

FOURTEENTH DIVISION

[CA-G.R. CV NO. 100231, March 11, 2015]

**JOSEFINA A. PRADO, PLAINTIFF-APPELLANT, VS. SHERIFF
OLIVER N. LANDINGIN, SHERIFF IV OF THE REGIONAL TRIAL
COURT OF BAGUIO CITY, AND ABELARDO A. GAPUZ,
DEFENDANTS-APPELLEES.**

D E C I S I O N

BATO, JR., J.:

This is an appeal from the Decision^[1] dated April 12, 2012 by the Regional Trial Court of Urdaneta City, Pangasinan in Civil Case No. U-8991 which dismissed, for lack of jurisdiction, the Complaint for Declaration of Nullity of Notice of Levy, Auction Sale and Sheriff's Certificate, and Damages.

The facts and antecedents of the case are accurately summarized by the court *a quo* as follows:

Defendant Abelardo Gapuz (Abelardo) and his wife Magdalena Gapuz (Magdalena) filed before the Regional Trial Court of Baguio City a complaint for Recovery of Possession and Damages against Rodolfo Prado (Rodolfo), husband of herein plaintiff Josefina Prado (Josefina). The case was docketed as Civil Case No. 4475-R and raffled off to Branch 7 of said court (RTC-Baguio). Subsequently, RTC-Baguio rendered a Decision dated February 6, 2004, disposing of the case as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- a) Declaring the plaintiffs the legal awardee of Lot 153, Block 3 from the government and therefore entitled to the possession thereof;
- b) Ordering the defendant Prado to vacate immediately the 90 sq. m. portion of Lot 153, Block 3 which he occupies in bad faith, and to deliver the possession of said portion to the plaintiffs;
- c) In case the defendant Prado would not remove the improvement he constructed on the 90 sq. m. portion of Lot 153, Block 3, and deliver the possession to the plaintiffs, giving the plaintiffs the right to remove said improvements at the expense of the defendant Prado;
- d) Ordering the defendant Prado to pay to the plaintiffs as follows:

(1) P140,352.00 plus yearly increase of 10% representing rentals from August, 1989 to September, 2001; plus 6% legal interest per annum legal interest thereon;

(2) P23,392.00 plus 6% legal interest per annum – representing rentals and interest thereon from October, 2001 up to October, 2003.

(3) P50,000.00 attorneys fee and P1,500.00 times the number of time (sic) plaintiffs' lawyer actually participated in the trial of the case, as appearance fee, as expenses of litigation.

e) To pay the costs of suit.

SO ORDERED.

Rodolfo appealed the decision to the Court of Appeals but said court dismissed the appeal and affirmed the decision of the RTC-Baguio. Rodolfo's motion for reconsideration was denied. Undaunted, Rodolfo brought the matter to the Supreme Court by way of petition for review but his petition was, likewise, denied. The denial became final and executory on March 30, 2007.

On September 28, 2007, the RTC-Baguio issued a writ of execution upon motion of defendant Abelardo. Thereupon, defendant Sheriff Oliver Landingin (Sheriff) issued a Notice of Levy Upon Realty dated October 23, 2007, levying upon the parcels of land covered by Transfer Certificate of Title (TCT) No. T-219944 and TCT No. T-219946.

Subsequently, A Notice of Sale on Execution of Real Property was issued over the property covered by TCT No. T-219946 which is situated at Barrio Cablong, Pozorrubio, Pangasinan, containing an area of Five Thousand and Thirty Five (5,035) square meters. The subject property is the conjugal property of Rodolfo and plaintiff Josefina.

At the public auction held on December 19, 2007, the subject property was sold to defendant Abelardo who was the highest bidder in the amount of Six Hundred Sixteen Thousand Eight Hundred Nine Pesos (P616,809.00). A Sheriff's Certificate of Sale was issued in his favor.

Plaintiff Josefina now claims that the levy on execution, the auction sale and the resultant certificate of sale, are not valid, hence she filed the present complaint, praying that the notice of levy, the auction sale and the certificate of sale be declared null and void; the notice of levy on TCT No. T-219946 be cancelled; TCT No. T-219946 and the ownership of the subject be restored to her; and defendants be ordered to pay damages.

