

GREGORIO R. SYQUIA, PETITIONER, VS. THE SHERIFF OF ILOCOS SUR AND FILADELFO DE LEON, RESPONDENTS.

G.R. No. L-22807. October 10, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of mandamus to compel the Sheriff of the Province of Ilocos Sur to proceed with a chattel mortgage foreclosure sale.

It appears from, the record that on February 3, 1915, Miguel Aglipay Cheng-Laco and Feliciano Reyes Cheng-Kiang executed a chattel mortgage in favor of the petitioner Gregorio R. Sy-Quia on their mercantile establishment, with all the merchandise therein contained, as security for a debt of P6,000. The chattel mortgage was duly recorded on the date of its execution and fell due on February 3, 1917. From its terms it may be inferred that it was the intention of the parties that the mortgagors were to be permitted to sell the merchandise replenishing their stock from time to time and that the new stock brought in should also be subject to the mortgage.

On May 5, 1924, Miguel Aglipay Cheng-Laco executed another chattel mortgage on the same establishment and all its contents in favor of the respondent Filadelfo de Leon as security for the sum of P4,900, which mortgage was recorded on May 14, 1924.

On the latter date the petitioner, in writing, requested the sheriff to take possession of the mortgaged property and to sell it at public auction under the provisions of section 14 of the Chattel Mortgage Law (Act No. 1508).

The sheriff seized the establishment in question as well as its contents and fixed the date of the sale at June 2, 1924. In the meantime Filadelfo de Leon presented an adverse claim to the property by virtue of his chattel mortgage, alleging that all the goods on which the chattel mortgage of Gregorio R. Sy-Quia was given had been sold long before the chattel mortgage in favor of De Leon was executed and that, therefore, the earlier chattel mortgage was of no effect.

The sheriff being in doubt as to the priority of the conflicting claims, suspended the foreclosure proceedings and brought an action under section 120 of the Code of Civil Procedure requiring the two claimants to interplead. Thereupon, the present proceeding in mandamus was instituted, the petitioner alleging that the duty of the sheriff to proceed with the sale was a ministerial one and praying that the sheriff be commanded to proceed.

Though it, perhaps, would have been better practice for the sheriff to sell the property and hold the proceeds of the sale subject to the outcome of the action of interpleader, we, nevertheless, are of the opinion that the facts shown do not justify our interference by mandamus. The sheriff might lay himself open to an action for damages if he sold the goods without the consent of the holder of the last mortgage, and it does not appear that the petitioner offered to give bond to hold him harmless in such an event. In these circumstances, his action in suspending the sale pending the determination of the action of interpleader seems justified.

We may say further that in cases such as the present, the petition for mandamus should be addressed to the Courts of First Instance rather than to this court.

The petition is denied with the costs against the petitioner. So ordered.

Johnson, Street, Malcolm, Avancena, Villamor, and Romualdez, JJ., concur.

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