

SECOND DIVISION

[G.R. No. 145222, April 24, 2009]

**SPOUSES ROBERTO BUADO AND VENUS BUADO, PETITIONERS,
VS. THE HONORABLE COURT OF APPEALS, FORMER DIVISION,
AND ROMULO NICOL, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Before this Court is a petition for certiorari assailing the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 47029 and its Resolution denying the motion for reconsideration thereof.

The case stemmed from the following factual backdrop:

On 30 April 1984, Spouses Roberto and Venus Buado (petitioners) filed a complaint for damages against Erlinda Nicol (Erlinda) with **Branch 19** of the Regional Trial Court (RTC) of Bacoor, Cavite, docketed as Civil Case No. 84-33. Said action originated from Erlinda Nicol's civil liability arising from the criminal offense of slander filed against her by petitioners.

On 6 April 1987, the trial court rendered a decision ordering Erlinda to pay damages. The dispositive portion reads:

Wherefore, judgment is hereby rendered in favor of the plaintiff[s] and against defendant ordering the latter to pay the former the amount of thirty thousand (P30,000.00) pesos as moral damages, five thousand (P5,000.00) pesos as attorney's fees and litigation expenses, another five thousand (P5,000.00) pesos as exemplary damages and the cost of suit.

^[2]

Said decision was affirmed, successively, by the Court of Appeals and this Court. It became final and executory on 5 March 1992.

On 14 October 1992, the trial court issued a writ of execution, a portion of which provides:

Now, therefore, you are commanded that of the goods and chattels of the defendant Erlinda Nicol, or from her estates or legal heirs, you cause the sum in the amount of forty thousand pesos (P40,000.00), Philippine Currency, representing the moral damages, attorney's fees and litigation expenses and exemplary damages and the cost of suit of the plaintiff aside from your lawful fees on this execution and do likewise return this writ into court within sixty (60) days from date, with your proceedings endorsed hereon.

But if sufficient personal property cannot be found whereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of said defendant you make the said sum of money in the manner required by the Rules of Court, and make return of your proceedings with this writ within sixty (60) days from date.^[3]

Finding Erlinda Nicol's personal properties insufficient to satisfy the judgment, the Deputy Sheriff issued a notice of levy on real property on execution addressed to the Register of Deeds of Cavite. The notice of levy was annotated on the Transfer Certificate of Title No. T-125322.

On 20 November 1992, a notice of sheriff's sale was issued.

Two (2) days before the public auction sale on 28 January 1993, an affidavit of third-party claim from one Arnulfo F. Fulo was received by the deputy sheriff prompting petitioners to put up a sheriff's indemnity bond. The auction sale proceeded with petitioners as the highest bidder.

On 4 February 1993, a certificate of sale was issued in favor of petitioners.

Almost a year later on 2 February 1994, Romulo Nicol (respondent), the husband of Erlinda Nicol, filed a complaint for annulment of certificate of sale and damages with preliminary injunction against petitioners and the deputy sheriff. Respondent, as plaintiff therein, alleged that the defendants, now petitioners, connived and directly levied upon and execute his real property without exhausting the personal properties of Erlinda Nicol. Respondent averred that there was no proper publication and posting of the notice of sale. Furthermore, respondent claimed that his property which was valued at P500,000.00 was only sold at a "very low price" of P51,685.00, whereas the judgment obligation of Erlinda Nicol was only P40,000.00. The case was assigned to **Branch 21** of the RTC of Imus, Cavite.

In response, petitioners filed a motion to dismiss on the grounds of lack of jurisdiction and that they had acted on the basis of a valid writ of execution. Citing *De Leon v. Salvador*,^[4] petitioners claimed that respondent should have filed the case with **Branch 19** where the judgment originated and which issued the order of execution, writ of execution, notice of levy and notice of sheriff's sale.

In an Order^[5] dated 18 April 1994, the RTC dismissed respondent's complaint and ruled that **Branch 19** has jurisdiction over the case, thus:

As correctly pointed out by the defendants, any flaw in the implementation of the writ of execution by the implementing sheriff must be brought before the court issuing the writ of execution. Besides, there are two (2) remedies open to the plaintiff, if he feels that the property being levied on belongs to him and not to the judgment debtor. The first remedy is to file a third-party claim. If he fails to do this, a right is reserved to him to vindicate his claim over the property by any proper action. But certainly, this is not the proper action reserved to the plaintiff to vindicate his claim over the property in question to be ventilated before this court. As earlier stated, this case should have been addressed to Branch 19, RTC Bacoor as it was that court which issued the writ of execution.^[6]

Respondent moved for reconsideration but it was denied on 26 July 1994.

On appeal, the Court of Appeals reversed the trial court and held that **Branch 21** has jurisdiction to act on the complaint filed by appellant. The dispositive portion reads:

WHEREFORE, the Orders appealed from are hereby REVERSED and SET ASIDE. This case is REMANDED to the Regional Trial Court of Imus, Cavite, Branch 21 for further proceedings.

SO ORDERED.^[7]

Petitioners' motion for reconsideration was denied on 23 August 2000. Hence, the instant petition attributing grave abuse of discretion on the part of the Court of Appeals.

A petition for certiorari is an extraordinary remedy that is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction. Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal. In addition, an independent action for certiorari may be availed of only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.^[8]

Nowhere in the petition was it shown that the jurisdiction of the Court of Appeals was questioned. The issue devolves on whether the husband of the judgment debtor may file an independent action to protect the conjugal property subject to execution. The alleged error therefore is an error of judgment which is a proper subject of an appeal.

Nevertheless, even if we were to treat this petition as one for review, the case should still be dismissed on substantive grounds.

Petitioners maintain that **Branch 19** retained jurisdiction over its judgment to the exclusion of all other co-ordinate courts for its execution and all incidents thereof, in line with *De Leon v. Salvador*. Petitioners insist that respondent, who is the husband of the judgment debtor, is not the "third party" contemplated in Section 17 (now Section 16), Rule 39 of the Rules of Court, hence a separate action need not be filed. Furthermore, petitioners assert that the obligation of the wife redounded to the benefit of the conjugal partnership and cited authorities to the effect that the husband is liable for the tort committed by his wife.

Respondent on the other hand merely avers that the decision of the Court of Appeals is supported by substantial evidence and in accord with law and jurisprudence.^[9]

Verily, the question of jurisdiction could be resolved through a proper interpretation of Section 16, Rule 39 of the Rules of Court, which reads:

Sec. 16. Proceedings where property claimed by third person.