Plaintiff posits that the conjugal partnership should not be held liable for the personal obligation of her husband. It is her contention that the pecuniary liabilities adjudged against her husband by the RTC-Baguio in

Civil Case No. 4475-R is the latter's personal obligation and, thus, the conjugal property should not be made to answer for its settlement.^[2]

In his Answer with Motion to Dismiss,^[3] defendant-appellee Abelardo A. Gapuz incorporated the following special and affirmative defenses:

X x x

- a. The plaintiff has no cause of action against the defendants because they were just implementing a valid and final decision of a co-equal court, affirmed by no less than the Court of Appeals and the Supreme Court;
- b. That the decision from which the Writ of Execution being questioned was based is an act of plaintiff's husband as head of the family and for the benefit of the conjugal partnership of gains, that is, constructing their residential house within the lot of the defendant Gapuz in bad faith. This is so because the plaintiff, her husband, their children, sons and daughters-in-law, as well as grandchildren are all living therein and are therefore benefiting from said act [of] plaintiff's husband. X x x
- c. The complaint should likewise be dismissed for having violated Section 4, Rule 3 of the 1997 Rules of Civil Procedure requiring [that] the husband and wife shall sue or be sued jointly and this case is not one among the exceptions when the plaintiff could sue alone without joining her husband. As such, this case should likewise be dismissed even on this ground alone.
- d. The complaint should be dismissed for failure to pay the correct docket and filing fees. X x x

13. The complaint should likewise be dismissed for violation of the Notarial Law. The complaint is a 'sham' or 'unsigned' pleading because the same was not properly verified in accordance with the Rules.

During the trial, plaintiff-appellant testified and presented her husband Rodolfo. Meanwhile, defendant-appellee testified and insisted that the court *a quo* had no jurisdiction over the subject matter of the case.

Subsequently, on April 12, 2012, the court *a quo* rendered its now assailed Decision which dismissed the complaint for lack of jurisdiction. It held that:

Unquestionably, the execution is under the authority and jurisdiction of the executing court until its final stage, in this case, the RTC-Baguio. Can this court then intervene in the acts of RTC-Baguio which is a co-equal court? The answer is in the negative.

Section 16, Rule 39 of the Rules of Court authorizes a third person, who is not the judgment debtor or his agent, to vindicate his claim to a property levied through an entirely separate and distinct action. X x x

x x x

x x x

x x x

Clearly, plaintiff Josefina was not impleaded in Civil Case No. 4475-R. Be that as it may, she cannot file a separate action like the present case to assert her right over the levied property because she is not a third-party or a 'stranger' as contemplated in the aforecited rule. This is the ruling of the Supreme Court in *Ching vs. Court of Appeals* x x x.

x x x

x x x

x x x

Verily, Josefina cannot maintain the present suit. The judgment or order of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed but is restricted to the court in which the judgment or order is rendered or issued. The filing of a mere motion by Josefina in Civil Case No. 4475-R before the RTC-Baguio to annul the execution, the auction sale, and the certificate of sale was the proper remedy. Resultantly, this court lacked jurisdiction over the nature of the action in the present case and the RTC-Baguio which rendered the decision and ordered the execution sale should settle the whole controversy.^[4]

Not satisfied with the decision of the trial court, plaintiff-appellant filed the present appeal, alleging that:

- A. THE TRIAL COURT COMMITTED REVERSIBLE ERRORS OF FACTS AND LAW IN DISMISSING CIVIL CASE NO. U-8991 ON THE GROUND OF LACK OF JURISDICTION;
- B. THE TRIAL COURT COMMITTED REVERSIBLE ERRORS OF FACTS AND LAW IN FAILING TO RENDER THEREON A JUDGMENT ON THE MERITS AS WARRANTED BY THE EVIDENCE PRESENTED BY THE APPELLANT.^[5]

In lieu of an Appellee's Brief, defendant-appellee filed a Manifestation,^[6] praying that he be allowed to adopt the Answer with Motion to Dismiss which he filed with the court *a quo*. On January 23, 2014, this Court issued a Resolution^[7] noting the Manifestation.

So, the issue in this appeal is whether or not the court *a quo* committed reversible error in dismissing the complaint for lack of jurisdiction.

The appeal is bereft of merit.

As the facts show, the notice of levy and the subsequent auction sale of the conjugal property of plaintiff-appellant and her husband Rodolfo located in Pozorrubio, Pangasinan, and embraced under TCT No. 219946, were pursuant to the execution of the final and executory judgment of the Regional Trial Court of Baguio City in Civil Case No. 4475-R. The rule is, during the execution stage, the power to supervise, even correct, the proceedings is vested with the court which rendered the decision. Thus, in *Balais vs. Velasco*,^[8] the Supreme Court held that: