

ALEXANDER LEYSON, PETITIONER, VS. HON. JUDGE SANTIAGO O. TANADA, FELISA T. NACION, ESTER NACION, FILEMON GACAYAN, EUSEBIO GACAYAN, ADELINA DE LOS SANTOS AND HEIRS OF SERGIO GACA...

G.R. No. L-31472. November 10, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Review on Certiorari of the Order, dated December 5, 1969, of the Court of First Instance of Cebu, Branch V, sitting as a land registration Court, which denied the entry of a new certificate of title in petitioner's name as the purchaser at an execution sale. The Petition was given due course on January 19, 1970.

The factual backdrop may be re-stated thus:

In a labor dispute (Case No. 140-ULP-Cebu) before the Court of Industrial Relations, petitioner Alexander Leyson and several other complainants, won on March 24, 1966, a total award of back wages in the sum of P36,772.34, against Filemon Gacayan and one Lorenzo Cabarrubias. By virtue of an Alias Writ of Execution issued in the case and to satisfy the judgment, the City Sheriff of Cebu, on April 5, 1968, levied upon a parcel of land, Lot No. 7525-B, situated in Lapu-lapu St., Cebu City containing an area of 208 square meters, more or less, registered in the name of "Filemon Gacayan, Filipino, of legal age, married to Adelina de los Santos, resident of Lapulapu St., Cebu City, Philippines, covered by TCT No. 19114."

On April 30, 1968, all the rights, interests and participation of Filemon Gacayan in the said property were sold at public auction to petitioner as the lone and highest bidder in full payment of the adjudged amount. A Certificate of Sale was issued by the Sheriff on the same date, which was registered on May 6, 1968. No redemption having been made within the one-year period, a Definite Deed of Sale was executed by the City Sheriff on June 6, 1969 in petitioner's favor.

Inscribed at the back of TCT No. 19114 at the time of the auction sale were two entries: (1) "Mortgage - By the spouses Filemon Gacayan and Adelina de los Santos in favor of the PNB, Cebu Branch, Cebu City," of Lot 7525-B under date of July 17, 1959; and (2)

"Entry No. 7046-BV-6-D.B. Notice of Lis Pendens by Cesar Kintanar, Atty. for the Plain-tiff, CC. No. R-7181, CFI, Province of Cebu, entitled 'Adelina de los Santos, Plain-tiff vs. Filemon Gacayan, Defendant', serving notice of the pendency of said case to establish the plaintiff's owner-ship of the parcel of land herein described and to compel the defendant to convey the said premises to the plaintiff, etc. Lis Pendens No. 195.

'Date of Instrument –

Sept. 4, 1961

Date of Inscription –

Sept. 4, 1961

at 10:15 A.M."

It appears that in August, 1961, in Civil Case No. CC R-7181 (Partition Case, for short) before the Court of First Instance of Cebu, Branch I, Adelina de los Santos had filed a complaint for partition of the subject property against Filemon Gacayan. Apparently, the spouses had been estranged. Also claiming interest over the property were Felisa T. Nacion and Ester Nacion, and Sergio Gacayan and Eusebio Gacayan, who were allowed to intervene in the proceedings. Because of the pendency of the case, the corresponding notice of lis pendens was annotated on TCT No. 19114 covering the property (supra).

In a Decision, dated November 29, 1965, in the Partition Case, the trial Court declared Filemon Gacayan and Adelina de los Santos "co-owners of one third (1/3) portion of the property", which was described, however, as Lot No. 7525-G. Filemon Gacayan appealed, but the case was dismissed by the Court of Appeals on February 9, 1968 for his failure to file a Brief. The Decision became final and executory on July 29, 1969 and the corresponding Writ of Execution was issued.

Reverting to the facts of the case at bar - on June 7, 1969, or a day after the Definite Deed of Sale was issued by the Sheriff in petitioner's favor on June 6, 1969, petitioner filed with the Court of First Instance of Cebu, Branch V, presided by respondent Judge, a Petition for Entry of New Certificate of Title over Lot No. 7525-B pursuant to section 78 of the Land Registration Act, which grants to a purchaser at an execution sale the right to petition the Court for entry of a new certificate in his name upon the expiration of the redemption period.

On June 27, 1969, respondent Judge, noting the absence of any opposition, granted the petition for a new title as follows:

"In view of the foregoing, the petition is hereby granted.

The outstanding owner's duplicate of transfer certificate of title No. 19114 covering Lot No. 7525-B, Cadastral Survey of Cebu is hereby declared null and void and of no further effect, and Filemon Gacayan and/or the Philippine National Bank, Cebu Branch, are hereby ordered to surrender said outstanding owner's duplicate to the Register of Deeds for Cebu City for cancellation; upon the presentation of the definite deed of sale, the Register of Deeds for Cebu City is hereby ordered to cancel transfer certificate of title No. 19114 and in lieu thereof, to issue another in the name of Alexander Leyson, Filipino, of legal age and resident of Cebu City, with the annotation of memorandum therein of the present proceedings." [1]

However, because of the several Motions for Reconsideration by respondents herein, asserting their respective claims of ownership, and after due hearing, respondent Judge reconsidered and set aside his Order of June 27, 1969, and decreed on December 5, 1969 as follows:

"After the cursory study of all the pleadings filed by the petitioner and oppositors and it appearing from the decision in Civil Case No. R-7181 (Exh. 'C' - petitioner; Exh. '1' and '2' - oppositors) that oppositor Adelina de los Santos and the registered owner Filemon Gacayan are declared co-owners of Lot No. 7525-G, the Court finds and declares the Motion for Reconsideration and Opposition to be meritorious and to prevent further confusion the order dated June 27, 1969, is hereby declared set aside. The petition for entry of new certificate of title is hereby denied for lack of merit." [2]

It is this Order which is sought to be reviewed herein upon the principal allegation that respondent Judge erred in issuing the same and in denying the petition for entry of a new certificate of title.

