1 Phil. 194

[G.R. No. 488. April 05, 1902]

GREGORIA MARTINEZ, PLAINTIFF AND APPELLEE, VS. HOLLIDAY, WISE & CO., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

Holliday, Wise & Co., on the 9th day of May, 1900, obtained an attachment against the property of Marcelo Lerma, and on the 11th following there were seized, among other things, the sixth part of an estate marked with the letters A, B, C, D, E, P, G, and H, and the fifth part of an estate marked with the letter I, both situated in Azcarraga Street. On the 3d day of November of the same year judgment was ordered, directing Lerma to pay the plaintiff 2,334 pesos and 94 cents. The attachment was provisionally recorded in the register of property.

In this condition of the suit Dona Gregoria Martinez filed a claim in intervention as owner and as a person having a prior lien on the property. In the first of these she asked that there be excluded from the attachment those parts of the estate seized as the property of Lerma, and that it be declared that they belonged to her as owner, and that the attachment upon them be dissolved. By the second she asked that her claim of 4,520 pesos against Lerma be declared superior to the claim of Holliday, Wise & Co.

The court below admitted the intervention only in respect to the claim of preference, and as thus limited the complaint was served, upon Holliday, Wise & Co. The plaintiff thus impliedly agreed that her claim of ownership should be stricken out. The defendant admitted the facts stated in the complaint, except that part thereof in which it is stated that Lerma had renounced in favor of Dona Gregoria Martinez the property which constituted his paternal inheritance, because, in the document presented with the complaint, no such waiver is stated. This document says that Manuel Lerma, the defendant in the first action, was entitled to 4,374 pesos 43 3/8 cents as his share in his father’s estate; that he had

received from his mother, the executrix, at different times, various amounts, so that at the date of the document there had been delivered to him 4,524 pesos; that is to say, 149 pesos and 56 5/8 cents in excess of his share. This document also says “that he acknowledges to have received prior to the execution of this instrument from Dofia Gregoria Martinez y Bernardo, as executrix of the will of Don Jose Lerma y Lim, the sum of 4,374 pesos and 43§ cents, the total amount of his hereditary portion, in cash, to his entire satisfaction, and the sum of 149 pesos and 56 5/8 cents loaned, also in cash, to his entire satisfaction, for which sums, amounting together to 4,524 pesos, evidenced by the above-mentioned receipts, the grantor hereby executes in favor of the said executrix the most binding and complete acquittance necessary for her security, and in consequence acknowledges to have received his said share in the hereditary estate.”

This is, in substance, all that the document contains. From it it clearly appears that the only debt which is set up or claimed is a debt of 149 pesos and 56 5/8 cents. In respect to the remainder, the words of the document constitute, in express terms, the extinction of a debt. It is possible that the parties intended to accomplish something else, and were not fully informed of the legal effect of the document, but we can only consider that which the document expresses, and we hold that by it there is recognized a debt of only 149 pesos and, 56 5/8 cents.

It is, however, still necessary to consider if, in respect to this sum, the plaintiff, Dofia Gregoria, has a right, in the distribution of the value of the property in question, superior to the right of Holliday, Wise & Co.

The claim of Holliday, Wise & Co., the appellants, is a simple debt, evidenced by a promissory note. As such it had no preference over the other debts against the same debtor, and was included within the provisions of aiticle 1925 of the Civil Code. While in this condition the claim of the appellee of 149 pesos had a preference over it, because her claim appeared in the public writing and fell within the provisions of article 1924, No. 3, of the same Code. Holliday, Wise & Co. commenced an ordinary declarative action against the common debtor and obtained an embargo, which was levied on certain goods recorded in the register of property in the name of the debtor. This attachment was provisionally recorded in the same register. Did that record give them a preference which they did not have before over the debt of the appellee?

Article 1391 of the Law of Civil Procedure requires this proceeding, and article 42, No. 2, of the Mortgage Law allows it. Article 44 of the Mortgage Law declares what its effect is in the

matter of preferences. This article is as follows:

> "The creditor who obtains in his favor a provisional record in the cases referred to in Nos. 2, 3, and 4 of article 42 will be preferred, in respect only to the property covered by the attachment, to those who may have against the same debtor another claim contracted after the said record."

From the time when the Mortgage Law of 1861 was in consideration up to the present time there has been only one opinion concerning the effects of a provisional record of this class. It has always been said that it did not change the character of the debt; that it did not convert into a right to the thing itself the claim of the creditor; that it did not give him any preference over existing claims which were not so provisionally recorded.

