327 Phil. 716

FIRST DIVISION

[G.R. No. 102998, July 05, 1996]

BA FINANCE CORPORATION, PETITIONER VS. HON. COURT OF APPEALS AND ROBERTO M. REYES, RESPONDENTS.

D E C I S I O N

VITUG, J.:

The case at bar is a suit for replevin and damages. The petition for review on certiorari assails the decision of the Court of Appeals[1] in CA- G.R. CV No. 23605 affirming that of the Regional Trial Court of Manila, Branch XX,[2] which has disposed of its Civil Case No. 87-42270 in this wise:

> "WHEREFORE, the case against defendant-spouses (sic) Reynaldo Manahan is hereby dismissed without prejudice, for failure to prosecute. Plaintiff having failed to show the liability of defendant John Doe in the person of Roberto M. Reyes, the case against the latter should likewise be dismissed. Moreover, plaintiff is hereby directed to return the vehicle seized by virtue of the order of seizure issued by this Court with all its accessories to the said Roberto M. Reyes."[3]

The decisions of both the appellate court and the court *a quo* are based on a like finding of the facts hereinafter briefly narrated.

The spouses Reynaldo and Florencia Manahan executed, on 15 May 1980, a promissory note[4] binding themselves to pay Carmasters, Inc., the amount of P83,080.00 in thirty-six monthly installments commencing 01 July 1980. To secure payment, the Manahan spouses executed a deed of chattel mortgage[5] over a motor vehicle, a Ford Cortina 1.6 GL, with motor and serial number CUBFWE-801010. Carmasters later assigned[6] the promissory note and the chattel mortgage to petitioner BA Finance Corporation with the conformity of the Manahans. When the latter failed to pay the due installments, petitioner sent demand letters. The demands not having been heeded, petitioner, on 02 October 1987, filed a complaint for replevin with damages against the spouses, as well as against a John Doe, praying for the recovery of the vehicle with an alternative prayer for the payment of a sum of money should the vehicle not be returned. Upon petitioner's motion and the filing of a bond in the amount of P169,161.00, the lower court issued a writ of replevin. The court, however, cautioned petitioner that should summons be not served on the defendants within thirty (30) days from the writ's issuance, the case would be dismissed for failure to prosecute.[7] The warning was based on what the court perceived to be the deplorable practice of some mortgagees of "freezing (the)

foreclosure or replevin cases" which they would so "conveniently utilize as a leverage for the collection of unpaid installments on mortgaged chattels."[8]

The service of summons upon the spouses Manahan was caused to be served by petitioner at No. 35 Lantana St., Cubao, Quezon City. The original of the summons had the name and the signature of private respondent Roberto M. Reyes indicating that he received, on 14 October 1987, a copy of the summons and the complaint.[9] Forthwith, petitioner, through its Legal Assistant, Danilo E. Solano, issued a certification to the effect that it had received from Orson R. Santiago, the deputy sheriff of the Regional Trial Court of Manila, Branch 20, the Ford Cortina seized from private respondent Roberto M. Reyes, the John Doe referred to in the complaint,[10] in Sorsogon, Sorsogon.[11] On 20 October 1987, the lower court came out with an order of seizure.

Alleging possession in good faith, private respondent filed, on 26 October 1987, a motion for an extension of time within which to file his answer and/or a motion for intervention. The court granted the motion.

A few months later, or on 18 February 1988, the court issued an order which, in part, stated:

> "Perusal of the record shows that an order for the seizure of personal property was issued on October 20, 1987 in pursuance to a previous order of the Court dated October 13, 1987. However, to date, there is no showing that the principal defendants were served with summons inspite of the lapse of four (4) months.
>
> "Considering, this is a replevin case and to forestall the evils that arise from this practice, plaintiff failing to heed the Order dated October 13, 1987, particularly second paragraph thereof, the above-entitled case is hereby ordered DISMISSED for failure to prosecute and further ordering the plaintiff to return the property seized with all its accessories to defendant John Doe in the person of Roberto M. Reyes.
>
> "SO ORDERED."[12]

On 26 February 1988, petitioner filed a notice of dismissal of the case "without prejudice and without pronouncement as to costs, before service of Summons and Answer, under Section 1, Rule 17, of the Rules of Court."[13] It also sought in another motion the withdrawal of the replevin bond. In view of the earlier dismissal of the case (for petitioner's failure to prosecute), the court, on 02 March 1988, merely noted the notice of dismissal and denied the motion to withdraw the replevin bond considering that the writ of replevin had meanwhile been implemented.[14]

