

SECOND DIVISION

[G.R. NO. 132537, October 14, 2005]

MARY JOSEPHINE GOMEZ AND EUGENIA SOCORRO C. GOMEZ-SALCEDO, PETITIONERS, VS. ROEL, NOEL, AND JANNETTE BEVERLY STA. INES AND HINAHON STA. INES, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals reversing the Order^[2] of the Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya, Branch 27, dismissing the complaint of herein respondents for lack of jurisdiction.

The pertinent facts are as follows:

On 17 June 1986, Mary Josephine C. Gomez (Mary Josephine) and Eugenia Socorro C. Gomez-Salcedo (Socorro) filed a complaint for damages before the RTC of Pasig against Marietta dela Cruz Sta. Ines (Marietta) alleging that they are the children of the deceased Purificacion dela Cruz Gomez who, during her lifetime, entrusted her rice land with an area of 25,087 square meters located at Bayombong, Nueva Vizcaya, to Marietta, together with the Transfer Certificate of Title (TCT) No. 47082 covering said land, for the latter to manage and supervise. Mary Josephine and Socorro further alleged that they have demanded for an accounting of the produce of said rice land while under the management of Marietta, and for the return of the TCT to the property, but the latter refused, thus compelling the sisters to file a civil case^[3] before the Pasig RTC.

During the pre-trial conference of the case, both Marietta and her counsel failed to appear, thus, by motion of counsel for Mary Josephine and Socorro, the trial court declared Marietta in default.

On 24 January 1989, the trial court rendered judgment against Marietta ordering her to deliver to Mary Josephine and Socorro the owner's copy of TCT No. 47082 and to pay P40,000.00 as moral damages, P20,000.00 as actual or compensatory damages, P30,000.00 as exemplary or corrective damages, and P15,000.00 as attorney's fees.

After said judgment became final and executory, a writ of execution was issued by the Pasig RTC, by virtue of which, a parcel of land (with improvements) located in Bayombong, Nueva Vizcaya, with an area of 432 square meters, covered by TCT No. T-55314 registered in the name of Marietta dela Cruz Sta. Ines, was levied upon by Flaviano Balgos, Jr., then Provincial Sheriff of Nueva Vizcaya, to satisfy the damages awarded in the civil case. Said property was sold at a public auction on 25 August 1992 to Mary Josephine as the highest bidder. The sale was registered with the

Register of Deeds of Nueva Vizcaya on 17 September 1992.

On 12 July 1993, a complaint^[4] for annulment of said sale was filed before the RTC of Bayombong, Nueva Vizcaya, by Hinahon Sta. Ines together with Noel, Roel, and Jannette, all named Sta. Ines, husband and children of Marietta, respectively, against Mary Josephine and Sheriff Flaviano Balgos, Jr. on the ground that said house and lot sold during the public auction is their family residence, and is thus exempt from execution under Section 12(a), Rule 39 of the Rules of Court, and under Article 155 of the Family Code.

Mary Josephine moved to dismiss the complaint on the following grounds: 1) the Nueva Vizcaya RTC has no jurisdiction over the case; 2) the plaintiffs have no legal capacity to sue; and 3) the complaint does not state a cause of action.

Acting on the Motion to Dismiss, the Nueva Vizcaya RTC issued an Order on 10 November 1993 denying said motion. According to the court *a quo*:

After studying the law, rules and jurisprudence, the Court is convinced that the motion to dismiss has no legal basis.

On the claim that this court has no jurisdiction over the case, inasmuch as this case involves proceedings to execute the decision of the Pasig RTC, it must be noted that the petitioners are not parties to the Pasig case. They are third-party claimants who became such only after trial in the previous (the Pasig) case has been terminated and the judgment therein has become final and executory. They are not indispensable nor necessary parties in the Pasig case and they could not, therefore, even intervene in the said case.

