

[G. R. No. 18548. December 29, 1922]

FLORENCIO MANALO, PLAINTIFF AND APPELLANT, VS. CARLOS YOUNG AND THE SHERIFF OF THE PROVINCE OF RIZAL, DEFENDANTS AND APPELLEES.

D E C I S I O N

OSTRAND, J.:

This action is brought to set aside a sheriff's sale of six parcels of land made to the defendant Carlos Young pursuant to a writ of execution issued in civil case No. 1557 of the Court of First Instance of the Province of Rizal. The trial court rendered a judgment in favor of the defendants absolving them from the complaint, from which judgment the plaintiff appeals.

The facts in the case, though somewhat involved, are not in dispute. One Antonino Guevara was originally the owner of lots Nos. 8, 10, 11, 12, 13, and 14 of the Muntinlupa Estate Sub-division, and held Torrens transfer certificate No. 2894 of the Province of Rizal therefor. On July 25, 1916, Guevara executed a mortgage in favor of E. C. McCullough & Co. on sixteen parcels of land, including the parcels in question, as security for a current or running commercial credit of not to exceed P4000. The mortgage was not recorded or noted upon the certificate of title until March 9, 1921, when it was finally entered by way of memorandum on transfer certificate of title No. 3460 by virtue of the judgment in civil case No. 1557, to be hereinafter mentioned.

On December 12, 1916, one Mariano Molo brought an action in the Court of First Instance of Rizal against Antonino Guevara for the recovery of the sum of P380, with interest, the action being numbered civil case No. 1512. In this action a writ of attachment was issued on the date of the filing of the complaint and levied upon the lands in question, being entered upon certificate No. 2894 by memorandum dated January 4, 1917.

On February 9, 1917, Antonino Guevara sold the six parcels of land in question to his son-in-law Juan Gilbuena and upon cancellation of certificate No. 2894, transfer certificate No.

3460 was on the same date issued in favor of the purchaser Gilbuena, subject to the attachment issued in civil case No. 1512. On the same day, February 9, 1917, Juan Gilbuena executed a document in favor of Mariano Molo by which he bound himself jointly and severally with Guevara to pay the amount sued for in case No. 1512, mortgaging the lands in question as security for such payment. This mortgage was entered upon certificate of title No. 3460 by memorandum bearing the same date as the instrument.

On July 25, 1917, Mariano Molo recovered judgment against Guevara in case No. 1512 and an order of execution issued which was levied upon the same parcels, the levy being noted on certificate of title No. 3460 under date of July 17, 1918. At the sheriff's sale had by virtue of the writ of execution, all the parcels were purchased again by Isabelo de los Reyes on July 8, 1918, and the certificate of sale in his favor was entered upon the certificate of title on October 19, 1918. Isabelo de los Reyes, in turn, sold the lands to the herein plaintiff Florencio Manalo on July 8, 1919, but this sale has not as yet been recorded.

In the meantime E. C. McCullough & Co., on April 19, 1917, filed a complaint against Antonino Guevara and Juan Gilbuena praying that the sale of the lands by Antonino Guevara to Juan Gilbuena be set aside, that Guevara be ordered to pay the sum of P3,694.44, and that, in default of such payment, the sixteen parcels of land mortgaged to McCullough & Co. be sold and the proceeds applied to the payment of the debt. This action was numbered civil case No. 1557. No notice of *lis pendens* appears to have been filed with the register of deeds.

On October 13, 1917, the Court of First Instance of Rizal rendered a judgment in said case No. 1557, the final or disposing clauses of which read as follows:

“Wherefore, it is ordered that the defendants Antonino Guevara and Juan Gilbuena surrender certificates of title Nos. 2894 and 3460 to the register of deeds of the Province of Rizal, in order that the plaintiff may record thereon the mortgage executed by the defendant Guevara, and the transfer of these six parcels of land made in favor of Juan Gilbuena is declared void and of no effect in so far as the plaintiff's mortgage is thereby affected. * * *

“For all of the foregoing, the court finds the defendant Antonino Guevara indebted to plaintiff in the sum of P3,055.11, with interest thereon at twelve per centum per year from April 19, 1917, until this amount is paid. Should the defendant Antonino Guevara fail to pay the amount which he is sentenced to pay

within the period of three months from the date of this judgment, the sheriff of the Province of Rizal shall sell at public auction the mortgaged properties. The defendants Guevara and Gilbuena shall pay each one-half of the costs of this action. So ordered.”

