

Gorgonio Pandes, Petitioner, vs. Hon. Jose Teodoro, Sr., Judge of the Court of First Instance of Negros Occidental et al., Respondents, G. R. No. L-6666, May 12, 1954, Concepcion, J.:

1. CIVIL PROCEDURE; ATTACHMENT OF PROPERTIES UNDER RECEIVERSHIP. — The exemption from attachment, garnishment or sale under execution of properties under receivership is not absolute. Such properties may not be levied upon "except by leave of the Court appointing the receiver" (4 Am. Jur. 808; 45 Am. Jur. 132). This is a mere consequence of the theory that "a receivership operates to protect the receiver against interference, without the consent of the court appointing him, with his custody and possession of the property subject to the receivership" (45 Am. Jur. 132; underscoring supplied). Hence, "it has been held x x x that real estate in the custody of a receiver can be levied upon and sold under execution, provided only that the actual possession of the receiver is not interfered with" (45 Am. Jur. 133-134, citing Albany City Bank v. Schermohrn, 9 Paige [NY] 372, 38 Am. Dec. 551). The reason is that "only a receiver's possession of property subject to receivership x x x is entitled to protection x x x against interference" (45 Am. Jur. 134; see, also, 75 C.J.S. 759).
2. IBID; IBID. — The interference enjoined is that resulting from orders or processes of a court "other" than that which appointed the receiver (45 Am. Jur. 136), the rule being predicated upon the need of preventing "unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons" (45 Am. Jur. 137).

Manuel T. Tanogbanua and Alfredo S. Tod-Y for petitioner. Arturo Villanueva and Eufemio Parana for respondents.

DECISION

CONCEPCION, J.:

On December 9, 1952, Uy Tiong Oh instituted in the Court of First Instance of Negros Occidental Civil Case No. 2562, against Gorgonio Pandes, for the recovery of a sum of money (Annex A). Upon the posting of the corresponding bond, a writ of preliminary attachment was issued, on motion of Uy Tiong Oh, "against the properties of the defendant not exempt from execution" (Annex B). Then, the provincial sheriff issued a "Notice of Garnishment" (Annex C) upon "whatever right, interest and participation the defendant Gorgonio Pandes has or might have in" a certain "partnership between Uy Tiong Oh and Ester Pandes, the wife of the defendant, in connection with the Eden Theater of San Carlos, Negros Occidental." Thereafter, Gorgonio Pandes filed an "Answer to Notice of Garnishment of the Provincial Sheriff" (Annex D), praying that said garnishment "be stayed" upon the ground, among others, that said right, interest and participation "is involved in Civil Case No. 2371" of the same court, entitled "Uy King Poe vs. Ester Pandes and Gorgonio Pandes." Admittedly, Uy King Poe, the plaintiff in said Case No. 2371, is the same Uy Tiong Oh, the plaintiff in case No. 2562. It would seem, also, that Gorgonio Pandes had never sought any court action on his aforesaid "answer". In due course, a decision was, subsequently, rendered in favor of Uy Tiong Oh in case No. 2562. Said decision having become final, the court ordered, on April 11, 1953, on motion of Uy Tiong Oh, the issuance of the corresponding writ of execution and directed the provincial sheriff to sell, at public auction, "whatever rights, interest and participation the defendant may have on the property levied upon x x x the proceeds thereof to be applied in satisfaction of the judgment rendered" as above stated (Annex E). After issuing the corresponding notice of auction sale (Annex F), on April 30, 1953, the provincial sheriff sold to Uy Tiong Oh for P500.00, such right, interest

and participation as Gorgonio Pandes has or might have in the partnership aforementioned (Annex G). Prior thereto, or on April 22, 1953, Gorgonio Pandes had moved for the reconsideration of the order of April 11, 1953, upon the ground that the partnership in question was under receivership and, being as such, under *custodia legis*, said partnership and its assets are not subject to garnishment (Annex G). The motion for reconsideration having been denied by the court, presided over by Hon. Jose Teodoro, Sr., Judge, (Annex H), Gorgonio Pandes instituted the present certiorari proceedings. In his petition to this effect, he prays:

"1. For the issuance of an order requiring the Clerk of Court of First Instance of Negros Occidental to certify to this Court, a copy of the order of December 10, 1953, a copy of the order of April 11, 1953, all in Civil Case No. 2371 of the said court, that the same may be reviewed by this Court.