In the introduction to the Mortgage Law of 1861 the Commission says: "The judicial mortgages, which hereafter, under the projected law, will be known as provisional records (*anotacion preventiva*), are constituted solely for the purpose of insuring the success of a trial. They do not create any right, and still less do they convert into a right in rein a claim which did not have this character before. It can not be said of them that they are the prize for the racers, as has been stated in another nation, thus likening the desire of the creditors to overreach each other in obtaining the provisional record to the. eagerness with which the first place at the end of a horse race is sought. They are not an unmerited favor granted to the most relentless creditor. They do not modify the character of obligations by changing simple into hypothecary obligations, nor do they make the judge an agent of the litigants, compelling him to make good the negligence of the creditor, and to give him securities which possibly the debtor himself at the time of assuming the obligation would not have given. The judicial mortgage, which has for its sole purpose that of insuring the results of a suit, has never had this character in Spain. It certainly has not created a mortgage action in favor of the creditor who has succeeded in obtaining the attachment or an order preventing a conveyance of the thing during the pendency of the action. The right of the creditor has not been modified by the judicial mortgage, nor has its character been changed. The creditor has simply obtained greater security by taking from the debtor the means of destroying the things of conveying it away, or of going into insolvency. Therefore, in the case of the insolvency of a nonmerchant or the bankruptcy of a merchant, those who have obtained in their favor judicial mortgages of the class above referred to did not obtain, nor will they now obtain thereby, any preferred claim over and above other creditors of the

same class, nor can they be classed as mortgage creditors.

> "These principles having been adopted by the proposed bill, they give a new lease of life to our ancient law and again proclaim that the creditor who obtains in his favor a provisional record, the object of which is to secure the consequences of a favorable judgment, shall solely enjoy preference over other creditors who hold claims against the same debtor which have accrued subsequent to the provisional record. Nor could it be otherwise without violating the principles of justice. One who makes a contract and does not demand a mortgage security contents himself with the security given him by the personal credit of the debtor, and should not be given any preference over others who find themselves in the same circumstances. If the debtor fails to perform his agreement at the time fixed the creditor may compel him to make payment by bringing his action, but this action does not change either the nature of the credit or the force of the claim. If any other rule were to be established the result would be that as to several creditors of the same class of one debtor the advantage would be on the part of the most insistent, the most relentless, the one who by fair means or foul might obtain exact information as to the condition of the estate of the debtor, the one who had the most diligent attorney. The Commission, following the teachings of the old law, has considered that none of these causes should be ground for preference." The Commission says elsewhere: "It can not be said with justice that by a judicial order, which has merely a provisional character, the nature of the obligation is changed, or that it is thereby converted from a simple to a mortgage debt; nor that it places at a disadvantage creditors of the same character; nor that it destroys the right of preference of mortgage creditors as established by the laws."

Moscoso says: "We have stated repeatedly that the provisional record does not change the character of the obligation or the right which is its object; its effects are prospective; it solely affects persons who come later, who, with respect to the property embraced by the record, can not disregard the liability to which such property appears to be subject. This is because from the time of the provisional record this liability is made public by its entry in the register." (Legislaci6n Hipotecaria, p. 343.)

The Supreme Court has repeatedly announced the same doctrine. In the judgment of the

26th of October, 1888, it is said: "That the record of attachments of real estate made for the purpose of securing the result of a suit does not alter the nature of the demand in litigation has repeatedly been held by this court."

The Civil Code, in article 1923, No. 4, in respect to preferences over described real estate, says; "Claims recorded in the register of property by virtue of a judicial order, by attachment, sequestration, or execution of judgments over the goods covered by the record, and only in respect to subsequent claims."

This is, in substance, the language of article 44 of the Mortgage Law. The words "subsequent claims" in the first have the same meaning as the words "contracted after said record" in the Mortgage Law.

According to the express terms of this article, the record affects only subsequent claims. It does not affect a prior one. The relation between the claim in favor of which the record is made and any other claim of a prior date is not changed in any way by the record. If the claim of the appellee was prior to that of the appellants without the record of this attachment, it was so after it. The express terms of the article, and the nature itself of a record of this class, as we have seen, permit no other conclusion.

In view of the condition in which the respective claims of the parties were found at the time the complaint in intervention was filed this article (1923) is not applicable. Neither is article 1927. We are not required to consider at present the apparent contradictions noticed by Moscoso (p. 344) between this article, No. 2, and article 1923, No. 4.

The plaintiff, Dona Gregoria Martinez, having a claim entitled to preference over that of Holliday, Wise & Co. in respect to the amount of 149 pesos, her right to maintain this complaint so far as that sum is concerned has been settled by the decision of the supreme court of Spain in the judgment of October 6,1886.

The judgment of the lower court is reversed, and it is declared that said Dona Gregoria is entitled to a preference only in respect to 149 pesos and 56 5/8 cents. No order is made in regard to costs.

Arellano, C. J., Torres, Cooper, and *Mapa, JJ.,* concur.

Ladd, J., did not sit in this case.

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