



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

MARCELINO and VITALIANA
DALANGIN,
Petitioners,

G.R. No. 178758

- versus -

Present:

CLEMENTE PEREZ,
CECILIA GONZALES,
SPOUSES JOSE BASIT and
FELICIDAD PEREZ,
SPOUSES MELECIO MANALO
and LETICIA DE GUZMAN,
AND THE PROVINCIAL
SHERIFF OF BATANGAS,
Respondents.

CARPIO, *Chairperson,*
VELASCO, JR.,
BRION,
DEL CASTILLO, *and*
PEREZ, *JJ.*

Promulgated:

APR 03 2013 *HH Cabalag of J. J. Del Castillo*

X ----- X

DECISION

DEL CASTILLO, J.:

Under the 1964 Rules of Court, notice of the execution sale to the judgment obligor was not required, or was merely optional; publication and posting sufficed. It was only in 1987 that the Court, via Circular No. 8 amending Rule 39, Section 18 of the Rules of Court, required that written notice be given to the judgment debtor.

This Petition for Review on *Certiorari*¹ assails the June 29, 2007 Decision² of the Court of Appeals (CA) in CA-G.R. CV No. 82429 which dismissed the appeal of petitioners and affirmed the Amended Decision of the Regional Trial Court (RTC) of Batangas City, Branch 8, in Civil Case No. 2700.

* Per Special Order No. 1437 dated March 25, 2013.

¹ Rollo, pp. 11-24.

² Id. at 25-46; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

Factual Antecedents

Sometime in 1967, respondents Clemente Perez and Cecilia Gonzales (Perez spouses) sold to petitioners Marcelino and Vitaliana Dalangin (Dalangin spouses) a 2.3855³-hectare parcel of land. The latter, however, failed to pay in full despite demand, leaving an unpaid balance of ₱3,230.00. Thus, on April 6, 1971, the Perez spouses filed a Complaint⁴ against the petitioners for recovery of a sum of money, which was docketed as Civil Case No. 1386 and raffled to Branch 2 of the City Court of Batangas.

Petitioners failed to file their Answer hence, they were declared in default and the Perez spouses were allowed to present their evidence *ex parte*.⁵

On June 15, 1971, the City Court of Batangas City, Branch 2, rendered its Decision⁶ ordering petitioners to pay jointly and severally the Perez spouses ₱3,230.00 with legal interest from the filing of the Complaint until fully paid, plus ₱150.00 attorney's fees, and costs of suit. No appeal having been taken, the Decision became final and executory. Pursuant to this, a Writ of Execution⁷ was issued.

The Provincial Sheriff of Batangas then levied upon and sold the petitioners' properties at auction. The execution sale was conducted on March 15, 1972, and on even date, a Certificate of Sale⁸ was issued in favor of the Perez spouses covering the following properties, to wit:

1. A parcel of riceland with Tax Declaration No. (TD) 6104 located in Dagatan, Taysan, Batangas with an area of 2.3855 hectares;
2. A parcel of riceland with TD 29 located in Bacao, Taysan, Batangas with an area of 5.031 hectares;
3. A parcel of riceland with TD 8693 located in Apar, Lobo, Batangas with an area of 22.5 hectares; and
4. A parcel of riceland with TD 9634 located in Apar, Lobo, Batangas with an area of 22.9161 hectares.

³ This figure is interchangeably indicated as 2.7855 and 2.7655 hectares in some parts of the records.

⁴ Records of Civil Case No. 1386, pp. 1-3.

⁵ Id. at 17.

⁶ Id. at 23; penned by Judge Filemon H. Mendoza.

⁷ Id. at 29-30.

⁸ Id. at 34.

For failure to redeem, the sheriff executed a Final Deed of Conveyance⁹ over said properties, and a Writ of Possession¹⁰ was issued by the City Court on April 30, 1974. The Writ of Possession was received by Emmanuel Dalangin, petitioners' son. The Perez spouses thus came into possession of the 2.3855-hectare riceland and one-half of the 5.031-hectare property.

Twelve years after the City Court's issuance of the Writ of Possession, or on February 24, 1986, petitioners filed a case for annulment of the sheriff's sale in Civil Case No. 1386 which was docketed as Civil Case No. 2700 and raffled to Branch 8 of the RTC of Batangas City. In their Complaint,¹¹ petitioners prayed that the sheriff's sale, Certificate of Sale and the Final Deed of Conveyance be nullified and voided for lack of publication and notice of the sheriff's sale, and for inadequacy of the purchase price of the subject properties in the amount of ₱4,187.00. Petitioners likewise claimed that respondents illegally colluded and cooperated with each other to deprive them of their lands and unduly enrich the Perez spouses at their expense.

