

THIRD DIVISION

[G.R. No. 97898, August 11, 1997]

**FLORANTE F. MANACOP, PETITIONER, VS. COURT OF APPEALS
AND E & L MERCANTILE, INC., RESPONDENTS.**

DECISION

PANGANIBAN, J.:

May a writ of execution of a final and executory judgment issued before the effectivity of the Family Code be executed on a house and lot constituted as a family home under the provision of said Code?

Statement of the Case

This is the principal question posed by petitioner in assailing the Decision of Respondent Court of Appeals^[1] in CA-G.R. SP No. 18906 promulgated on February 21, 1990 and its Resolution promulgated on March 21, 1991, affirming the orders issued by the trial court commanding the issuance of various writs of execution to enforce the latter's decision in Civil Case No. 53271.

The Facts

Petitioner Florante F. Manacop^[2] and his wife Eulaceli purchased on March 10, 1972 a 446-square-meter residential lot with a bungalow, in consideration of P75,000.00. ^[3] The property, located in Commonwealth Village, Commonwealth Avenue, Quezon City, is covered by Transfer Certificate of Title No. 174180.

On March 17, 1986, Private Respondent E & L Mercantile, Inc. filed a complaint against petitioner and F.F. Manacop Construction Co., Inc. before the Regional Trial Court of Pasig, Metro Manila to collect an indebtedness of P3,359,218.45. Instead of filing an answer, petitioner and his company entered into a compromise agreement with private respondent, the salient portion of which provides:

"c. That defendants will undertake to pay the amount of P2,000,000.00 as and when their means permit, but expeditiously as possible as their collectibles will be collected." (sic)

On April 20, 1986, the trial court rendered judgment approving the aforementioned compromise agreement. It enjoined the parties to comply with the agreement in good faith. On July 15, 1986, private respondent filed a motion for execution which the lower court granted on September 23, 1986. However, execution of the judgment was delayed. Eventually, the sheriff levied on several vehicles and other personal properties of petitioner. In partial satisfaction of the judgment debt, these chattels were sold at public auction for which certificates of sale were

correspondingly issued by the sheriff.

On August 1, 1989, petitioner and his company filed a motion to quash the alias writs of execution and to stop the sheriff from continuing to enforce them on the ground that the judgment was not yet executory. They alleged that the compromise agreement had not yet matured as there was no showing that they had the means to pay the indebtedness or that their receivables had in fact been collected. They buttressed their motion with supplements and other pleadings.

On August 11, 1989, private respondent opposed the motion on the following grounds: (a) it was too late to question the September 23, 1986 Order considering that more than two years had elapsed; (b) the second alias writ of execution had been partially implemented; and (c) petitioner and his company were in bad faith in refusing to pay their indebtedness notwithstanding that from February 1984 to January 5, 1989, they had collected the total amount of P41,664,895.56. On September 21, 1989, private respondent filed an opposition to petitioner and his company's addendum to the motion to quash the writ of execution. It alleged that the property covered by TCT No. 174180 could not be considered a family home on the grounds that petitioner was already living abroad and that the property, having been acquired in 1972, should have been judicially constituted as a family home to exempt it from execution.

On September 26, 1989, the lower court denied the motion to quash the writ of execution and the prayers in the subsequent pleadings filed by petitioner and his company. Finding that petitioner and his company had not paid their indebtedness even though they collected receivables amounting to P57,224,319.75, the lower court held that the case had become final and executory. It also ruled that petitioner's residence was not exempt from execution as it was not duly constituted as a family home, pursuant to the Civil Code.

Hence, petitioner and his company filed with the Court of Appeals a petition for certiorari assailing the lower court's Orders of September 23, 1986 and September 26, 1989. On February 21, 1990, Respondent Court of Appeals rendered its now questioned Decision dismissing the petition for certiorari. The appellate court quoted with approval the findings of the lower court that: (a) the judgment based on the compromise agreement had become final and executory, stressing that petitioner and his company had collected the total amount of P57,224,319.75 but still failed to pay their indebtedness and (b) there was no showing that petitioner's residence had been duly constituted as a family home to exempt it from execution. On the second finding, the Court of Appeals added that:

"x x x. We agree with the respondent judge that there is no showing in evidence that petitioner Mañacop's residence under TCT 174180 has been duly constituted as a family home in accordance with law. For one thing, it is the clear implication of Article 153 that the family home continues to be so deemed constituted so long as any of its beneficiaries enumerated in Article 154 actually resides therein. Conversely, it ceases to continue as such family home if none of its beneficiaries actually occupies it. There is no showing in evidence that any of its beneficiaries is actually residing therein. On the other hand, the unrefuted assertion of private respondent is that petitioner Florante Mañacop had already left the country and is

now, together with all the members of his family, living in West Covina, Los Angeles, California, U.S.A.”

Petitioner and his company filed a motion for reconsideration of this Decision on the ground that the property covered by TCT No. 174180 was exempt from execution. On March 21, 1991, the Court of Appeals rendered the challenged Resolution denying the motion. It anchored its ruling on *Modequillo v. Bрева*,^[4] which held that “all existing family residences at the time of the effectivity of the Family Code are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code.”

Applying the foregoing pronouncements to this case, the Court of Appeals explained:

“The record of the present case shows that petitioners incurred the debt of P3,468,000.00 from private respondent corporation on February 18, 1982 (Annex `A', Petition). The judgment based upon the compromise agreement was rendered by the court on April 18, 1986 (Annex `C', Ibid). Paraphrasing the aforecited *Modequillo* case, both the debt and the judgment preceded the effectivity of the Family Code on August 3, 1988. Verily, the case at bar does not fall under the exemptions from execution provided under Article 155 of the Family Code.”

Undeterred, petitioner filed the instant petition for review on certiorari arguing that the Court of Appeals misapplied *Modequillo*. He contends that there was no need for him to constitute his house and lot as a family home for it to be treated as such since he was and still is a resident of the same property from the time “it was levied upon and up to this moment.”

The Issue

As stated in the opening sentence of this Decision, the issue in this case boils down to whether a final and executory decision promulgated and a writ of execution issued before the effectivity of the Family Code can be executed on a family home constituted under the provisions of the said Code.

The Court's Ruling

We answer the question in the affirmative. The Court of Appeals committed no reversible error. On the contrary, its Decision and Resolution are supported by law and applicable jurisprudence.

No Novel Issue

At the outset, the Court notes that the issue submitted for resolution in the instant case is not entirely new. In *Manacop v. Court of Appeals*,^[5] petitioner himself as a party therein raised a similar question of whether this very same property was exempt from preliminary attachment for the same excuse that it was his family home. In said case, F.F. Cruz & Co., Inc. filed a complaint for a sum of money. As an incident in the proceedings before it, the trial court issued a writ of attachment on the said house and lot. In upholding the trial court (and the Court of Appeals) in