioner filed an original petition for certiorari with the Court of Appeals, questioning the sheriff's levy and sale of the abovementioned personal and real properties. Petitioner claimed that the personal properties did not belong to him but to his children; and that the real property covered by TCT No. N-105280 was his family home thus exempt from execution.

On November 17, 2003, the Court of Appeals issued the assailed Resolution dismissing the petition for failure of petitioner to file a motion for reconsideration of the trial court's July 16, 2003 Order granting the motion for execution and ordering the issuance of a writ therefor, as well as for his failure to indicate in his petition the timeliness of its filing as required under the Rules of Court. On May 7, 2004, the appellate court denied petitioner's motion for reconsideration.

Thus, the instant petition which raises the following issues:

I.

WHETHER OR NOT THE LEVY AND SALE OF THE PERSONAL BELONGINGS OF THE PETITIONER'S CHILDREN AS WELL AS THE ATTACHMENT AND SALE ON PUBLIC AUCTION OF HIS FAMILY HOME TO SATISFY THE JUDGMENT AWARD IN FAVOR OF RESPONDENT IS LEGAL.

II.

WHETHER OR NOT THE DISMISSAL OF THE PETITIONER'S PETITION FOR CERTIORARI BY THE HONORABLE COURT OF APPEALS IS JUSTIFIED UNDER THE CIRCUMSTANCES.

Petitioner argues that the trial court sheriff erroneously attached, levied and sold on execution the real property covered by TCT No. N-105280 because the same is his family home; that the execution sale was irregular because it was conducted without complying with the notice and posting of requirements; and that the personal and real properties were sold for inadequate prices as to shock the conscience. The real property was allegedly worth P8 million but was sold for only P848,448.64.

Petitioner also argues that the appellate court gravely abused its discretion in dismissing the petition based purely on technical grounds, *i.e.*, his failure to file a motion for reconsideration of the trial court's order granting execution, and his failure to indicate in his petition for certiorari the timeliness of filing the same with the Court of Appeals.

Respondent, on the other hand, argues that petitioner's alleged family home has not been shown to have been judicially or extrajudicially constituted, obviously referring to the provisions on family home of the Civil Code - not those of the Family Code which should apply in this case; that petitioner has not shown to the court's satisfaction that the personal properties executed upon and sold belonged to his children. Respondent argues that he is entitled to satisfaction of judgment considering the length of time it took for the parties to litigate and the various remedies petitioner availed of which have delayed the case.

The petition is meritorious.

Petitioner, in his opposition to respondent's motion for issuance of a writ of execution, claimed that he was insolvent; that he had no property to answer for the judgment credit; that the house and lot in which he was residing at the time was his family home thus exempt from execution; that the household furniture and appliances found therein are likewise exempt from execution; and that these furniture and appliances belonged to his children Jasmin Josef and Jean Josef Isidro. Thus, as early as during proceedings prior to the issuance of the writ of execution, petitioner brought to the fore the issue of exemption from execution of his home, which he claimed to be a family home in contemplation of the civil law.

However, instead of inquiring into the nature of petitioner's allegations in his opposition, the trial court ignored the same and granted respondent's motion for execution. The full text of the July 16, 2003 Order provides, as follows:

This resolves the "Motion for the Issuance of Writ of Execution" filed by plaintiff thru counsel and the "Opposition" thereto filed by the defendant on her own behalf.

The records show that a decision was rendered by this Court in favor of the plaintiff on December 18, 1995 which decision was affirmed by the Court of Appeals on June 26, 2001 and by the Supreme Court on February 18, 2002. On June 18, 2003, this Court received the entire records of the case from the Court of Appeals.

Considering the foregoing, it is now the ministerial duty of the Court to issue a writ of execution pursuant to Sec. 1, Rule 39 of the Rules of Court.

WHEREFORE, premises considered, the motion for issuance of writ of execution is hereby granted. Let a writ of execution be issued commanding the Sheriff of this Court to execute the decision dated December 18, 1996.

SO ORDERED.^[13]

The above Order did not resolve nor take into account petitioner's allegations in his Opposition, which are material and relevant in the resolution of the motion for issuance of a writ of execution. This is serious error on the part of the trial court. It should have made an earnest determination of the truth to petitioner's claim that the house and lot in which he and his children resided was their duly constituted family home. Since it did not, its July 16, 2003 Order is thus null and void. Where a judgment or judicial order is void it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.^[14]

The family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by

creditors except in certain special cases.^[15]

Upon being apprised that the property subject of execution allegedly constitutes petitioner's family home, the trial court should have observed the following procedure:

1. Determine if petitioner's obligation to respondent falls under either of the exceptions under Article 155^[16] of the Family Code;
2. Make an inquiry into the veracity of petitioner's claim that the property was his family home;^[17] conduct an ocular inspection of the premises; an examination of the title; an interview of members of the community where the alleged family home is located, in order to determine if petitioner actually resided within the premises of the claimed family home; order a submission of photographs of the premises, depositions, and/or affidavits of proper individuals/parties; or a solemn examination of the petitioner, his children and other witnesses. At the same time, the respondent is given the opportunity to cross-examine and present evidence to the contrary;
3. If the property is accordingly found to constitute petitioner's family home, the court should determine:
 - a) if the obligation sued upon was contracted or incurred prior to, or after, the effectivity of the Family Code;^[18]
 - b) if petitioner's spouse is still alive, as well as if there are other beneficiaries of the family home;^[19]
 - c) if the petitioner has more than one residence for the purpose of determining which of them, if any, is his family home;^[20] and
 - d) its actual location and value, for the purpose of applying the provisions of Articles 157^[21] and 160^[22] of the Family Code.

The family home is the dwelling place of a person and his family, a sacred symbol of family love and repository of cherished memories that last during one's lifetime.^[23] It is the sanctuary of that union which the law declares and protects as a sacred institution; and likewise a shelter for the fruits of that union. It is where both can seek refuge and strengthen the tie that binds them together and which ultimately forms the moral fabric of our nation. The protection of the family home is just as necessary in the preservation of the family as a basic social institution, and since no custom, practice or agreement destructive of the family shall be recognized or given effect,^[24] the trial court's failure to observe the proper procedures to determine the veracity of petitioner's allegations, is unjustified.

The same is true with respect to personal properties levied upon and sold at auction. Despite petitioner's allegations in his Opposition, the trial court did not make an effort to determine the nature of the same, whether the items were exempt from execution or not, or whether they belonged to petitioner or to someone else.^[25]