101 Phil. 997

[G. R. No. L-10089. July 31, 1957]

MARCELO LAPEÑA AND EPIFANIA PINEDA, PETITIONERS, VS.JUDGE JESUS P. MORFE, PETRONA GUTIEREZ AND JOSEFA GUTIEREZ, RESPONDENTS.

D E C I S I O N

PADILLA, J.:

Petitioners seek to annual an order of the respondent court in case No. 11849, dated 17 November 1955, ordering them their house from a part of the parcel of land involved in the litigation within fifteen days from receipt of notice of the order, with a warning that if within that period they should fail to do so, the respondent court would order its immediate demolition (Annex F), on the ground of excess of jurisdiction or grave abuse of discretion. They pray that the respondent court be enjoined from issuing the order of demolition. On 27 December 1955 this Court issued the writ of preliminary injunction prayed for upon the filing of the required bond.

Since 1 April 1939, the petitioners were the lesses of part of a residential lot in the municipality of San Carlos, province of Pangasinan, owned by the respondents Petrona Gutierez and Josefa Gutierrez, on which they built a residential house claimed to be worth P8,000. The terms of the lease was ten years. On 22 August 1951 the respondents brought an action in the Court of First Instance of Pangasinan against the petitioners praying that as the contract of lease had expired on 1 April 1949, the petitioners be ordered to vacate the part of the parcel of land leased by them (civil No. 11849, Annex A). The petitioners pleaded, among others, that the contract had been extended for another ten years (Annex B). ON 1 April 1952 when the case was called for hearing, the parties entered into a written agreement, which reads, as follows:

Parties accompanied by their respective counsel respectfully submit the following agreement, to wit:

1. The plaintiffs agree to extend the period of lease of their land referred to in the

complaint for a period of three (3) years from date hereof;

2. That defendants agree to pay a monthly rental of P25.00 from date hereof, payable in advance within the first ten (10) days of every month, except the rentals for the first six (6) months of this lease in the amount of P150.00 which will be paid by the defendants within fifteen days from today;

3. That defendant failure of the defendants to pay two successive months rentals, shall entitle the plaintiffs to ask for a writ of execution evicting the defendants from the premises under lease;

4. That defendants agree to pay another sum of P50.00 payable within fifteen (15) days from today, in payable of back rentals;

5. That defendants renounce all claims of alleged debts of plaintiffs mentioned under paragraph VIII of their answer to the complaint;

6. That the present owners of the land in question are the spouses Ramon Anastacio and Josefa Gutierrez;

   WHEREFORE, parties hereto, assisted by their respective counsel, respectfully pray that judgment be rendered in accordance with the foregoing agreement. (Annex C.)

Conformably to the prayer, the respondent court rendered "judgment approving the same and enjoins (enjoining) the parties to comply strictly with its terms."

After the expiration of the three year period agreed upon by the parties in paragraph 1 of the above transcribed written agreement, on 24 June 1955 the respondents filed a motion in the case praying that the respondents filed a motion in the case praying that the respondent court issue an order commanding the provincial sheriff to demolish the residential house erected on a part of the parcel of land in question (Annex D). The petitioners objected to the motion and averred that since they had introduced useful improvements on the land

consisting of a residential house worth P8,000, they have a right to demand that the respondents pay them one-half of the vendee assume a first mortgage executed on the property in favor of the Philippine National Bank and certain obligations of the vendor with the Firestone Tires and Rubber Company and Violeta G. de Galvez (Exh. "A"). The deed of sale was entered in the day book of the register of deeds of Cebu on May 10, 1951, upon payment of an entry fee of P0.50. However, the sale was not transcribed at the back of the certificate of title for the reason that this was then in the possession of the mortgagee, Philippine National Bank.