The Perez spouses filed a Motion to Dismiss¹² but the RTC deferred its resolution until after trial.¹³ The Perez spouses thus filed their Answer¹⁴ arguing that all proceedings covering the sheriff's sale are valid and binding, and reiterating the arguments in their Motion to Dismiss.

On August 22, 2003, the RTC rendered its Decision¹⁵ upholding the validity of the sheriff's sale. It ruled that while it appears that there was no notice of sheriff's sale, petitioners nevertheless received copies of the Writ of Execution and the subsequent Writ of Possession, which should serve as adequate warning of the continued action on the case and the impending loss of their properties. The trial court concluded that the existence of other official documents on record covering the whole execution process, coupled with the presumption of regularity in the performance by the sheriff of his official duties, outweigh petitioners' argument of lack of notice. It added that petitioners' taking action only after 12 years from the service of the Writ of Possession upon them raises serious doubts as to their claimed ignorance of the sheriff's sale.

On December 16, 2003, the trial court issued an Amended Decision,¹⁶ decreeing as follows:

⁹ Id. at 39-40.

¹⁰ Id. at 56-58.

¹¹ Records of Civil Case No. 2700, pp. 1-4.

¹² Id. at 18-21.

¹³ See Order dated October 13, 1986, id. at 66-67.

¹⁴ Id. at 83-84.

¹⁵ Id. at 388-400; penned by Judge Liberato C. Cortes.

¹⁶ Id. at 411-423. The trial court merely rectified a minor mistake in the original award, in that its original decretal portion covered a portion of the property which was not intended by the parties in their sale agreement.

WHEREFORE, the plaintiffs' complaint is hereby DISMISSED with respect to the two properties which were actually placed in the defendants' possession by virtue of the Writ of Possession issued by the City Court, in connection with Civil Case No. 1386, to wit:

(1) 'A parcel of riceland with TD No. 6104 located at Dagatan, Taysan, Batangas, bounded on the N – Canuto Ampuro, on the E – Creek; on the S – Valeriana Gonzales and W – Cecilia Gonzales with an area of 27,855 square meters, more or less and with an assessed value of Php1,910'; and

(2) The Northeastern one-half portion of the following lot:
'A parcel of riceland with TD No. 29 located at Bacao, Taysan, Batangas, bounded on the N – Mrs. Felicidad Magtibay; E – Fausto Manalo; S – Raymundo Bacao; W – Batalan River with an area of 50[,410 square meters, more or less with an assessed value of Php1,510.00;

Of the other lots mentioned in said Writ of Possession, the Municipal Assessors of Taysan, Batangas and Lobo, Batangas are hereby ordered to cancel whatever tax declarations relative to the following properties that may be in the names of the herein defendants as a consequence of said Civil Case No. 1386, but the actual possession of which have not been delivered to or taken by them, and to issue new ones in the names of the herein plaintiffs Marcelino Dalangin and Vitaliana Dalangin, to wit:

(1) 'A parcel of land (riceland) caingin, located at Apar, Lobo, Batangas, with TD No. 8693, bounded on the N – Miguel Bagsic' psc-172200; S – Nicolas Buisan, E – Vitaliano Manalo, W – Mahabang Parang River and with an area of 225[,000 square meters more or less, with an assessed value of Php6,750.00';

(2) 'A parcel of land (riceland) caingin, with TD No. 9634 located at Apar, Lobo, Batangas, bounded on the N – Nicolas Buisan; on the S – Nicolas Buisan, E – Nicolas Buisan; and W – Aurora Manalo and Sps. Marcelino Dalangin and Vitaliana Dalangin with an area of 229[,161 square meters, more or less, with an assessed value of ₱4,100'.

(3) The Southeastern one-half portion of the following lot:
'A parcel of riceland with TD No. 29 located at Bacao, Taysan, Batangas, bounded on the N – Mrs. Felicidad Magtibay; E – Fausto Manalo; S – Raymundo Bacao; W – Batalan River with an area of 50[,140 square meters, more or less with an assessed value of Php1,510.00';

No pronouncement as to costs.

SO ORDERED.¹⁷

Ruling of the Court of Appeals

Petitioners appealed to the CA insisting on the irregularity of the sheriff's sale and subsequent delivery of possession to the Perez spouses of the parcel of land covered by TD 6104 and the northeastern one-half portion of the land

¹⁷ Rollo, pp. 37-38.

covered by TD 29, for lack of notice.

