

FIRST DIVISION

[G.R. No. 172263, July 09, 2008]

**SPOUSES AUTHER G. KELLEY, JR. AND DORIS A. KELLEY,
COMPLAINANTS, VS. PLANTERS PRODUCTS, INC. AND JORGE A.
RAGUTANA,^[1] RESPONDENTS.**

R E S O L U T I O N

CORONA, J.:

Petitioner Auther G. Kelley, Jr. (Auther) acquired agricultural chemical products on consignment from respondent Planters Products, Inc. (PPI) in 1989. Due to Auther's failure to pay despite demand, PPI filed an action for sum of money against him in the Regional Trial Court of Makati City, Branch 57 (RTC Makati City). This was docketed as Civil Case No. 91-904.

After trial on the merits, the RTC Makati City decided in favor of PPI and issued a writ of execution. Pursuant thereto, respondent sheriff Jorge A. Ragutana sold on execution real property covered by TCT No. 15079 located in Naga City. A certificate of sale was issued in favor of PPI as the highest bidder.

After being belatedly informed of the said sale, petitioners Auther and his wife Doris A. Kelley (Doris) filed a motion to dissolve or set aside the notice of levy in the RTC Makati City on the ground that the subject property was their family home which was exempt from execution. Petitioners' motion was denied for failure to comply with the three-day notice requirement.

Subsequently, petitioners filed a complaint for declaration of nullity of levy and sale of the alleged family home with damages against Ragutana and PPI in the Regional Trial Court of Naga City, Branch 19 (RTC Naga City). This was docketed as Civil Case No. 2000-0188. The case was, however, dismissed for lack of jurisdiction and lack of cause of action. The dismissal was upheld by the CA.

Petitioners now come to us in this petition for review on certiorari contending that the CA erred in upholding the dismissal of Civil Case No. 2000-0188 by the RTC Naga City. They claim that Doris was a stranger^[2] to Civil Case No. 91-904 (in the RTC Makati City) who could not be forced to litigate therein.

Petitioners anchor their action in Civil Case No. 2000-0188 on their contention that TCT No. 15079 is the Kelley family home. No doubt, a family home is generally exempt from execution^[3] provided it was duly constituted as such. 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.^[4] It must be the house where they and their family actually reside and the lot on which it is situated.^[5] The family home must be part of the properties of the absolute community or the conjugal partnership, or of

the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family.^[6] The actual value of the family home shall not exceed, at the time of its constitution, the amount of P300,000 in urban areas and P200,000 in rural areas.^[7]

Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted as such by operation of law. All existing family residences as of August 3, 1988 are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. ^[8]

The exemption is effective from the time of the constitution of the family home as such and lasts as long as any of its beneficiaries actually resides therein.^[9] Moreover, the debts for which the family home is made answerable must have been incurred after August 3, 1988. Otherwise (that is, if it was incurred prior to August 3, 1988), the alleged family home must be shown to have been constituted either judicially or extrajudicially pursuant to the Civil Code.

The rule, however, is not absolute. The Family Code, in fact, expressly provides for the following exceptions:

Article 155. The family home shall be exempt from execution, forced sale or attachment except:

- (1) For non-payment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by a mortgage on the premises before or after such constitution; and
- (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

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Article 160. When a creditor whose claim is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum amount allowed by law in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

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We grant the petition only to the extent of allowing petitioners to adduce evidence in the trial court that TCT No. 15079 is in fact their family home as constituted in