Execution proceedings are entirely a different proceedings from the trial proper of a case inasmuch as trial proper is conducted by the Court while execution proceedings are conducted by the Sheriff after the judgment in a trial proper has become final and executory. The petitioners, therefore, could not, even if they wanted to, intervene in the trial proper because they are neither indispensable nor necessary parties and because, precisely, the trial was already over and the judgment has become final and executory.

But they could, as they have done, intervene in the execution stage because their rights have been violated by the action of the sheriff. Under Section 17 of Rule 39, of the Rules of Court, the petitioners could, as they have done, file an independent action to protect their rights. Under the Judiciary Reorganization Act and Section 2, paragraph a, of Rule 4, Rules of Court, this Court can take cognizance of the action. There is, therefore, no doubt that this court has jurisdiction over this case.

It must be mentioned that there are legal obstacles for the petitioners to seek remedy from the Pasig Court.

Firstly, they are not indispensable nor necessary parties to the Pasig case. Secondly, the judgment therein has become final and executory. Thirdly, under paragraph a, Section 2 of Rule 4 of the Rules of Court,

cases involving real properties must be filed in the province where the property or any part thereof lies. The property levied upon is located in the province of Nueva Vizcaya. Fourthly, as the judgment in the Pasig case has become final and executory, the said Pasig court has already lost jurisdiction over the said case except in some instances and the exception does not apply to this case.

While it is, therefore, true that conflicts of jurisdiction should be avoided, nonetheless, there can be no conflict of jurisdiction in this case because there is no concurrent jurisdiction between the Pasig court and this court for reasons already set forth above.

On the allegation that the petitioners have no legal capacity to sue, the court believes that they have, in fact, that capacity to sue. Under Article 154 of the Family Code of the Philippines, the petitioner Hinahon Sta. Ines and the other petitioners are beneficiaries of the Family home. Any one or all of them can, therefore, legally question the execution, forced sale or attachment which is prohibited under Article 155 thereof. It should be noted that, as already pointed out, the right of the petitioners as beneficiaries of the family home has been violated when the said family home was levied upon on execution and sold in violation of the law.

As for lack of cause of action, the Court has already stated above that the right of the petitioners as beneficiaries of the family home has been transgressed. They, therefore, have a cause of action against the sheriff's act of unlawfully levying upon and selling the rights, interests, title and participation in the land in question and its improvement of Marietta dela Cruz-Sta. Ines.

Pertinently, it may be asked whether an undivided interest of the owner of the family home like Marietta Sta. Ines can be levied upon on execution and this fact will not violate the prohibition on such levy found in the Family Code.

The court believes that this can not be done.

Article 154 of the Family Code expressly enumerates the beneficiaries of a family home. If a person other than any of those enumerated in Article 154 would be allowed to have an undivided interest in the family home, then he becomes a beneficiary of such property in violation of the said provision under the principle of *expressio unius est exclusio alterius*.

Moreover, Article 152 of the Family Code provides that "the family home, constituted jointly by the husband and the wife x x x, is the dwelling house where they and their family reside, and the land on which it is situated."

The family home as defined by the said article can not be split in such a way that part of it, albeit undivided, is owned by a non-beneficiary. To allow this would be to diminish the family home which can be used and enjoyed by those entitled thereto under the law. This is so because

whoever buys the undivided portion belonging to one of the owners, as in this case, can demand an equal exercise of the right of co-ownership from the other beneficiaries thereof. To the extent that such demand can be made effective, the full enjoyment of the property by the beneficiaries thereof will be correspondingly diminished. The court believes that when the Family Code allows the constitution of a family home, it does so with the idea that the beneficiaries thereof can have untrammelled use and enjoyment thereof; hence, the express prohibition to levy on such property.