"2. That the Hon. JOSE TEODORO, Sr., Judge of the Court of First Instance of Negros Occidental, and JOSE AZCONA, Ex-Officio Provincial Sheriff of Occidental Negros be ordered to refrain from further proceeding in the matter here sought to be reviewed until further order of this Court.

"3. That after hearing the parties, a judgment be rendered declaring the order of April 11, 1953 as improper, null and void as in excess of the jurisdiction of the respondent judge, or as being a grave abuse of his judicial discretion; and that the petitioner be conceded such further and other relief as in the opinion of the Court he is justly and equitably entitled, with costs." (p. 4, petition.)

It appears that on October 17, 1950, Uy Tiong Oh and Ester Pandes, assisted by her husband, petitioner Gorgonio Pandes, executed a contract of partnership, copy of which is appended to respondents' answer, as Annex 1. It is stated therein that Uy King Poe (*alias* Uy Tiong Oh) owns two (2) cinema projectors described therein, with all its accessories; that Mrs. Pandes owns one (1) generator and one (1) motor, with its corresponding accessories, all installed at the Eden Theater, situated at San Carlos, Negros Occidental; and that both parties have agreed to form a partnership for the operation of a cinema house at said Theater, subject to the condition that Uy would contribute said projectors and Mrs. Pandes, the generator and the motor above referred to; that the rentals of the building would be charge against the partnership; that the net profits, after deducting all expenses, would be divided equally between the partners; that Mrs. Pandes would be the managing partner and Uy Tiong Oh, the treasurer; that the employment and dismissal of employees would be determined by both; and that the partnership would exist for five (5) years, subject to renewal.

It further appear that on or about July 2, 1952, Uy King Poe (*alias* Uy Tiong Oh) commenced the aforementioned civil case No. 2371 of the Court of First Instance of Negros Occidental, for the dissolution and liquidation of said partnership and the recovery of the sum of P18,000.00, upon the ground that Mrs. Pandes had misappropriated said sum allegedly belonging to the partnership, and that she had prevented the plaintiff and his representatives from inspecting and supervising "the premises of the cinema house, causing bodily harm to said representatives." (Annex 4.) Upon the same grounds and the additional ground that Mrs. Pandes would continue defrauding the partnership and had threatened to damage and destroy his projectors, Uy King Poe moved for the appointment of a receiver, "to take care of the properties contributed" by the partners and, also, of the "administration of the Cinema House" during the pendency of the case (Annex 5). Acting upon this motion, said court, presided over by the same Judge, respondent Jose Teodoro, Sr., appointed one Felisberto A. Broce, "as receiver x x x with authority to take possession and take charge of the Cinema House denominated and popularly known as Eden Theater, situated at San Carlos, Negros Occidental, Philippines."

The only question for determination in the case at bar is whether or not respondent Judge had, in the words of petitioner herein (par. 10 of the petition), "exceeded his authority when he issued the order of April 11, 1953" (Annex E), directing the provincial sheriff "to sell at public auction whatever rights, interest and participation the defendants may have on the property levied upon x x x the proceeds thereof to be applied in satisfaction of the judgment rendered in this case." Petitioner maintains the affirmative, upon the ground that "said partnership being in the hands of a receiver, the same or the properties thereof cannot be reached by execution." (Par. 10 of the petition.)

This pretense is untenable for the exemption from attachment, garnishment or sale under execution of properties under receivership is not absolute. Such properties may not be levied upon "except by leave of the Court appointing the receiver" (4 Am. Jur. 808; 45 Am. Jur. 132). This is a mere consequence of the theory that "a receivership operates to protect the receiver against interference, without the consent of the court appointing him, with his custody and possession of the property subject to the receivership" (45 Am. Jur. 132; underscoring supplied). Hence, "it has been held x x x that real estate in the custody of a receiver can be levied upon and sold under execution, provided only that the actual possession of the receiver is not interfered with" (45 Am. Jur. 133-134, citing Albany City Bank v. Schermerhorn, 9 Paige [NY] 372, 38 Am. Dec. 551). The reason is that "only a receiver's possession of property subject to receivership x x x is entitled to protection x x x against interference" (45 Am. Jur. 134; see, also, 75 C.J.S. 759).

Then, again, the interference enjoined is that resulting from orders or processes of a court "other" than that which appointed the receiver (45 Am. Jur. 136), the rule being predicated upon the need of preventing "unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons" (45 Am. Jur. 137). Thus, in *Cu Unjeng e Hijos vs. Mabalacat Sugar Co.* (58 Phil. 439, 441), this Court said:

"The fact that the mortgaged properties are in the hands of a receiver appointed by the court which tried the foreclosure suit does not prevent the same court from ordering the sale of the aforesaid mortgaged properties, inasmuch as although the said properties are in *custodia legis* by virtue of the conflict of jurisdiction therein because the court that ordered the sale thereof is the same which ordered that they be placed under receivership."