On June 29, 2007, the CA rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, the appeal is **DISMISSED**. The assailed *Amended Decision*, dated December 16, 2003, of the Regional Trial Court of Batangas City, Fourth Judicial Region, Br. 8, in Civil Case No. 2700, is hereby **AFFIRMED in toto**. No special pronouncement as to costs.

SO ORDERED.¹⁸

Reiterating the trial court's pronouncements, the CA held that the presumption of regularity of the proceedings covering the execution sale and the sheriff's performance of his official functions outweigh and prevail over the self-serving allegations and bare denials of petitioners that they were not served with notice of the sheriff's sale. In this regard, the CA found that petitioners failed to prove their allegation that they were not served with the notice of sheriff's sale. Also, it ruled that the fact that the entire record of the sheriff's proceedings on the sale could no longer be located given the lapse of 12 years should not be taken against the respondents.

The CA added that since petitioners received copies of the adverse Decision, as well as the subsequent Writs of Execution and Possession, they are thus considered to have been sufficiently warned of the forthcoming consequences. But, instead of acting upon the case, petitioners failed and refused to follow up on the same, even after they were dispossessed of the Dagatan, and half of the Bacao, properties after the same were placed in the possession of the Perez spouses. Petitioners chose to stay silent, and it was only after 12 years did they come to court, via Civil Case No. 2700, to question the sheriff's proceedings and complain of their dispossession. The CA thus declared petitioners barred by estoppel and laches.

Petitioners thus filed the present Petition.

Issue

In this Petition, petitioners submit the following lone issue for the Court's resolution:

DID THE HONORABLE COURT OF APPEALS CORRECTLY APPLY THE PROVISIONS OF RULE 39, SECTION 15 OF THE RULES OF

¹⁸ Id. at 46. Emphases in the original.

COURT?¹⁹

Petitioners’ Arguments

In seeking a reversal of the assailed Decision, petitioners contend that under Rule 39, Section 15 of the 1997 Rules of Civil Procedure, a written notice of sale on execution should have been given to them. The lack of this notice effectively converted the auction proceedings into a private sale which is prohibited under the law. They argue that they did not waive this requirement, and the absence thereof rendered the proceedings taken thereon as null and void.

Petitioners argue that their receipt of the corresponding Writs of Execution and Possession cannot overcome the requirement of notice. They insist that the lack of notice of the sheriff’s sale renders the same of no effect.

Respondents’ Arguments

Apart from echoing the CA pronouncement, respondents,²⁰ in their respective Comments,²¹ argue that petitioners should not be permitted to take advantage of the unavailability of records covering the sheriff’s sale. They point to the fact that during trial, then Batangas Provincial Sheriff Atty. Abratigue’s testimony regarding the circumstances of the sheriff’s sale was stricken off the record on the initiative of the petitioners. For this reason, the issue covering the issuance of notice to them could not be resolved by the trial court. To the respondents, this constitutes willful suppression of evidence which is adverse to petitioners’ cause.

Moreover, respondents claim that under the 1964 Rules then applicable to the sheriff’s sale which was held on March 15, 1972, particularly Rule 39, Section 18, notice to the judgment obligor was not required. Respondents argue that the present Rule under the 1997 Rules of Civil Procedure,²² requiring that written notice of the sale be given to the judgment obligor three days before the sale, should not retroactively apply to this case.

¹⁹ Id. at 135.

²⁰ The Perez spouses have since passed away and have been substituted by their heirs. Respondent Felicidad Perez also passed away and is substituted by her co-respondent spouse Jose Basit and their children. Felicidad is the Perez spouses’ daughter. Respondents Jose Basit and his deceased spouse Felicidad, and respondent spouses Melecio Manalo and Leticia de Guzman, are impleaded as transferees of portions of the property in litigation.

²¹ *Rollo*, pp. 82-94, 96-109.

²² Section 15 of Rule 39 reads in part:
x x x x
(d) In all cases, written notice of the sale shall be given to the judgment obligor at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by section 6 of Rule 13.
x x x x

Our Ruling

The Court affirms.

The applicable rule at the time of the execution sale on March 15, 1972 is Rule 39, Section 18 of the 1964 Rules of Court. This rule does not require personal written notice to the judgment debtor.

At the time of the execution sale on March 15, 1972, the applicable rule is Rule 39, Section 18 of the 1964 Rules of Court. It states:

Sec. 18. Notice of sale of property on execution. – Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(b) In case of other personal property, by posting a similar notice in three public places in the municipality or city where the sale is to take place, for not less than five (5) nor more than ten (10) days;

(c) In case of real property, by posting a similar notice particularly describing the property for twenty (20) days in three public places in the municipality or city where the property is situated, and also where the property is to be sold, and, if the assessed value of the property exceeds four hundred pesos (₱400), by publishing a copy of the notice once a week, for the same period, in [a] newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the Province in both the English and Spanish languages, then a like publication for a like period shall be made in one newspaper published in the English language, and in one published in the Spanish language.