On July 14, 1951, the municipal court of Cebu City entered a judgment in its civil case No. R-763, entitled Elena R. Causin vs. Rogaciano R. Espiritu, for defendant to pay plaintiff the sum of P950, with interest and attorney's fees. Execution of this judgment was ordered on July 30, 1951, and levy was made upon the property of the defendant. On August 4, 1951, the attachment was inscribed on Transfer Certificate of Title No. 410 as entry No. 5215 V-2-D. B. On August 23, 1951, plaintiff herein filed a third-party claim against the attachment but as Causin filed the bond required of her by the sheriff, the latter continued the proceedings for the sale of the property on execution. So Ramirez brought the present action in the Court of First Instance of Cebu on September 18, 1951, to dissolve the attachment and enjoin the sheriff from proceeding with the sale and to recover damages. Meanwhile, on September 22, 1951, transfer certificate of title No. 410 in the name of Rogaciano C. Espiritu was cancelled and in lieu thereof transfer certificate of title No. 1786 issued in the name of Agustin Ramirez. This new transfer certificate of title carries on the back the attachment and levy in favor of Elena R. Causin.

After the issues were joined the parties went to trial and thereafter the court rendered the decision appealed from, after reconsidering a previous order granting the Prayer of the complaint. On this appeal plaintiff-appellant's contention is that as the sale in his favor was entered in the day book of the register of deeds on May 10, 1951, previous to the annotation of the attachment on August 10, 1951, previous to the annotation of the attachment on August 4, 1951, and inasmuch as the sale was subsequently registered and a new transfer certificate issued in the name of the vendee, the registration retroacts to the date of the original entry on the day book, which took place on May 10, 1951 and therefore the sale is superior to the attachment levied upon on behalf of the defendant. In support of this contention plaintiff-appellant cites the case of Fidelity & Surety Co. *vs.* Conegero, 41 Phil. 396. The defendant-appellee argues that as the deed of sale, and when the registration actually took place the attachment had already been registered previously, on August 4, 1951.

A study of the case of Fidelity and Surety Company *vs.* Conegero, *supra*, cited by plaintiff-appellant, fails to support his contention. The facts of that case are different from those of the case at bar because in the former the deed of sale could not be registered because in the former the deed of sale could not be registered because the title upon which was supposed to operate was non-existent. So that a portion of the decision which says:

> "That wherever registration is actually effected and new certificate issued, the registration is retroactive and takes effect by relation as of the date when the annotation in the entry book was made." (p.400)

was a mere dictum. On the other hand, the latter part of the decision cites section 50 of Act No. 496 insofar as it provides that "the act of registration is the operative act to convey and affect the land" and further states that section 57 requires various steps in order that registration may be considered complete, namely, the presentation of the deed of sale *and the production of the grantor's duplicate certificate,* upon which the title is founded, to the registered of deeds for cancellation.

A comparative study of sections 50, 55 and 72 of the Land Registration Act will readily disclose the differences between the registration of voluntary instruments and those of attachments or other liens or adverse claims. With respect to the former (voluntary conveyances), section 50 expressly provides that the act of registration shall be the operative act to convey and affect the land; but section 55 requires the presentation of the owner's duplicate certificate for the registration of any deed or voluntary instrument, thus:

> "Sec. 55. No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the register of deeds, in pursuance of any deed or other voluntary instrument, *unless the owner's duplicate certificate is presented for such endorsement*, except in cases expressly provided for in this Act, or upon the order of the court, for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate." (Act No. 496.) (Italics supplied.)

But with respect to involuntary instruments like attachments, executions or adverse claims, section 72 allows registration, even without the presentation of the duplicate certificate of title, thus:

> "SEC. 72. In every case where an attachment or other lien or adverse claim of any description is registered, and the duplicate certificate is not presented at the time of registration to the register of deeds, he shall within twenty-four hours thereafter hours thereafter send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce the duplicate certificate in order that a memorandum of the attachment or other lien or adverse claim shall be made thereon. If the owner neglects or refuses to comply within the reasonable time, the register of deeds shall suggest the fact to the court, and the court, after notice, shall enter an order to the owner to produce his certificate at a time and place to be named therein, and may enforce the order by suitable process." (Act No. 496.)

As above expressly indicated, an involuntary deed needs presentation only, and it is the register if deeds who completes registration by requiring the production of the certificate from the owner so that the proper attachment, execution, lien or adverse claim may be noted thereon.

