

## SECOND DIVISION

**[ G.R. No. 166333, November 25, 2005 ]**

**JOSE E. HONRADO, PETITIONER, VS. COURT OF APPEALS, HON. ROGELIO M. PIZARRO, IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 222; THE CLERK OF COURT OF THE REGIONAL TRIAL COURT, AS EX-OFFICIO SHERIFF OF THE RTC OF QUEZON CITY; MR. NERY G. ROY, IN HIS OFFICIAL CAPACITY AS SHERIFF IV OF THE RTC OF QUEZON CITY; AND PREMIUM AGRO-VET PRODUCTS, INC., RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before this Court is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 77488 dated June 30, 2004 dismissing the petition for *certiorari* for the nullification of the April 14, 2003 Resolution of the Regional Trial Court (RTC) of Quezon City, Branch 222 in Civil Case No. Q-97-32965. Also assailed in this petition is the CA Resolution dated December 2, 2004 denying the motion for reconsideration of the said decision.

On December 11, 1997, Premium Agro-Vet Products, Inc. (Premium) filed with the RTC of Quezon City a complaint for sum of money against Jose Honrado, who was doing business under the name and style of J.E. Honrado Enterprises. The case was docketed as Civil Case No. Q-97-32965. Premium sought to collect the amount of P240,765.00 representing the total price of veterinary products purchased on credit by Honrado from November 18, 1996 until June 30, 1997.

For failure of Honrado, as well as his counsel, to appear at the pre-trial conference, he was declared in default. Premium was, thus, allowed to present evidence *ex parte*.

It turned out that the Spouses Jose and Andrerita Honrado had filed a petition with the RTC of Calamba City for the judicial constitution of the parcel of land registered in Honrado's name under Transfer Certificate of Title (TCT) No. T-143175 located in Calamba, Laguna, and the house thereon, as their family house. The case was docketed as SP Case No. 489-1998-C. In his petition, Honrado declared that his creditors were Atty. Domingo Luciano, P & J Agriculture Trading, Inc., and Mr. Tito Dela Merced, and that the estimated value of the property was not more than P240,000.00.

On February 23, 1999, the RTC rendered judgment in favor of Premium:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendant directing the latter to pay plaintiff the

following:

- 1) P240,765.00 representing the total overdue account plus interest of 28% per annum thereon computed from their respective dates of deliveries until the same shall have been paid in full;
- 2) 25% of the total amount awarded, plus acceptance fee of P50,000.00 and additional P1,500.00 for each day of court appearance, as attorney's fees; and
- 3) Costs of this suit.

SO ORDERED.<sup>[2]</sup>

Honrado filed a Notice of Appeal. However, on March 20, 2000, the appeal was dismissed for his failure to file his brief as appellant. Entry of judgment was made on April 26, 2000.<sup>[3]</sup> On October 10, 2000, Premium filed a Motion for Issuance of Writ of Execution.<sup>[4]</sup> The RTC granted the motion<sup>[5]</sup> and a writ of execution was issued on March 29, 2001.<sup>[6]</sup>

The Sheriff levied on the parcel of land covered by TCT No. T-143175. The Notice of Levy was annotated at the dorsal portion of the title on April 4, 2001.<sup>[7]</sup> The Sheriff set the sale of the property at public auction on April 4, 2001. Honrado was served with a copy of the notice of such sale but he opposed the same.

On May 17, 2001, the property was sold to Premium, the highest bidder, for the amount of P650,204.10.<sup>[8]</sup> On May 23, 2001, the corresponding Certificate of Sale was issued<sup>[9]</sup> and annotated at the dorsal portion of the title.<sup>[10]</sup> Honrado failed to redeem the property.

In the meantime, the RTC of Calamba City rendered a Decision<sup>[11]</sup> in SP Case No. 489-1998-C on April 29, 2002, declaring the property a family home.

On May 3, 2002, Honrado filed a Motion to Declare Properties Exempt from Execution under Article 155 of the Family Code of the Philippines in Civil Case No. Q-97-32965. It was alleged therein that the property is exempt from execution because it is a family home which had been constituted as such before he incurred his indebtedness with Premium. He also alleged that he and his family had no other real property except the land which was levied upon and sold on execution.<sup>[12]</sup> Premium opposed the motion on the ground that Honrado was already estopped or barred by laches from claiming the exemption, and that said claim has been mooted by the lapse of the redemption period for Honrado to redeem the property. Premium averred that, after the sale at public auction, Honrado and his family even vacated the property. Honrado re-occupied the property only in April or May 2002.<sup>[13]</sup> It further averred that the law does not automatically exempt a family home from levy or execution and there was no showing that its present value does not exceed the amount allowed by law under Article 157 of the Family Code.<sup>[14]</sup>

On September 18, 2002, the RTC denied said motion on the ground that Honrado is

deemed to have waived the exemption considering that he failed to object to the sale of the property on execution on May 17, 2001.<sup>[15]</sup> Honrado did not assail the said order.