On 09 March 1988, private respondent filed a motion praying that petitioner be directed to comply with the court order requiring petitioner to return the vehicle to him. In turn, petitioner filed, on 14 March 1988, a motion for the reconsideration of the orders of 18 February 1988 and 02 March 1988 contending that: (a) the

dismissal of the case was tantamount to adjudication on the merits that thereby deprived it with the remedy to enforce the promissory note, the chattel mortgage and the deed of assignment, under Section 3, Rule 117, of the Rules of Court; (b) the order to return the vehicle to private respondent was a departure from jurisprudence recognizing the right of the mortgagor to foreclose the property to respond to the unpaid obligation secured by the chattel mortgage, and (c) there were no legal and factual bases for the court's view that the filing of the replevin case was "characterized (by) evil practices."[15]

On 20 April 1988, the court granted petitioner's motion for reconsideration and accordingly recalled the order directing the return of the vehicle to private respondent, set aside the order dismissing the case, directed petitioner "to cause the service of summons together with a copy of the complaint on the principal defendants within five (5) days from receipt"[16] thereof at petitioner's expense, and ordered private respondent to answer the complaint.

A few months later, or on 02 August 1988, petitioner filed a motion to declare private respondent in default. The court granted the motion on that same day and declared private respondent "in default for his failure to file the x x x answer within the reglementary period."[17] The court likewise granted petitioner's motion to set the case for the presentation, *ex parte*, of evidence. Petitioner, thereupon, submitted the promissory note, the deed of chattel mortgage, the deed of assignment, a statement of account in the name of Florencia Manahan and two demand letters.

On 27 February 1989, the trial court rendered a decision dismissing the complaint against the Manahans for failure of petitioner to prosecute the case against them. It also dismissed the case against private respondent for failure of petitioner to show any legal basis for said respondent's liability. The court ratiocinated:

> "x x x. Roberto M. Reyes is merely ancillary debtor in this case. The defendant spouses Manahan being the principal debtor(s) and as there is no showing that the latter has been brought before the jurisdiction of this court, it must necessarily follow that the plaintiff has no cause of action against said Roberto M. Reyes herein before referred to as defendant John Doe. Under the circumstances, it is incumbent upon the plaintiff to return the seized vehicle unto the said Roberto M. Reyes."[18]

In its appeal to the Court of Appeals, petitioner has asserted that a suit for replevin aimed at the foreclosure of the chattel is an action *quasi in rem* which does not necessitate the presence of the principal obligors as long as the court does not render any personal judgment against them. This argument did not persuade the appellate court, the latter holding that-

> "x x x. In action quasi in rem an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or lien burdening the property, such as proceedings having for their sole object the sale or disposition of the property of the defendant,

whether by attachment, foreclosure, or other form of remedy (Sandejas vs. Robles, 81 Phil. 421). In the case at bar, the court cannot render any judgment binding on the defendants spouses for having allegedly violated the terms and conditions of the promissory note and the contract of chattel mortgage on the ground that the court has no jurisdiction over their persons, no summons having been served on them. That judgment, if rendered, is void for having denied the defendants spouses due process of law which contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property (Macabingkil vs. Yatco, 26 SCRA 150, 157).

"It is next contended by appellant that as between appellant, as mortgagee, and John Doe, whose right to possession is dubious if not totally non-existent, it is the former which has the superior right of possession.

"We cannot agree.

"It is an undisputed fact that the subject motor vehicle was taken from the possession of said Roberto M. Reyes, a third person with respect to the contract of chattel mortgage between the appellant and the defendants spouses Manahan.

"The Civil Code expressly provides that every possessor has a right to be respected in his possession (Art. 539, New Civil Code); that good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof (Art. 527, ibid.); and that the possession of movable property acquired in good faith is equivalent to a title; nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same (Art. 559, ibid.). Thus, it has been held that a possessor in good faith is entitled to be respected and protected in his possession as if he were the true owner thereof until a competent court rules otherwise (Chus Hai vs. Kapunan, 104 Phil. 110; Yu, et al. vs. Hon. Honrado, etc., et al., 99 SCRA 237). In the case at bar, the trial court did not err in holding that the complaint does not state any cause of action against Roberto M. Reyes, and in ordering the return of the subject chattel to him."[19]

The appellate court, subsequently, denied petitioner's motion for reconsideration.

In the instant appeal, petitioner insists that a mortgagee can maintain an action for replevin against any possessor of the object of a chattel mortgage even if the latter were not a party to the mortgage.

Replevin, broadly understood, is both a form of principal remedy and of a provisional relief. It may refer either to the action itself, i.e., to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and hold it *pendente lite.*[20] The action is primarily