The foregoing rule does not require written notice to the judgment obligor. Respondents are thus correct in their argument that at the time of the execution sale on March 15, 1972, personal notice to the petitioners was not required under Rule 39, Section 18 of the 1964 Rules of Court. Indeed, notice to the judgment obligor under the 1964 Rules of Court was not required, or was merely optional; publication and posting sufficed.

It was only in 1987 that the Court required that written notice of the

execution sale be given to the judgment debtor, via Circular No. 8²³ amending Rule 39, Section 18 of the Rules of Court on notice of sale of property on execution. Thus, the alleged failure on the part of the respondents to furnish petitioners with a written notice of the execution sale did not nullify the execution sale because it was not then a requirement for its validity.

The presumption of regularity of the execution sale and the sheriff's performance of his official functions prevail in the absence of evidence to the contrary and in light of the self-serving allegations and bare denials of petitioners to the effect that they were not served with notice of the sheriff's sale.

²³ Dated May 15, 1987.

CIRCULAR NO. 8

May 15, 1987

TO: COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL CIRCUIT TRIAL COURTS, SHARIA DISTRICT COURTS, SHARIA CIRCUIT COURTS, INTEGRATED BAR OF THE PHILIPPINES AND MAJOR VOLUNTARY BAR ASSOCIATIONS.

SUBJECT: AMENDMENT OF RULE 39, SECTION 18 OF THE RULES OF COURT ON NOTICE OF SALE OF PROPERTY ON EXECUTION

For the information and guidance of all concerned, quoted hereunder is the resolution of the Court En Banc, dated April 7, 1987 in "Re: Amendment of Rule 39, Section 18 of the Rules of Court on Notice of Sale of Property on Execution."

Re: Amendment of Rule 39, Section 18 of the Rules of Court on Notice of Sale of Property on Execution. – The Court Resolved to APPROVE the following amendments of Rule 39, Section 18(c) of the Rules of Court on Notice of Sale of Property on Execution which consists of (1) publication, in addition to posting, is required where the assessed value of the real property subject of sale of execution exceeds ₱50,000.00 (increased from ₱400.00 under the present provision); (2) such publication of the notice of sale shall be made once a week for two (2) consecutive weeks (instead of for twenty [20] days), in some newspaper published or having general circulation in the province; (3) in places where newspapers are published in English and/or Filipino, publication shall be made in one such newspaper (instead of publishing said notice in both the English and Spanish newspapers as presently provided in the Rules); **as well as the addition of paragraph (d) in said Section 18, imposing the requirement that in all cases, written notice of the sale must be given to the judgment debtor.** The text of the amendments follows:

RULE 39

EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

Sec. 18. *Notice of sale of property on execution.* — Before the sale of property on execution, notice thereof must be given as follows:

(a) x x x

(b) x x x

(c) In case of real property, by posting for twenty (20) days in three (3) public places in the municipality or city where the property is situated, a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds FIFTY THOUSAND PESOS (₱50,000.00), by publishing a copy of the notice once a week for two (2) consecutive weeks in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in English and/or Filipino, then the publication shall be made in one such newspaper.

(d) In all cases, written notice of the sale shall be given to the judgment debtor.

Let copies hereof be circulated among all Courts, the Integrated Bar of the Philippines and major voluntary bar associations.

Please be guided accordingly.

May 15, 1987. (Emphasis supplied)

In *Reyes v. Tang Soat Ing*,²⁴ the Court was confronted with similar circumstances which the herein parties now find themselves in. In said case, the judgment obligors claimed – long after their property was subjected to execution sale and consolidation proceedings – that the rules requiring prior notice of the execution sale were not strictly complied with. The Court did not agree, and it held –

Contrary to the Court of Appeals' holding, the burden of evidence to prove lack of compliance with Section 15, Rule 39 of the Rules of Court rests on the party claiming lack thereof i.e., respondents.

In *Venzon v. Spouses Juan*, we declared that the judgment debtor, as herein respondents, alleging lack of compliance with the posting and publication requirements of the auction sale in accordance with the rules, is behooved to prove such allegation. We held, thus:

x x x. Whoever asserts a right dependent for its existence upon a negative, must establish the truth of the negative by a preponderance of the evidence. This must be the rule, or it must follow that rights, of which a negative forms an essential element, may be enforced without proof. Thus, whenever the [party's] right depends upon the truth of a negative, upon him is cast the onus probandi, except in cases where the matter is peculiarly within the knowledge of the adverse party.

