

THIRTEENTH DIVISION

[CA-G.R. SP NO. 123648, October 03, 2014]

**CECILIA A. SIA, MARIANITA A. HOFIÑEÑA, MARIA D. BUTAC,
KATHRINA GRACE A. SIA, KIM PATRICK A. SIA, AND EDUARDO
HOFIÑEÑA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES,
REGIONAL TRIAL COURT OF MANILA (BRANCH 52),
REPRESENTED BY JUDGE RUBEN REYNALDO G. ROXAS AND
ROSITA TAN AND RTC MANILA SHERIFF MONIQUE A. CASTILLO,
RESPONDENTS.**

D E C I S I O N

SADANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court, with prayer for issuance of temporary restraining order and preliminary injunction, seeking to set aside the October 27, 2011^[1] Order of respondent Judge Ruben Reynaldo G. Roxas of the Regional Trial Court of Manila, Branch 52, and the February 7, 2012^[2] Order denying the Motion for Reconsideration.

Records show that petitioner Cecilia Sia (Cecilia) was one of the accused in *People of the Philippines v. Jaime Tan, Alberto Cordero Sy and Cecille Sia a.k.a. Cecilia Ang Sia*, for estafa, filed before the RTC Manila, Branch 52 and docketed as Criminal Case No. 02-198502, while private respondent Rosita Tan (Rosita) was the private complainant. On January 14, 2010, respondent judge promulgated his Decision acquitting all the accused but finding accused Jaime Tan and Cecilia civilly liable. The *fallo* reads:^[3]

WHEREFORE, all the accused are acquitted on ground of reasonable doubt.

Accused Jaime Tan and Cecille Sia a.k.a. Cecilia Ang Sia are directed to pay jointly and severally, complainant Rosita Tan the sum of Php450,000.00 with legal rate of interest at 12% per annum from the date of extrajudicial demand until the amount is fully paid.

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With costs against the accused J. Tan and Cecilia Ang Sia.

SO ORDERED.

On motion of Rosita, respondent judge ordered the issuance of a writ of execution. Acting on the writ, Monique A. Castillo, Branch Sheriff, levied on the rights, interest

and participation of Cecilia in a 531 square meter lot situated in Sta. Mesa Heights, Quezon City, covered by Transfer Certificate of Title No. 311120 (T-158737).^[4] The public auction of the levied property was set on August 17, 2011.

On August 9, 2011, Cecilia, together with third-party movants Marianita Hofileña, Maria D. Butac, Kathrina Grace A. Sia, and Kim Patrick A. Sia, filed an Urgent Motion to Suspend Auction Sale and to Exclude Family Home from Levy and Execution^[5] (Urgent Motion, for brevity). They contended that: as shown in TCT No. 311120 (T-158737) the lot is co-owned by Maria D. Butac, Cecilia, married to Raymundo Sia (Raymundo), and Marianita Hofileña, married to Eduardo Hofileña; the co-owners contributed funds for the construction of a duplex house on the lot; since its acquisition on February 7, 1984, the subject property has been constituted as the family homes of Cecilia and her family, including her mother, Maria Butac, who lives with her, and Marianita and her family; upon the death of Raymundo in 2004, his share was transmitted to Cecilia and their children Kim Patrick and Kathrina Grace; as the lot is their family home it must be excluded from execution sale or levy; inasmuch as the lot is owned in common, the co-owners who are not judgment debtors cannot be bound by any judgment stemming from an action *in personam*, such as the civil aspect of the criminal case.

During the hearing of Cecilia's Urgent Motion on August 15, 2011, the auction sale was deferred until further notice.

Rosita filed a Comment/Opposition (To Exclude Family Home From Execution)^[6] arguing that: the third-party movants have no standing to question the writ of execution because it is limited to the rights, interests and participation of Cecilia; under the law, only one family home may be established on the same lot but it appears that more than one residential unit was built on the subject lot; even if the property were to be considered a family home, its actual value exceeds P300,000.00, the maximum amount fixed by the Family Code for exemption from execution.

On October 27, 2011, respondent judge issued the Order^[7] denying the Urgent Motion, thus:

WHEREFORE, premised on the foregoing considerations, the *Urgent Motion to Suspend Auction Sale and to Exclude Family Home from Levy and Execution* is **DENIED** for lack of merit. Consequently, the suspension of the auction sale is hereby lifted. Sheriff Monique A. Castillo is directed to proceed and schedule anew the auction sale of the property covered by TCT No. 311120 (T-158737) but limited only to the undivided one-third share therein corresponding to the rights, interest and participation of accused Sia.

SO ORDERED.

Petitioners filed a Motion for Reconsideration^[8] and Supplemental Motion for Reconsideration^[9] but they were denied by respondent judge in his second assailed order dated February 7, 2012; hence, this petition.

In compliance with the Court of Appeals' Resolution^[10] dated March 22, 2012, the petitioners filed an Amended Petition impleading the People of the Philippines in accordance with Section 1, Rule 7 of the Rules of Court and including Eduardo Hofileña as one of the petitioners.

On June 26, 2012, petitioners filed a Manifestation informing of the Order, dated May 24, 2012, of respondent judge directing the sheriff to proceed with the auction sale scheduled on April 12, 2012.

On April 10, 2013, petitioners filed their Memorandum.^[11] Private respondent did not file comment to the petition; hence, she was deemed to have waived her right to do so.^[12]

RULING

The petition is devoid of merit.

In the recent case of *Spouses De Mesa v. Spouses Acero, et al.*,^[13] the rules on the constitution of family homes were stated thus: *first*, family residences constructed before the effectivity of the Family Code or before August 3, 1988 must be constituted as a family home either judicially or extrajudicially in accordance with the provisions of the Civil Code in order to be exempt from execution; *second*, family residences constructed after the effectivity of the Family Code on August 3, 1988 are automatically deemed to be family homes and thus exempt from execution from the time they were constituted and lasts as long as any of its beneficiaries actually resides therein; and *third*, family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code, but were existing thereafter, are considered as family homes by operation of law and are prospectively entitled to the benefits accorded to a family home under the Family Code.

A family home is the sanctuary of a marital union which the law declares and protects as a sacred institution and likewise a shelter for the fruits of that union.^[14] The law vests upon it a mantle of exclusivity for the family. Thus, the Family Code requires that it be constituted jointly by the husband and wife or the unmarried head of a family, and no one else.

The family home is the dwelling place of a person and his family, a sacred symbol of family love and repository of cherished memories that last during one's lifetime.^[15] It is without dispute that the family home, from the time of its constitution and so long as any of its beneficiaries actually resides therein, is generally exempt from execution, forced sale or attachment^[16].

In *Kelley, Jr. v. Planters Products Inc.*,^[17] the requisites for the exemption of a family home from execution were laid down, *viz*: there must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family;^[18] it must be the house where they and their family actually reside and the lot on which it is situated;^[19] the family home must be part of the properties of the absolute community or the conjugal partnership, or of the