This view was reiterated and applied in *Orlanes & Banaag Trans. Co. vs. Asiatic Petroleum Co. (P.I.), Ltd. and Laguna-Tayabas Bus Co.* (59 Phil. 433, 439), in the following language:

"The appellants contend that inasmuch as the certificates of public convenience in question were in the hands and under the control of a judicial receiver and, therefore, in *custodia legis*, the Court of First Instance of Tayabas had no jurisdiction to order the sale thereof and, consequently, the sale made by the sheriff of the City of Manila to the Asiatic Petroleum Company (P.I.), Ltd., and the assignment for the latter of its rights in favor of the Laguna-Tayabas Bus Company are null and void.

"In the case of *Cu Unjeng e Hijos vs. Mabalacat Sugar Co.* (58 Phil., 439), which was decided on September 22, 1933, this court held that the court, which ordered the placing of the mortgaged property in the hands of a receiver in a foreclosure proceeding, has jurisdiction to order the sale of said property at public auction even before the termination of the receivership.

"In the case under consideration, it was the same Court of First Instance of Tayabas, which ordered the certificates of

public convenience in question placed in the hands of a receiver, appointed the receiver who was to take charge thereof, and ordered the receiver thus appointed to sell said certificates. In accordance with the afore-cited doctrine, said Court of First Instance of Tayabas had jurisdiction to order said sale."

For this reason, respondents maintain that petitioner is not entitled to the relief sought, the garnishment and the sale under execution complained of, having been ordered, not only by the same court of First Instance of Negros Occidental which had jurisdiction over the receivership, but, also, by the same Judge, respondent Jose Teodoro, Sr., who appointed the receiver

At any rate, the receivership in case No. 2371 is limited to the "possession" and administration "of the Cinema House dominated and popularly known as Eden Theater" (Annex 3). This is not necessarily a receivership of the partnership in question. But, even if it were, neither said possession by the receiver, nor the administration of the Eden Theater are affected by the order complained of (Annex E), the same being directed, not against the partnership or its properties, but against those of Gorgonio Pandes, particularly, "whatever rights, interest and participation" he "has or might have" in said partnership. This right, interest or participation, if any, is a property of *Gorgonio Pandes*, separate and distinct from the properties of the partnership, which has a personality of its own, distinct from that of its partners, and, certainly, of said Gorgonio Pandes (Arts. 44 and 1768, Civil Code of the Philippines). Such property, if any, of the latter, is not under receivership. The receiver had no authority to take it under his custody and, in fact, never had it in his possession or under his administration. Consequently, it is not in *custodia legis* and is subject to levy, even without the permission of the court appointing the receiver.

In view of the foregoing, the petition is hereby dismissed, with costs against the petitioner.

IT IS SO ORDERED.

Paras, Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista, Angelo and Labrador, J.J., concur.

Mr. Justice Padilla did not take part.

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Luzon Stevedoring Co., Inc., and Visayan Stevedore Transportation Co., Petitioners, vs. The Public Service Commission and the Philippine Shipowners Association, Respondents, G. R. No. L-5458, September 16, 1953, Tuazon, J.

1. PUBLIC SERVICE LAW; WHAT CONSTITUTES PUBLIC SERVICE OR PUBLIC UTILITY. — It is not necessary, under Sec. 13(b) of the Public Service Law (Commonwealth Act No. 146) that one holds himself out as serving or willing to serve the public in order to be considered public. In *Luzon Brokerage Co. v. Public Service Commission*, 40 O. G., 7th Supplement, p. 271, this Court declared that "Act 454 is clear in including in the definition of public service that which is rendered for compensation, although limited exclusively to the customers of the petitioner."
2. IBID; IRID. — In the United States where, it is said, that there is no fixed definition of what constitutes public service or public utility, it is also held that it is not always necessary, in order to be a public service, that an organization be dedicated to public use, i.e., ready and willing to serve the public as a class. It is only necessary that it must in some way be impressed with a public interest; and whether the operation of a given business is a public utility depends upon whether or not the service rendered by it is a public character and of public consequence and concern. (51 C. J. 5.) Thus, a business may be affected with public interest and regulated for public good although not under any duty to serve the public (43 Am. Jur. 572.)