From this judgment an appeal was taken by the defendants to this court, but the bill of exceptions was dismissed on September 23, 1918, for failure to prosecute. Under the execution of the judgment, the lands here in question were, over the protest of Isabelo de los Reyes, again sold on July 20, 1919, and this is the sale which the plaintiff now seeks to set aside. It may be noted that no entry has been made of any of the proceedings in case No. 1557 on the certificate of title and that the only record entry as to the claim of E. C. McCullough & Co. and the defendant Young is that of the mortgage executed by Guevara in favor of E. C. McCullough & Co. on July 25, 1916, which, as already stated, was noted by memorandum on transfer certificate of title No. 3460 under date of March 9, 1921, by virtue of the judgment in case No. 1557.

As will be seen, the outstanding principal facts are that the plaintiff's title rests on recorded documents and transactions beginning with the memorandum of the attachment issued in civil case No. 1512 dated January 4, 1917, while there appears to have been no record in the registry of deeds of the documents and transactions upon which the claim of the defendant Young is based prior to the entry of the memorandum of the mortgage in favor of E. C. McCullough & Co. on July 20, 1921, long after the plaintiff had acquired the rights he here asserts. There is nothing in the evidence to indicate that Isabelo de los Reyes and the plaintiff Florencio Manalo had notice of the claim of McCullough & Co. prior to the conveyances to them or that they at any time acted in bad faith.

The trial court based its judgment on the ground that under the rule laid down in *Fabian vs. Smith, Bell & Co*, (8 Phil., 496), the Molo attachment created no priority over the mortgage of McCullough & Co.; that at the time of the sale under execution in case No. 1512, the Court of First Instance had already declared the sale made by Guevara to the defendant in execution, Juan Gilbuena, null and void; that, therefore, Gilbuena at that time had no title to the lands in question; and that, consequently, no title passed to the purchaser at the sheriff's sale under said execution.

The court below evidently lost sight of the fact that the lands attached were registered under Act No. 496, and that, therefore, the rule in the cases of *Fabian vs. Smith, Bell & Co.*,

supra, and McMicking vs. Kimura (12 Phil., 98), did not apply. (See Buzon vs. Licauco, 13 Phil., 354; Worcester vs. Ocampo and Ocampo, 34 Phil., 646.)

An examination of the pertinent provisions of Act No. 496 will make this clear. Section 50 of the Act provides that:

“ * * No deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to intake registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies.”* And section 51 of the same Act says:

“Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering”

In the case of Worcester vs. Ocampo and Ocampo, *supra*, this court, commenting upon section 50, said:

“Said section 50 clearly provides that when registered land is conveyed, mortgaged, leased, or otherwise dealt with, such conveyance, mortgage, etc., shall not affect or convey the land until such conveyance, mortgage, etc., is recorded or filed or entered in the office of the register of deeds. From said provision it is clear then, that by reason of the fact that said *pacto de retracto* was not recorded, filed, or entered in the office of the register of deeds until after the plaintiff had secured his lien by attachment, that Gervasio Ocampo y Reyes acquired his right subject to the rights of the plaintiff herein. His right being subject to the rights of the plaintiff, it cannot be enforced against the land until

after the rights of the plaintiff have been fully satisfied. No claim is made by the appellant that there were any rights left in said parcel of land over and above the rights of the plaintiff.”

The language quoted applies with full force to the present case. Until the mortgage in favor of E. C. McCullough & Co. was recorded or noted upon the certificate of title, it had no legal existence as far as the plaintiff, a third party in good faith, was concerned, and his rights having as their foundation properly recorded transactions and having been acquired before the entry of the memorandum of the McCullough & Co. mortgage, necessarily hold priority over the latter.

The judgment appealed from is therefore reversed and it is ordered that upon presentation of duplicate transfer certificate of title No. 3460 of the Province of Rizal, the register of deeds shall cancel said certificate with its duplicate, and issue a new transfer certificate of title in favor of the plaintiff Florencio Manalo for the lands described in the cancelled certificate, free of all memorandums or incumbrances except the notice of *lis pendens* of the case of Ricardo Bayot vs. Antonino Guevara entered upon transfer certificate of title No. 2894 under date of October 12, 1916, and continued on transfer certificate No. 3460, unless the entry of said notice of *lis pendens* shall in the meantime have been cancelled. The sheriff's sale under execution in civil case No. 1557 being subject to the rights of the plaintiff, no formal declaration of its nullity is necessary. No costs will be allowed in this instance. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez JJ., concur.

DISSENTING

JOHNSON, J.,

I cannot give my assent to this decision.

Date created: June 06, 2014