

## SECOND DIVISION

**[ G.R. No. 142648, February 27, 2003 ]**

**OFELIA J. VILLA VICENCIO, MA. ELIZABETH J. VILLAVICENCIO,  
MA. LUISA J. VILLAVICENCIO, ANTONIO J. VILLAVICENCIO AND  
MA. REGINA J. VILLAVICENCIO, PETITIONERS, VS. ALEJANDRO  
A. MOJARES AND RODOLFO V. PAYUMO, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for review seeks set aside the decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 48871 dated December 21, 1999, as well as its resolution<sup>[2]</sup> dated March 30, 2000 denying petitioners' motion for reconsideration. The Court of Appeals affirmed the decision of the Regional Trial Court of Quezon City, Branch 92, in Civil Case No. Q-92-11083, which dismissed petitioners' complaint for annulment of sheriff's sale and damages against herein respondents.

The facts of the case, as culled from the records, are as follows:

Petitioners are the legal heirs of the late Jose Villavicencio, who died intestate on October 7, 1991. They filed a complaint for annulment of sheriff's sale and damages affecting a house and lot at No. 21 Green Leaves St., Capitol Green Village, Tandang Sora Avenue, Quezon City and covered by Transfer Certificate of Title (TCT) No. 262376 of the Register of Deeds of Quezon City.

The disputed house and lot were owned by Spouses Carlito and Myrna Martell (the Martell spouses) and registered under TCT No. 262376 in the Register of Deeds of Quezon City. They mortgaged both to secure a loan of P418,000 from the Home Bankers Savings and Trust Company (HBSTC). The mortgage was registered and the owner's copy of the title was given to the mortgagee, HBSTC. Later on, the Martell spouses defaulted, the mortgage was foreclosed, and HBSTC acquired the subject house and lot at an auction held on January 16, 1991. Meantime, the Martell spouses, through their attorney-in-fact Marivic Martell, negotiated the sale of their hocked properties with Jose Villavicencio who paid earnest money on January 24, 1991. The parties executed a Deed of Sale with Assumption of Obligation dated February 12, 1991 and presented this to HBSTC.

Accordingly, HBSTC executed in favor of the Martell spouses a Certificate of Redemption dated June 27, 1991 upon redemption of the subject property and payment of P622,605 by the Martell spouses to HBSTC on April 22, 1991. Thus, the ownership of the petitioners seemed secured, with their son Antonio and his family residing in the premises.

But meanwhile Alejandro Mojares, who had previously sued the Martell spouses in Civil Case No. Q-52417, had secured a writ of attachment on the subject house and

lot which was annotated on the said title on December 22, 1987. A decision dated October 8, 1990, was rendered in favor of Mojares, and having become final and executory a writ of execution dated April 16, 1991 was issued. Pursuant thereto, the house and lot were set to be sold on May 20, 1991, when Jose Villavicencio timely filed an Affidavit of Third Party Claim with supporting papers. Nonetheless, the execution sale proceeded with Mojares as the highest and successful bidder. No redemption having been exercised, a Sheriff's Certificate of Sale was executed and was annotated on May 22, 1992.

The looming conflict became more intricate when the City Hall of Quezon City was gutted by fire on June 11, 1988. Among those razed was the Office of the Register of Deeds and with it the said TCT No. 262376. Expectedly, in its place were issued TCT No. 262376 (PR-13321), TCT No. 262376 (PR-18585), and TCT No. 65497. The latter, which was issued on August 26, 1992, and bears the entries of Notice of Levy on Attachment under Civil Case No. Q-52417 inscribed on December 22, 1987, and the Sheriff's Certificate of Sale inscribed on May 22, 1992, was already in the name of the spouses Jose and Ofelia Villavicencio.

On January 15, 1992, herein petitioners filed a Complaint for Annulment of the sheriff's sale with the Regional Trial Court of Quezon City, Branch 92, docketed as Civil Case No. Q-92-11083.

