

SECOND DIVISION

[G.R. No. 117213, March 04, 1999]

ARMANDO DE GUZMAN, PETITIONER, VS. SPOUSES MARIANO AND SUSAN ONG, ROGELIO AGOOT, AND COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This is a petition for review on *certiorari* of the decision rendered by the Court of Appeals in CA-G.R. CV No. 34474, affirming the decision of Branch 57 of the Makati Regional Trial Court in Civil Case No. 89-5173.

The facts of the case are as follows:

On November 19, 1986, private respondent Rogelio Agoot bought two truckloads of sand from Victory Hardware Gravel and Sand (hereinafter Victory Hardware). He was attended to by private respondent Susan Tan Ong. He was issued a receipt which listed one Chua Po as the hardware's proprietor.

Agoot asked that the sand be delivered on the same day. This was not done, however, and Agoot and Tan Ong agreed that delivery would be made on November 21, 1986 instead. However, the sand was delivered on November 20, 1986, a Sunday. No one received the sand and it was left resting against a concrete wall. The wall collapsed against the weight of the sand, causing the death of a woman and injuries to a child.

Agoot was sued by the heirs of the woman and relatives of the child in two separate civil cases filed in Imus, Cavite.^[1] He filed third-party complaints against Chua Po in both cases. In one case, the process server's return indicated that the third-party complaint and summons were served upon Chua Po but he refused to sign the return. In the other case, it appeared that the documents were served upon his wife who also refused to sign the return. Chua Po did not file answers in both cases.

Judgment was rendered against Agoot in Civil Case No. 230-87.^[2] He was ordered to pay a total of P118,000.00 while Chua Po, as third-party defendant, was ordered to reimburse Agoot.

A writ of execution was issued and petitioner Armando De Guzman was appointed as special sheriff and tasked to execute the writ.

On September 9, 1989, Agoot and De Guzman went to Chua Po's residence and saw a truck with Victory Hardware's name printed thereon. De Guzman levied upon the property after verifying from its driver that it belonged to Chua Po and Tan Ong.

Two days later, Tan Ong furnished De Guzman with an Affidavit of Third Party Claim dated September 9, 1989, demanding return of the vehicle to her as its lawful owner. De Guzman immediately notified Agoot of the claim.^[3] Agoot thereafter filed an indemnity bond in the amount of P250,000.00.^[4] De Guzman then proceeded with the sale of the truck at a public auction held on September 18, 1989.

Agoot later discovered that Chua Po had died in 1981 and the spouses Mario and Susan Tan Ong already owned Victory Hardware.

The Ongs filed a complaint against Agoot and De Guzman for Recovery of Possession with Damages on September 22, 1989. They alleged that the truck was taken unlawfully by Agoot and De Guzman since it was registered not in the name of Chua Po but of Susan Tan Ong. Tan Ong submitted in evidence a deed of sale showing that her husband sold the truck to her on October 1987.^[5]

Agoot and De Guzman moved for the dismissal of the complaint. They alleged that Chua Po and Tan Ong are one and the same person. Otherwise, Tan Ong represented herself as Chua Po when Agoot bought the sand from Victory Hardware as she personally accepted Agoot's order. Agoot further stated that he merely enforced his right pursuant to the decision of the Imus trial court. For his part, De Guzman asserted that the Ongs did not even attend the public sale of the truck.

The trial court decided in favor of the Ongs. It ruled that since execution can issue only against a party to the suit, the Ongs' property could not be subject to execution in the suit filed by Agoot against Chua Po as they were not parties to that suit. According to the trial court, Agoot should have impleaded the Ongs in the Imus cases.

The dispositive portion of the trial court's decision reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter jointly and severally to pay plaintiff:

1. The sum of P250,000.00 representing the current purchase/sale value of the motor vehicle;
2. The sum of P60,000.00 representing the accumulated unrealized profits as of the date of the filing of this Complaint;
3. The sum of P25,000.00 by way of attorney's fees;
4. Costs of suit.

The defendants' counterclaim is hereby dismissed there being no evidence in support thereof adduced in the trial.

SO ORDERED."^[6]

Agoot and De Guzman's Motion for Reconsideration was denied. Both Agoot and De Guzman appealed to the Court of Appeals which, however, affirmed *in toto* the decision of the trial court. Moreover, the Court of Appeals pointed out that the

judgment in Civil Case No. 230-87 is void as regards Chua Po since the latter was already dead even before the case was commenced. The Court of Appeals later on denied the separate Motions for Reconsideration filed by Agoot and De Guzman.

Agoot and De Guzman filed separated petitions for review before this Court. Agoot's petition, docketed as G.R. No. 117127, was denied for failure to attach a certified true copy of the resolution of the Court of Appeals denying his motion for reconsideration and, at any rate, for failure to show any reversible error on the part of the Court of Appeals. [7]

Before us now is the petition for review filed by De Guzman, in which he raises the following assignment of errors:

I

THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ERROR IN NOT APPLYING THE DOCTRINE OF ESTOPPEL TO THE INSTANT CASE.

II

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING PETITIONER DE GUZMAN LIABLE NOTWITHSTANDING THE UNDISPUTED FACT THAT PETITIONER DE GUZMAN ACTED IN GOOD FAITH, WITH DUE CARE AND IN STRICT COMPLIANCE WITH THE RULES OF COURT IN IMPLEMENTING THE WRIT OF EXECUTION.

III

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN IGNORING THE FACT THAT PETITIONER DE GUZMAN WAS JUST CONSTRAINED TO PROCEED WITH THE AUCTION SALE OF THE ISUZU ELF PICK-UP NOT ONLY BECAUSE OF THE FILING OF AN INDEMNITY BOND BY RESPONDENT AGOOT, BUT ALSO BECAUSE OF A LETTER SENT BY THE LATTER STATING THAT NO VALID GROUNDS EXISTED TO STOP THE AUCTION SALE AND THREATENING PETITIONER DE GUZMAN WITH CONTEMPT AND ADMINISTRATIVE PROCEEDINGS IN THE EVENT THE PROPERTY IS RELEASED AND THE AUCTION SALE IS NOT HELD.

IV

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE FACT THAT PETITIONER DE GUZMAN WAS DEPRIVED OF FULL OPPORTUNITY TO DEFEND HIMSELF DUE TO THE EXISTENCE OF A CONFLICT OF INTEREST BETWEEN HIM AND HIS COUNSEL, RESPONDENT AGOOT [8]

The issues for our consideration in this petition are (1) whether or not the writ of execution in Civil Case No. 230-87 was properly implemented, and, if not, (2) whether or not petitioner is liable therefor.

The rule is that execution may only be effected against the property of the judgment debtor, who must necessarily be a party to the case. [9] A sheriff who levies upon