It was error, therefore, for the trial court to hold that:

Defendants did not present evidence to rebut the “no notice” allegation of the plaintiff. Although in the defendant spouses' pre-trial brief, there is that general allegation that the auction sale was made in accordance with law, however, there is no showing in the record that the requirements with respect to publication/posting of notices were complied with by the defendants.

Deliberating on the absence of notice, the fact that the plaintiff did not come to know that Lot 12 was being subjected to an auction sale proves two things: one, that no notice was posted in the place where the property is located [and, two, that] there was no auction sale that took place on March 30, 1992. . . .

Further, the defendants, particularly defendant sheriff, who is the most competent person to testify that a written notice of sale was made and posted in accordance with law, was not presented to the witness stand. Neither was a document presented like Sheriff's Certificate of Posting to attest to the fact that a written notice of sale was posted before the property was allegedly sold at public auction. In fact, the record is silent as (to) where the auction sale was conducted.

By ruling in the foregoing manner, the trial court incorrectly shifted the plaintiff's burden of proof to the defendants. It is true that the fact of posting and publication of the notices is a matter “peculiarly within the knowledge” of the Deputy Sheriff. However, the trial court did not acquire jurisdiction over him, as he was not served with summons. At the time of the filing of the complaint, he was “no longer connected” with the Caloocan RTC, Branch 126, which issued

²⁴ G.R. No. 185620, December 14, 2011, 662 SCRA 553.

the writ of execution. Hence, he could not testify in his own behalf.

x x x [T]he duty imposed by Section [18] (c) is reposed upon the sheriff, who is charged with the enforcement of the writ. Respondent spouses had a right to presume that he had regularly performed his duty. It was not incumbent upon them to present him as a witness for, in the absence of the sheriff, the burden to prove lack of posting and publication remained with petitioner.

Respondents made no attempt to meet this burden of evidence, simply maintaining lack of notice of the entire proceedings (execution and issuance of a new title over the subject property) before the trial court.

We cannot subscribe to respondents' belated posturing. The disputable presumption that official duty has been regularly performed was not overcome by respondents. The documents on record lead us to the inevitable conclusion that respondents had constructive, if not actual, notice of the execution proceedings from the issuance of the Writ of Execution, the levy on the subject property, its subjection to execution sale, up to and until the proceedings in the RTC relating to the issuance of a new certificate of title over the subject property. Certainly, respondents are precluded from feigning ignorance of MFR (substituted by Reyes) staking a claim thereon.

There was substantial compliance with Section 15, Rule 39 of the Rules of Court: the documents in support thereof, i.e., the Certificate of Posting issued by Sheriff Legaspi and the Affidavit of Publication executed by the publisher of The Times Newsweekly, appear to be in order. In this case, the purpose of giving notice through posting and publication under Section 15(c) of the same rule—to let the public know of the sale to the end that the best price or a better bid may be made possible to minimize prejudice to the judgment debtor—was realized.²⁵

Applying *Reyes* to this case, the Court affirms the view that petitioners may no longer question the conduct of the execution proceedings below. As correctly held by the CA, the presumption of regularity of the execution sale and the sheriff's performance of his official functions prevail in the absence of evidence to the contrary and in light of the self-serving allegations and bare denials of petitioners to the effect that they were not served with notice of the sheriff's sale, and given that the entire record covering the sale could no longer be located.

After 12 years and after being dispossessed of their properties and title thereto for such a long time, petitioners instituted Civil Case No. 2700 in an attempt to reverse the effects of the final and executory judgment in Civil Case No. 1386. This is a clear case of afterthought, a risk petitioners took knowing that they stood to lose nothing more, but gain back their properties in the event of a victory that is farfetched.

WHEREFORE, the Petition is **DENIED**. The June 29, 2007 Decision of

²⁵ Id. at 563-565.

the Court of Appeals in CA-G.R. CV No. 82429 is hereby **AFFIRMED**.

SO ORDERED.



MARIANO C. DEL CASTILLO

Associate Justice

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



PRESBITERO J. VELASCO, JR.

Associate Justice



ARTURO D. BRION

Associate Justice



JOSE PORTUGAL PEREZ

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**


*Associate Justice
Chairperson*

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice

CERTIFIED TRUE COPY:

MA. LOURDES C. PERFECTO
Division Clerk of Court
Second Division

