

46 Phil. 753

[G.R. No. 18501. January 20, 1923]

DOLORES BENEDICTO DE TARROSA ET AL., PLAINTIFFS AND APPELLANTS, VS. F.M. YAP TICO & CO., AND THE PROVINCIAL SHERIFF OF OCCIDENTAL NEGROS, DEFENDANTS AND APPELLANTS.

D E C I S I O N

ROMUALDEZ, J.:

On May 28, 1916, a liquidation of account was had between F. M. Yap Tico & Co. and Wenceslao Tarrosa, which gave a balance of P13,486.72 against the latter. To secure the payment of said balance a mortgage was executed, covering 90 *laksas* of sugar cane planted on the "Hacienda Dolores," situated in the barrio of Alicante, municipality of Saravia, Occidental Negros. This *hacienda* is also known as "Alicante" and is the same estate the plantations of which were mortgaged to F.M. Yap Tico & Co. in the year 1912, together with a steam boiler of one year use.

As the said debt was not paid, the creditor corporation attached the animals belonging to the estate, and as the amount realized from the sale thereof was insufficient to cover the credit, other properties of the debtor were attached, among which were 16 fields of sugar cane of 105 *laksas*, 80 *brazas* of firewood, 3,600 *rajas* and one 8-horsepower steam boiler. Dionisio Luzuriaga Dy Chiamco, one of the plaintiffs herein, presented a third party claim to the plantations of the estate, alleging that they were mortgaged to him by Dolores Benedicto and' her husband Wenceslao Tarrosa for P1,500. Isidoro Escares also presented a claim to said sugar canes, alleging that they had been mortgaged to him on November 9, 1916, for the sum of P9,639.45.

The firm of F.M. Yap Tico & Co. gave a bond in order to maintain the attachment, which was carried on as usual, and the attached plantations yielded 1,732 piculs of sugar which were sold for P9,632.48.

The plaintiffs, Catalino Palma, Julio Singco, Gonzalo Junsay, Sotera Suplico, Alfonso Hiceta, Daniel Divino, and Donato Miraflor, allege themselves to be coparceners of Dolores Benedicto and entitled to a one-third part of the sugar cane plantation.

Dolores Benedicto also laid claim to the plantation of the aforesaid 16 fields, the 80 *brazas* of firewood, 3,600 *rajas*, and steam boiler above mentioned.

The defendants set up a general and a special defense, alleging that the registration of the mortgage in favor of Dionisio Luzuriaga was void, and praying that the same be cancelled and that they be absolved from the complaint with costs.

The trial court rendered judgment declaring the plaintiffs to be coparceners on shares and entitled to one-third of the plantations of the 16 fields of sugar cane; that the mortgage in favor of Dionisio Luzuriaga is void; and that Isidoro Escares has a preferential right over a two-third part of the plantations of the 16 fields levied upon; and sentencing F. M. Yap Tico & Co. to pay P113.84 to Catalino Palma; P85.36 to Julio Singco; P85.38 to Gonzalo Junsay; P213.45 to Sotero Hiceta; P113.84 to Daniel Divino; and P113.84 to Donato Miraflor; sentencing the plaintiffs jointly and severally to pay Isidoro Escares the sum of P2,988.79, the net value of a two-third part of the plantations of the 16 fields aforementioned, and absolving the defendants from the claims of Dolores Benedicto and Dionisio Luzuriaga Dy Chiamco. This judgment is the subject-matter of the appeal interposed by some of the plaintiffs, on the one hand, and by the defendants, on the other.

The plaintiffs-appellants assign errors to the action of the lower court:

“1. In not finding that Dolores Benedicto was the exclusive owner of the boiler, firewood, and *rajas* in question and that she must be reimbursed for all the expenses of cultivation of the plantations of the 16 fields of sugar cane;

“2. In finding that Dionisio Luzuriaga has no preferential right over the plantations under attachment; and

“3. In not making any finding of fact and in not passing upon the liability of the defendants for the P4,463, the value of the shortage in sugar, due to the milling having been begun out of time.”

The defendants, in turn, claim that the trial court erred:

“1. In sentencing F. M. Yap Tico & Co. to pay P113.84 to Catalino Palma; P85.38 to Julio Singco; P85.38 to Gonzalo Junsay; P171.76 to Sotera Suplico; P213.45 to Alfonso Hiceta; P113.84 to Daniel Divino; and P113.84 to Donato Miraflor, holding them to have legal capacity to bring this action; and

“2. In sentencing the defendants to pay Isidoro Escares P2,988.79, holding him to have preferential right over a two-third part of the sugar cane levied upon.”

As to who is the owner of the properties attached, the evidence is not sufficient to rebut the presumption that said properties belong to the conjugal partnership of the spouses Wenceslao Tarrosa and Dolores Benedicto de Tarrosa. Our conclusion, therefore, is that said properties are liable for the debt in favor of F. M. Yap Tico & Co.

With regard to the debt due Dionisio Luzuriaga stated in the mortgage deed Exhibit F, the trial court found said mortgage void for the reason that it lacks the oath required by the law (sec. 5, Act No. 1508). This court has already had occasion to pass upon this question in the case of Giberson vs. A. N. Jureidini Bros. (44 Phil., 216) wherein we held, as we do herein hold, that a mortgage with such a defect is of no effect as against third persons, and consequently the mortgage now in question cannot be held preferential over the mortgage in favor of Isidoro Escapes, nor over the attachment levied upon the properties in question, duly recorded in the registry.

With reference to the third error assigned by the plaintiffs-appellants, it was not sufficiently established by the evidence that the defendants were negligent in beginning the milling of the sugar canes levied upon, the delay in the milling having been explained in a manner satisfactory in our opinion (fols. 53, 54, transcript of stenographic notes).

Turning to the errors pointed out by the defendants, we note that the allegation that the plaintiffs, who were coparceners on shares, had no legal capacity to bring this action is untenable. It is true that these coparceners on shares have no cause of action against the sheriff, for not having presented their claim to said officer, but this omission does not preclude them from claiming the properties attached. Section 451 of the Code of Civil Procedure, after prescribing the procedure to be had in case the properties attached are claimed by a third person from the officer levying the attachment, says in its last paragraph.

“* * * but nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action.”

The second and last error assigned by the plaintiffs-appellants is as to that part of the judgment giving preference to the credit of Isidoro Escares over the attachment on the properties in question procured by the firm of F. M. Yap Tico & Co. The mortgage was executed before the levying of the attachment. And as the trial judge says, there is no proof that the execution of the mortgage was for the purpose of frustrating the attachment. The presumption that said mortgage was executed in good faith by the parties stands un rebutted. There is, therefore, no reason whatever why we should disturb the finding of the trial court.

We find in the record no sufficient ground for altering the dispositive part of the judgment appealed from, which is hereby affirmed, without pronouncement as to costs. So ordered.

*Araullo, C.J., Street, Malcolm, Avanceña,
Villamor, Ostrand, and Johns, JJ., concur.*