At the outset, it should be clarified that, on July 23, 1969, petitioner had filed in the Partition Case a Motion for Cancellation of Notice of Lis Pendens on the ground that said annotation was a mis-take, the lot in litigation

having been described as "Lot No. 7525-D" and not Lot No. 7525-B which is the parcel of land covered by TCT No. 19114. The trial Judge, however, in an Order, dated September 30, 1969, denied cancellation on the ground that what was actually involved in the Partition Case was Lot No. 7525-B covered by TCT No. 19114, not Lot 7525-D nor Lot 7525-G, of which petitioner should have been aware had he made the proper investigation, "the notice of lis pendens being warning enough."

We find that review is unwarranted.

There is no question that Section 78 of the Land Registration Act authorizes the grant of a title to a purchaser at an execution sale.

"Sec. 78. Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description the person claiming under the execution or under any deed or other instrument made in the course of proceedings to levy such execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted: Provided, however, that every new certificate entered under this section shall contain a memorandum of the nature of the proceedings on which it is based: Provided, further, that at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under execution or to enforce liens of any description." (italics supplied).

However, the registered owners are expressly allowed by law to pursue all remedies to impeach or annul proceedings under the execution. Respondents had timely filed their oppositions to the issuance of a new title in petitioners' name, although initially they did not succeed in stopping the Sheriff from executing the sale in petitioner's favor.

Moreover, petitioner is necessarily bound by the outcome of the Partition Case, the pendency of which was duly annotated in TCT No. 19114. From the Decision therein (supra) it is clear that all that the judgment debtor, Filemon Gacayan, is entitled to is one-half (1/2) of one-third (1/3) of the subject property, or a one-sixth pro-indiviso share in Lot No. 7525-B, and not the entirety of said lot as petitioner had applied for. The interest acquired by a purchaser in an execution sale is limited to that which is possessed by the debtor. If there is more than one person owning property in common and an execution against one only is levied thereon, the sale effected by the sheriff under such execution operates exclusively upon the interest of the execution debtor, without being in any wise prejudicial to the interest of the other owners. The result in such case merely is that one new owner in common is substituted for the owner whose interest is alienated by process of law.[3] This is in keeping with section 35, paragraph 2, Rule 39 of the Rules of Court providing:

"Sec. 35. Deed and possession to be given at expiration of re-demption period. By whom executed or given.

x x x x x x x x

Upon the execution and delivery of said deed the purchaser or his redemptioner, or his assignee, shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor to the property as of the time of the levy, except as against the judgment debtor in possession, in which case the substitution shall be effective as of the date of the deed. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment debtor." (italics ours).

Further, this Court had held in *Pabico vs. Ong Pauco*[4] that purchasers at execution sales should bear in mind that the rule of caveat emptor applies to such sales, that the sheriff does not warrant the title to real property sold by him as sheriff, and that it is not incumbent on him to place the purchaser in possession of such property. The rationale for this rule is:

"At a sheriff's sale they do not sell the land advertised to sell, although that is a common acceptance, but they simply sell what interest in that land the judgment debtor has; and if you buy his interest, and it afterwards develops that he has none, you are still liable on your bid, because you have offered so much for his interest in open market, and it is for you to determine before you bid what his interest is worth. Now, even if it should appear that at a sheriff's sale one has bought the interest of the judgment debtor in a certain tract of land, and paid his money for it, and then suit is brought to recover the land, and he is defeated in the suit, he has no right to recover his money back, because he has paid that much for the interest that his particular judgment debtor had in that tract of land." [5]

In other words, all that petitioner is entitled to is a one-sixth portion of Lot No. 7525-B by virtue of the judicial sale to him of April 30, 1968.

WHEREFORE, the Order of respondent Judge, dated December 5, 1969, is hereby modified in that the corresponding entry of petitioner Alexander Leyson's right and ownership over the one-sixth (1/6) portion of Lot 7525-B is hereby ordered to be made by the Register of Deeds for Cebu City on Transfer Certificate of Title No. 19114 of the said Register of Deeds of Cebu City. Private respondents are also ordered to surrender the owner's duplicate of said title to the said Register of Deeds for notation thereon of the aforesaid corresponding entry in favor of petitioner.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] Rollo pp. 32-34.

[2] Rollo p. 75.

[3] Cabuhat vs. Ansay and Reodica, 42 Phil. 170, 173 (1921).

[4] 43 Phil. 572, 576 (1922).

[5] Long v Mckissick, 50 S.C. 218, 27 SE 636, cited in 30 Am Jur 2d Execution Subsection 428 p. 691, 692.

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