

## **SPECIAL TWENTY-SECOND DIVISION**

**[ CA-G.R. CV NO. 02711-MIN, June 04, 2014 ]**

**SY SEN BEN, PLAINTIFF-APPELLANT, VS. ROBERT MEDIALDEA,  
THE REGISTER OF DEEDS OF DAVAO CITY, JAMES IAN O. YEUNG,  
MARLINA T. SHENG, NANETTE CRISOLOGO AND JESUS  
CRISOLOGO, DEFENDANTS-APPELLEES,**

### **D E C I S I O N**

**INTING, J.:**

Before Us on appeal is the Order<sup>[1]</sup> dated May 23, 2011 of the Regional Trial Court of Davao City, Branch 16, rendered in Civil Case No. 33,580-10, which is a Complaint for Annulment of Sheriff's Provisional Certificate of Sale, with a Prayer for a Writ of Preliminary Injunction.

The facts<sup>[2]</sup> of the case are as follows:

At the heart of this dispute is a parcel of land covered by Transfer Certificate of Title (TCT) No. T-195366, situated in the City of Davao, Philippines, more particularly described as follows:

"A parcel of land (lot 74 of the subdivision plan Psd-23107, being a portion of the land described on the original plan Psn-2123, G.L.R.O. Record No.) situated in the City of Davao. Bounded on the N., by Lot 79, 78 and 77 of the subdivision plan; on the E., by lot 75 of the subdivision plan; on the S., by Road Lot 2, of the subdivision plan; and on the W., by Lot 73 of the subdivision plan. Beginning at a point marked "1" on plan being N. 57 deg. 17'E., 728.34 m. from ELIN 1 City of Davao."<sup>[3]</sup>

Sometime in 1998, plaintiff-appellant Sy Sen Ben (Sy) filed a complaint against So Keng Koc (So) and Robert Allan Limso (Limso) for sum of money with damages before the Regional Trial Court of Davao City, Branch 8 (RTC-8). The case was docketed as Civil Case No. 26,513-98.

On September 8, 1998, RTC-8 approved Sy's prayer for a Writ of Preliminary Attachment. Consequently, the properties of So and Limso were levied upon, including the subject property. The Writ of Attachment was recorded in the TCT of the subject property.

Later in the same year, defendants-appellees Jesus and Nanette Crisologo (Crisologo) also filed a complaint against So and Limso. The case was docketed as Civil Case Nos. 26,810-98 and 26,811-98 before the Regional Trial Court of Davao City, Branch 15 (RTC-15). As a result, the subject property was also levied by the

Crisologos, upon Order of RTC-15 dated October 7, 1998 which approved their prayer for a preliminary Writ of Attachment. The Writ was recorded in the TCT on October 8, 1998.<sup>[4]</sup>

During the trial under RTC-8, a compromise agreement was reached by the parties wherein the defendants bound themselves to convey the properties of So in favor of Sy, as settlement of the money claim of the latter.

As a result, on October 19, 1998, RTC-8 rendered a Decision approving the compromise agreement, to wit:

"WHEREFORE, finding the aforequoted Compromise Agreement to be in order and not otherwise contrary to law, morals and public policy, the same is hereby Approved and judgment is hereby rendered in accordance with its terms and conditions, without pronouncement as to costs.

Parties are hereby directed to comply with the terms and conditions of the aforequoted agreement failure of which execution shall issue upon motion seasonably filed."<sup>[5]</sup>

The Decision became final and executory on November 18, 1998.

Sometime thereafter, the Crisologos filed a complaint for Injunction/Reconveyance before the Regional Trial Court of Davao, Branch 10 (RTC-10) against Sy involving the same subject property. The case was docketed as Civil Case No. 26,891-98.

The case remains pending before RTC-10.<sup>[6]</sup>

On July 1, 1999, RTC-15 rendered a Decision in favor of the Crisologos. The dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering defendants Robert Limso and So Keng Koc to pay solidarily the plaintiffs:

IN CIVIL CASE NO. 26,810-98

1. Forty Six Million Four Hundred Eighty One Thousand Six Hundred Seventy One Pesos (P46,481,671.00) plus two point four percent (2.4%) interest per month to be computed from December 16, 1997 until fully paid.
2. One Hundred Thousand Pesos (P100,000.00) as moral damages;
3. Two Hundred Thousand Pesos (P200,000.00) as exemplary damages;
4. Four Million Pesos (P4,000,000.00) as attorney's fees;
5. One Hundred Sixty Five Thousand Seven Hundred Sixty Pesos and Thirty Five Centavos (P165,760.35) for the Writ of Attachment premiums. One Hundred Seventy Five Thousand

Two Hundred Ninety Eight Pesos (P175,298.00) for the filing fees. One Hundred Sixteen Thousand Six Hundred Fifty Four Pesos (P116,654.00), Two Thousand Nine Hundred Eighteen and Sixty Centavos (P2,918.60) for the legal research fund.