On October 14, 2002, Premium filed a Motion for Issuance of Final Deed of Conveyance and Writ of Possession<sup>[16]</sup> asserting that the one-year redemption period had already lapsed on May 23, 2002, without any redemption being made by Honrado. The latter opposed the said motion claiming that the RTC of Calamba, Laguna, had already rendered a decision declaring the property a family home. Honrado further averred that his family resided in the house before the Family Code became effective and was entitled to the exemption under the Code.<sup>[17]</sup>

On April 14, 2003, the respondent Judge issued an Order<sup>[18]</sup> granting the motion of Premium and directing Honrado to: (1) execute a final deed of conveyance over the subject parcel of land covered by TCT No. T-143175 of the Registry of Deeds of Calamba, Laguna; and (2) surrender of the subject title, TCT No. T-143175. The respondent Judge further ordered that after execution of the deed of conveyance, a writ of possession be issued over the aforesaid property in favor of the plaintiff and against the defendant or his successors-in-interest who are in possession of the said premises.

Honrado filed a petition for *certiorari* with the CA assailing the April 14, 2003 Resolution of the RTC. On June 30, 2004, the CA dismissed the petition.<sup>[19]</sup> The CA declared that there was no proof that the public respondents committed grave abuse of discretion. The CA ruled that the petitioner failed to assert his claim for exemption at the time of the levy or within a reasonable time thereafter. It held that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court.<sup>[20]</sup>

On December 2, 2004, the CA denied the motion for reconsideration filed by Honrado.<sup>[21]</sup>

In this petition for review, the petitioner alleges that the CA committed serious errors of law and facts:

5:A – IN FINDING AND CONCLUDING THAT ARTICLE 153 OF THE FAMILY CODE FINDS NO APPLICATION IN THE INSTANT CASE;

5:B – IN FINDING AND CONCLUDING THAT HONRADO'S FAILURE TO ASSERT HIS CLAIM FOR EXEMPTION OF HIS FAMILY HOME FROM EXECUTION AT THE TIME OF THE LEVY OR WITHIN A REASONABLE TIME IS FATAL TO HIS CLAIM;

5:C – IN NOT FINDING THAT THE RIGHT TO CLAIM EXEMPTION CANNOT BE WAIVED BECAUSE IT IS CONTRARY TO LAW AND/OR PUBLIC POLICY.

<sup>[22]</sup>

The petitioner contends that the trial court committed grave abuse of discretion in disallowing his prayer for exemption of his family home from execution. The petitioner avers that the ruling of the RTC of Calamba, Laguna, Branch 35 in SP

Case No. 489-1998-C, declaring that the property in question is a family home, has already become final; hence, it can no longer be disturbed. The family home cannot be levied upon considering that the debt, which was the basis of the judgment under execution, was incurred between the period from November 18, 1996 and June 30, 1997, or after the Family Code had been in effect. Hence, the family home of the petitioner is exempt from execution under Article 155 of the Family Code.<sup>[23]</sup>

The petitioner further asserts that he and his family had been occupying the property as their family home as early as 1992. Under Article 153 of the Family Code, his house was constituted as a family home in that year. Thus, even if he failed to contest the levy on his property or move for the lifting thereof, the same cannot be deemed a waiver of his right to claim the exemption of his family home. He avers that his right cannot be waived, for it would be contrary to public policy. He claims that the policy of the State, in conferring such exemption, is to allow a particular family to occupy, use and enjoy their family home, which must remain with the person constituting it and his heirs. Moreover, the waiver must be shown by overt acts and it cannot be presumed from the mere failure to assert the claim for exemption within a reasonable time.<sup>[24]</sup>

The private respondent avers that the petitioner is estopped from claiming that the property is exempt from execution and from assailing the levy of the property, the sale thereof at public auction and the September 18, 2002 and April 14, 2003 Orders of the RTC. It points out that the petitioner agreed to the levy and sale of the property at public auction; he even surrendered the key to the house and vacated the property after it was purchased by the private respondent at the public auction. The private respondent averred that the petitioner hoped to get a higher amount than his debt. The petitioner never adverted to his petition in the RTC of Calamba, Laguna, for the constitution of the property as a family home. The petitioner revealed the decision of the RTC in SP Case No. 489-1998-C only on November 25, 2002 when he opposed the private respondent's motion for a final deed of conveyance. It was only after the RTC of Calamba, Laguna, rendered its decision that the petitioner re-occupied the property and claimed, for the first time, that the property is a family home and exempt from execution. By then, the period for the petitioner to redeem the property had long lapsed.

The petition has no merit.

In dismissing Honrado's petition, the CA declared that:

Article 153 of the Family Code provides that the family home is deemed constituted on a house and lot from the time it is occupied as the family residence. From the time of its constitution and so long as its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment, except as hereinafter provided and to the extent of the value allowed by Law. A family home is a real right, which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by creditors except in certain special cases. Such provision finds no application in this case.