The difference above indicated between voluntary registration and the registration of involuntary instruments such as attachments, executions, liens or adverse claims, has heretofore been indicated by US in the cases of Villasoror *vs.* Camon, et al., 89 Phil., 404; Defensor *vs.* Brillo, 98 Phil. 427; 52 Off. Gaz., (17) 7281; Barreto *vs.* Arevalo, 99 Phil., 776; 52 Off. Gaz., (13) 5818. In the case of Villasor *vs.* Camon, et al., *supra*, we pointed out the distinction between requirements of registration of voluntary instruments and those of involuntary instruments, thus:

> "The reason for the difference between the conditions required for the registration of a voluntary and that of an involuntary instruments is obvious. The law requires the production of the owner's duplicate certificate by the registrant by a voluntary instrument together with the deed or instrument to be registered, because as a voluntary instrument is a willful act of the registered owner of the land to be affected by the registration, it is to be presumed that he is interested in registering the instrument, and would willingly surrender, present or produce his duplicate certificate of title to the register of deeds in order to accomplish such registration. And this is the reason why the second paragraph of Section 55 provides that "The production of the owner's duplicate certificate whenever any

voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the register of deeds to enter a new certificate or to make memorandum of registration in accordance with such instrument,'.

"But in case of involuntary instrument such as an attachment, or other lien or adverse claim of any description, as the registration thereof is contrary to the interests of the registered owner or will affect him adversely, it is but natural that he will not willingly present or produce his duplicate certificate or at least delay his production as long as possible. For the reason, the law does not require its presentation together with the involuntary instrument, as in the case of voluntary instrument, and considers the annotation of such instrument upon the entry book as sufficient to affect the real estate to which it relates; but section 72 of Act No. 496 imposes upon the register of deeds the duty; within twenty-four hours thereafter, to request or require the registered owner to send or produce his duplicate certificate in order to make thereon on memorandum of the attachment or other lien or adverse claim. To provide or hold that an attachment or other involuntary instrument entered in the entry look is not to be considered as duly registered unless and until the duplicate certificate is produced, would defeat the purpose of the registration law.

"Wherefore, the lower court did not commit any error in holding that the mere registration in the entry book of the deed of sale or assignment of all of his rights and interest in the lot in question by the defendant Camon to the appellant, without the production of the owner's duplicate certificate of title and annotation of such assignment thereon and on the original, did not have the effect of a conveyance of Camon's right and interest on said lot to the plaintiff and a notice of such conveyance to all other persons or the defendant Lizares from the time of such registration."

In the case of Defensor *vs.* Brillo, *supra*, we held:

"First: The doctrine is well-settled that a levy on execution duly registered takes preference over a prior unregistered sale (Gomez *vs.* Levy Hermanos, 67 Phil.134); and that even if the prior sale is subsequently registered, before the sale in execution sale should be maintained, because it retroacts to the date of levy (Vargas *vs.* Tansioco, 67 Phil. 308; Chin Lin & Co. *vs.* Mercado, 67 Phil. 409;

> Phil Executive Commission *vs.* Abadilla, 74 Phil. 68); otherwise, the preference created by the levy would be meaningless and illusory (Phil. Executice Commission *vs.* Abadilla, *supra*.)."

And in the case of Barretto *vs.* Arevalo, et al., *supra*, we held:

> "As to plaintiff's deed of sale, as to which registration is voluntary, not involuntary, its presentation and entry in the day book without surrender of the title, did not operate to convey and affect the land sold or conveyed (Villasor *vs.* Camon, et al., 89 Phil., 404).