IN CIVIL CASE NO. 26,811-98

1. Fourteen Million Four Hundred Thousand Five Hundred Eighty Five Pesos (P14,400,585.00) plus two point four percent (2.4%) per month to be computed from December 16, 1997 until fully paid.
2. One Hundred Thousand Pesos (P100,000.00) as moral damages and Two Hundred Thousand Pesos (P200,000.00) as exemplary damages.
3. One Million Pesos (P1,000,000.00) as attorney's fees.
4. Costs of suit.

SO ORDERED."<sup>[7]</sup>

The case was elevated on appeal. On July 22, 2008, the Court of Appeals rendered a Decision which partially granted the appeal with modifications with regard to the exemplary damages and interest. The dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the instant appeal is partially GRANTED. Accordingly, the assailed Decision of the Regional Trial Court, 11<sup>th</sup> Judicial Region, Branch 15, Davao City, dated July 1, 1999, is hereby MODIFIED in the sense that appellant's loan obligations are subject to an interest of twelve percent (12%) per annum, to be computed from December 16, 1997 (for Case No. 26,810-98) and September 23, 1998 (for Case No. 26,811-98) until fully paid, and that the award for exemplary damages is hereby DELETED."<sup>[8]</sup>

Thereafter, on July 5, 2010, defendant-appellee Robert M. Medialdea (Medialdea), Sheriff IV of RTC-15 issued a Notice of Sale to the parties setting the auction sale on August 26, 2010. However, the August 26, 2010 auction sale was not conducted since a Third Party Claim was filed by Sy before RTC-15.

On September 3, 2010, Medialdea issued a 2<sup>nd</sup> Notice of Sale setting the auction sale on October 7, 2010. The notice was also sent to Atty. Leonides Tan, counsel of Sy.

Medialdea conducted the public auction sale on October 7, 2010. The subject property was sold and adjudicated in favor of the defendants-appellees James Ian O. Yeung and Marlina T. Sheng, being the highest/sole bidder for the amount of P16,000,000.00.

Notably, the Sheriff's Certificate of Sale was issued without any express mention of the third party claim of Sy.

Thus, Sy was constrained to file a complaint for Injunction with a Prayer for a Writ of

Preliminary Injunction and/or Temporary Restraining Order before the Regional Trial Court of Davao City, Branch 16 (RTC-16) against Medialdea.

Subsequently, Sy amended his complaint to annul the Sheriff's (Provisional) Certificate of Sale. The amended complaint also impleaded the Register of Deeds of Davao City, James Ian O. Yeung, Marlina T. Sheng, Nanette Crisologo and Jesus Crisologo as defendants.

On March 3, 2011, defendants-appellees filed a Motion to Dismiss the complaint based on absence of legal capacity to sue (on the part of Sy) and prescription.

On May 23, 2011, the court *a quo* rendered the assailed Order ruling in favor of defendants-appellees. The pertinent portion of which reads:

"Plaintiff (*sic*) inaction for a period of more than eleven (11) years is not attributable to any other persons, but only to him. Like Rip Van Winkle, plaintiff slept on his right unaware that he already lost the right to enforce the judgment in his favor.

With the foregoing facts and jurisprudence as guide, this Court finds that plaintiff's cause of action against TCT No. T-195366 in the name of So Keng Koc has long prescribed.

As such, the instant Amended Complaint is hereby DISMISSED.

With the dismissal of the instant case, the issue on the application for preliminary injunction becomes academic."<sup>[9]</sup>

On June 13, 2011, Sy filed a motion for reconsideration which the court *a quo* denied on October 10, 2011.

Undeterred, Sy elevated the assailed Order on appeal before this Court.

The plaintiff-appellee assigns the following errors:

I.

WHETHER OR NOT PLAINTIFF-APPELLANT'S COMPLAINT FILED BEFORE THE COURT A *QUO* HAS PRESCRIBED;

II.

WHETHER OR NOT THE SUBJECT PROPERTY COVERED BY TCT NO. T-195366 WHICH HAS ALREADY BEEN ADJUDICATED IN FAVOR OF PLAINTIFF-APPELLANT IN A DECISION RENDERED BY RTC-BRANCH 8 AND DESPITE THE PENDENCY OF ANOTHER CASE FILED BY DEFENDANTS-APPELLEES FOR INJUNCTION/ RECONVEYANCE BEFORE RTC-BRANCH 10, CAN BE SOLD AT PUBLIC AUCTION, WITHOUT VIOLATING EXISTING RULES AND JURISPRUDENCE NOT TO MENTION THE VESTED RIGHTS ACQUIRED BY PLAINTIFF-APPELLANT; AND