

**MANUEL C. MANARANG AND LUCIA D. MANARANG, PETITIONERS
AND APPELLANTS, VS. MACARIO M. OFILADA, SHERIFF OF THE CITY
OF MANILA AND ERNESTO ESTEBAN, RESPONDENTS AND
APPELLEES.**

G.R. No. L-8133. May 18, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

On September 8, 1951, petitioner Lucia D. Manarang obtained a loan of P200 from Ernesto Esteban, and to secure its payment she executed a chattel mortgage over a house of mixed materials erected on a lot on Alvarado Street, Manila. As Manarang did not pay the loan as agreed upon, Esteban brought an action against her in the municipal court of Manila for its recovery, alleging that the loan was secured by a chattel mortgage on her property. Judgment having been entered in plaintiff's favor, execution was issued against the same property mortgaged.

Before the property could be sold Manarang offered to pay the sum of P277, which represented the amount of the judgment of P250, the interest thereon, the costs, and the sheriff's fees, but the sheriff refused the tender unless the additional amount of P260 representing the publication of the notice of sale in two newspapers be paid also. So defendants therein brought this suit to compel the sheriff to accept the amount of P277 as full payment of the judgment and to annul the published notice of sale.

It is to be noted that in the complaint filed in the municipal court, a copy of the chattel mortgage is attached and mention made of its registration, and in the prayer request is made that the house mortgaged be sold at public auction to satisfy the debt. It is also important to note that the house mortgaged was levied upon at plaintiffs request (Exhibit "E").

On the basis of the above facts counsel for Manarang contended in the court below that the house in question should be considered as personal property and the publication of the notice of its sale at public auction in execution considered unnecessary. The Court of First Instance held that although real property may sometimes be considered as personal property, the sheriff was in duty bound to cause the publication of the notice of its sale in order ip make the sale valid or to prevent its being declared void or voidable, and he did not, therefore, err in causing such publication of the notice. So it denied the petition.

There can not be any question that a building of mixed materials may be the subject of a chattel mortgage, in which case it is considered as between the parties as personal property. We held so expressly in the cases of *Luna vs. Encaraacion, et al.*,* 48 Off. Gaz., No. 7, p. 2664; *Standard Oil Co. of New York vs. Jaranillo*, 44 Phil., 630; and *De Jesus vs. Guan Dee Co., Inc.*, 72 Phil, 464. The matter depends on the circumstances and the intention of the parties.

"* * * The general principle of law is that a building permanently fixed to the freehold becomes a part of it, that prima facie a house is real estate, belonging to the owner of the land gn. which it stands, even though it was erected against the will of the landowner, or without his consent. * * * The general rule is otherwise,

however, where the improvement is made with the consent of the landowner, and pursuant to an understanding either expressed or implied that it shall remain personal property. Nor does the general rule apply to a building which is wrongfully removed from the land and placed on the land of the person removing it." (42 Am. Jur. 199-200.)

"* * * Among the principal criteria for determining whether property remains personal or becomes realty are annexation to the soil, either actual or construction, and the intention of the parties. * * *

"Personal property may retain its character as such where it is so agreed by the parties interested even though annexed to the realty, or where it is affixed in the soil to be used for a particular purpose for a short period and then removed as soon as it has served its purpose. * * *." (Ibid., 209-210.)

The question now before us, however, is Does the fact that the parties entering into a contract regarding a house gave said property the consideration of personal property in their contract, bind the sheriff in advertising the property's sale at public auction as personal property? It is to be remembered that in the case at bar the action was to collect a loan secured by a chattel mortgage on the house. It is also to be remembered that in practice it is the judgment creditor who points out to the sheriff the properties that the sheriff is to levy upon in execution, and the judgment creditor in the case at bar is the party in whose favor the owner of the house and conveyed it by way of chattel mortgage and, therefore, knew its consideration as personal property.

These considerations notwithstanding, we hold that the rules on execution do not allow, and we should not interpret them in such a way as to allow, the special consideration that parties to a contract may have desired to impart to real estate, for example, as personal property, when they are not ordinarily so. Sales on execution affect the public and third persons. The regulation governing sales on execution are for public officials to follow. The form of proceedings prescribed for each kind of property is suited to its character, not to the character which the parties have given to it or desire to give it. When the rules speak of personal property, property which is ordinarily so considered is meant; and when real property is spoken of, it means property which is generally known as real property. The regulations were never intended to suit the consideration that parties, may have privately given to the property levied upon. Enforcement of regulations would be difficult were the convenience or agreement of private parties to determine or govern the nature of the proceedings. We, therefore, hold that the mere fact that a house was the subject of a chattel mortgage and was considered as personal property by the parties does not make said house personal proper for purposes of the notice to be given for its sale at public auction. This ruling is demanded by the need for a definite, orderly and well-defined regulation for official and public guidance and which would prevent confusion and misunderstanding.

We, therefore, declare that the house of mixed materials levied upon on execution, although subject of a contract of chattel mortgage between the owner and a third person, is real property within the purview of Rule 39, section 16, of the Rules of Court as it has become a permanent fixture on the land, which is real property; (42 Am. Jur. 190-200; Leung Yee vs. Strong Machinery Co., 37 Phil., 644; Republic vs. Ceniza, et al 90 Phil., 544; Ladera, et al. vs. Hedges, et al., [C. A], 48 Off, Gaz., 5374.)

The judgment appealed from is hereby affirmed, with costs. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[*] 91 Phil., 531.

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