Named as defendants were Mojares, the purchaser-judgment creditor, Deputy Sheriff Rodolfo Payumo, Marivic Martell, the Martell spouses, HBSTC, and Samuel Cleofe of the Register of Deeds of Quezon City.

For failure to file a responsive pleading, the Martell spouses were declared in default by the RTC, while Cleofe was declared as in default for failure to attend the pre-trial conference. The complaint against HBSTC was dismissed for failure to state a cause of action.

The trial court rendered judgment on August 12, 1994 dismissing the case against respondents Mojares and Payumo after the latter filed a Demurrer to Evidence. The dispositive portion reads as follows:

In view of the foregoing, the Court is left with no recourse but to GRANT defendants' Demurrer to Evidence.

WHEREFORE, premises considered, the case in caption is hereby dismissed as to defendants Alejandro A. Mojares and Rodolfo Payumo. Let the reception of evidence for defendant Marivic Martell be set on September 21, 1994 at 8:30 o'clock in the morning.

SO ORDERED.<sup>[3]</sup>

Petitioners filed a Motion for Reconsideration, which was denied by the trial court on December 13, 1994.

Petitioners appealed before the Court of Appeals, which rendered judgment on December 21, 1999, affirming the decision of the trial court.<sup>[4]</sup> They filed a Motion for Reconsideration, which was denied by the Court of Appeals on March 30, 2000.

Hence, this petition where petitioners raise the following issues:

1. Whether the sheriff's sale was valid although there was no written notice of sale to the judgment debtor as required by Section 18, Rule 39 of the Rules of Court, as amended by Supreme Court Circular No. 8 dated May 15, 1987 [now Sec. 15(d), Rule 39 of the 1997 Rules of Civil Procedure];
2. Whether the sheriff's sale was valid although the purchaser-judgment creditor did not pay the amount of his bid in cash as required by Section 23, Rule 39 of the Rules of Court [now Sec. 21, Rule 39 of the 1997 Rules of Civil Procedure];
3. Whether the alleged levy/attachment was binding on the petitioners although it was not annotated on the copy of the title that was on file with the Register of Deeds;
4. Whether the levy/attachment was binding on petitioners although the record was not reconstituted in accordance with law; and
5. Whether the levy/attachment was valid with respect to the whole property although the judgment debtor had only one-half interest therein.<sup>[5]</sup>

After a careful consideration of the controversy, we find that the issues for resolution may be delimited as follows:

1. Whether the sheriff's execution sale is invalid; and
2. Whether the attachment/levy on the subject property is binding on petitioners.

On the *first issue*, petitioners argue that the sheriff's execution sale was null and void for lack of written notice of sale to the judgment debtor as required by Sec. 18, Rule 39 (now Sec. 15 (d), Sec. 39) of the Revised Rules of Court<sup>[6]</sup> and for failure of the purchaser-judgment creditor to pay his bid in cash.<sup>[7]</sup> In support of their argument regarding the lack of notice of sale, petitioners quoted verbatim the Sheriff's Return, which enumerated in detail the proceedings undertaken.<sup>[8]</sup>

Respondents, in response, contend that the execution sale was valid as there was personal service of the notice of sale and publication in the *Metro Profile* prior to the sale. In support of this contention, they rely on the testimony on cross-examination of Sheriff Payumo, one of the witnesses for petitioners.<sup>[9]</sup>

At the outset, it bears stressing that this issue involves determination of facts, which is not proper in a petition for review on certiorari. The Court has ruled that findings that concern compliance or non-compliance with notice and publication requirements of an extrajudicial foreclosure sale involve a factual issue binding on the Supreme Court.<sup>[10]</sup> It is axiomatic that only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45 of the Rules of Court.<sup>[11]</sup> The Court is not a trier of facts, and we need not delve into the records to determine the probative value of the evidence supporting the trial court's finding.<sup>[12]</sup>