WHEREFORE, for lack of basis, the motion to dismiss is hereby DENIED. The respondent is hereby directed to file her answer within 15 days from receipt of this Order.^[5]

On 01 December 1993, herein petitioners filed a Motion for Reconsideration, which was then granted by the Nueva Vizcaya RTC in an Order dated 28 January 1994. The trial court reasoned thus:

After restudying the jurisprudence involved in the motion for reconsideration impinging [sic] on the jurisdiction of this court in relation to the execution of a judgment rendered by another Regional Trial Court (in Pasig, Metro Manila), indeed, the only conclusion that can be honestly reached is that this court has no jurisdiction over the nature of the herein action.

As correctly posited by the defendant's counsel, it is the Pasig Regional Trial Court that should still exercise jurisdiction over execution of its judgments, "a power that carries with it the right to determine every question of fact and law which may be involved in the execution." (see *GSIS vs. Guines*, 219 SCRA 724; *Darwin vs. Takonaza*, 197 SCRA 442). In fine, plaintiffs should have challenged the action of the Sheriffs in the civil case wherein the judgment being executed was promulgated, and not in an independent action filed with a different or even the same court.

WHEREFORE, for this court's lack of jurisdiction to hear and decide this case, the instant action is hereby DISMISSED, with costs de officio.^[6]

Herein respondents filed a Motion for Reconsideration of said Order of dismissal which was denied by the lower court in an Order dated 15 March 1994.

Aggrieved, respondents appealed said Order to the Court of Appeals raising the following errors: 1) the lower court erred in holding that it lacks jurisdiction for the question presented in this case should have been brought in the Pasig Court as a part of the proceedings therein and not as a separate case; and 2) the lower court erred in holding that plaintiffs (herein respondents) cannot be considered third-party claimants.

In their Appellee's Brief, herein petitioners assailed the jurisdiction of the appellate court to entertain the said appeal arguing that the issues raised were purely questions of law which the Supreme Court has exclusive appellate jurisdiction.

On 29 March 1996, the Court of Appeals rendered a Decision reversing the Order of dismissal. According to the appellate court:

Section 17, Rule 39 of the Revised Rules of Court provides:

"Proceedings where property claimed by third person -If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his ***title thereto*** or ***right to the possession thereof***, stating the grounds of such ***right*** or ***title***, and served the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. xxx xxx xxx"
(Italics supplied)

To fall within the ambit of a third-party claimant within the contemplation of the foregoing, it is not required that one must claim title to the property levied upon, a claim to the ***right to the possession thereof*** being enough, provided that the grounds of such right are amply explained.

The plaintiffs-appellants in this case claim in their complaint that they have occupied the house and lot subject of the levy as a family residence since 1972 and that, under Articles 153 and 155 of the Family Code, the same is exempt from execution. Additionally, if indeed the house and lot subject of this suit are components of a family home, under Article 154 of the same Code, the plaintiffs are the beneficiaries thereof.

As such third-party claimants, plaintiffs-appellants may avail of the remedy known as "terceria" provided in Section 17 above quoted, by serving upon the sheriff and the judgment creditor their affidavit attesting to their right of possession of the property under the Family Code. Also, the plaintiffs-appellants, as third-party claimants, may invoke the supervisory power of the Pasig Court, as explained in **Ong vs. Tating, et al., 149 SCRA 265**, and after a summary hearing, the Pasig Court may command that the house and lot be released from the mistaken levy and restored to the rightful possessors or owners. But, as held in **Ong vs. Tating, supra**, the Pasig Court is limited merely to the determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment. The Pasig Court cannot pass upon the question of title to or right to the possession of the property subject of the levy with any character of finality and this question has to be resolved in a "proper action" entirely separate and distinct from that in which the execution was issued, if instituted by a stranger to the latter suit (**Sy vs. Discaya, 181 SCRA 378**). Plaintiffs-appellants are not impleaded as parties in the case decided by the Pasig Court. While, as previously stated, plaintiffs-appellants may avail of the "terceria", or may apply for a summary hearing with the Pasig Court as contemplated in **Ong vs. Tating, supra**, or may file an independent proper action to assert their right of possession to the house and lot