In accordance with the principles enuciated in the above cases, it seems clear that as the deed of sale in favor of Agustin Ramirez on May 10, 1951 was not accompanied upon presentation by the duplicate certificate of title covering the land, the registration of the aforementioned deed of sale cannot be be considered as having been affected on said date. Consequently, when on August 4, 1951 the attachment in favor of Elena R. Causin was presented, which was immediately transcribed on the Transfer Certificate of Title No. 410, said attachment was not affected by the entry of the sale on May 10, 1951, as the sale was not yet registered, and the levy of attachment became full, complete and binding on all the parties in interest as well as on all third persons. It follows also that the attachment already inscribed on August 4, 1951 acquired precedence over the right of purchaser Agsutin Ramirez, which became effective only on September 22, 1951.

The contention of plaintiff-appellant that the registration of the deed of sale in his favor retroacted from the date of which the entry thereof was made in the day book of the register of deeds of May 10, 1951 is clearly inconsistent with the provisions of section 55 requiring the presentation of the duplicate certificate in order to make a conveyance effective as to third persons. Even if we admit the contention, it would be true of the parties only, and the retroaction would be true of the parties only, and the retroaction would not operate to defeat the attachment which had become full and complete when the actual registration of the deed of sale was effected. In other words, admitting for the sake of argument that the deed of sale should retroact to the date of registration of the deed in the day book of the registered of deeds, this should be as between the parties to the contract only, and may not prejudice any rights that may have arisen and were perfected between the time of the entry of the sale in the day book and that of its presentation (of the deed) and its subsequent

registration of transcription on the certificate of title, or the issuance of a new certificate of title in favor of the purchaser. The order of the court denying the petition for cancellation of the attachment was, therefore, correct.

We have taken pains to ascertain if our ruling as above set forth in any way conflicts with our decisions in the cases of Potenciano, et al. *vs.* Dineros, et al.,[1] G. R. No. L-7614, prom. May 31, 1955 and Levin *vs.* Bass, etc.[2] G. R. Nos. L-4340-46, prom. May 28, 1952. In the case of Potenciano, et al. *vs.* Dineros, Potenciano presented for registration a deed of sale in his favor *accompanied with the owner's duplicate of title.* The entry was made in the day book. It so happened, however, that the documents presented were lost or destroyed in the course of the confusion caused by the war. The sale and the attempted registration took place in November, 1944, and in April 1946, the land already sold to Potenciano was attached. Potenciano filed a third party claim. We held that the entry of the deed of sale in registry affected the land, and we rejected the attaching creditor's contention that the entry in the day book is not sufficient registration. Evidently, the reason why the sale was considered effective as against a subsequent attaching creditor was because the deed of sale when presented for registration was accompanied with the owner's duplicate certificate of title to the property. Because of the confusion that existed in the City of Manila at the time of the registration of the deed of sale and the submission therewith of the certificate of title to the property, which presentation is considered as the authority for the Register of deeds to register the deed of sale in question. This case, therefore, is distinguished from the case at bar, in that in the latter *there was no presentation of the duplicate certificate of title* at the time of the presentation of the deed of sale which was entered in the registry, such presentation of the duplicate certificate of title having been made only after the opposing party had levied upon the property and registered the attachment thereon.

The case of Levin vs. Bass, on the other hand, supports our ruling in the case at bar. In that case, we held:

> "* * * . Do the entry in the day book of a deed of sale which was presented and filed together with the owner's duplicate certificate of title with the office of the Register of Deeds and full payment of registration fees constitute a complete act of registration which operates to convey and affect the land? In voluntary registration, such a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within 15 days, entry in the day book of the deed of sale does not

operate to convey and affect the land sold. * * *."

As in the case at bar the duplicate certificate of title was not surrendered at the time of the presentation of the deed of sale, the registration cannot be considered as having been made and the registration of deed of sale did not affect and convey the land sold. Hence the subsequent attachment, which was accompanied by the duplicate certificate of title, acquired preference over the deed of sale, because the latter was not validly registered until after the attachment had already been lawfully and validly entered and registered.

The judgment appealed from is hereby affirmed, with cost against the plaintiff-appellant.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Baustista Angelo, Concepcion, Reyes, J. B. L., and *Felix, JJ.,* concur.

Judgment affirmed.

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[1] 97 Phil., 196.

[2] 91 Phil., 419, 49 Off. Gaz. [4] 1444.

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