

COMPAÑA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLANT, VS. JOSE FELIX MARTINEZ ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-5681. October 06, 1910

Ponente: TRENT, J.

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TRENT, J.:

The plaintiff company claims to be the registered owner of a certain sugar plantation known as the "Velez-Malaga," in the barrio of La Castellana, municipality of Pontevedra, Province of Occidental Negros, containing 379 hectares 20 ares, and 32 centares, bounded and described as follows: On the north with the land of the state, of Gregorio Armonico, and other state lands; on the east with state lands; on the south with state lands and the River Bungahin, and on the west with the River Camandoc. All the parties agree that Tomas R. de Leon was the original owner of this hacienda.

The sixty hectares in dispute in this case form a part of this hacienda. On the 7th of May, 1889, Tomas R. de Leon sold the said plantation, including the sixty hectares, to Jose Domingo Frias. On July 18, 1898, the vendor ratified and affirmed this sale. Both of these documents were registered on the same day, October 3, 1898, in the property registry. On June 12, 1900, Jose Domingo Frias sold this hacienda which he had purchased from Tomas R. de Leon, including the sixty hectares in question, to Manuel Giner. This document of sale was duly registered on September 29, 1900. On May 5, 1908, Manuel Giner sold this property, including the land in question, to the plaintiff company. This document of purchase and sale was likewise registered in the property registry on August 11, 1908.

On March 13, 1885, one Marcelo Corteza commenced an action in the Court of First Instance of the Province of Occidental Negros against the said Tomas R. de Leon to recover the sum of P2,175 with interest, due upon a promissory note. By reason of the commencement of this action an order of attachment was issued on March 20, 1885, out of the said Court of First Instance and levied upon the one hundred hectares of the above-described hacienda.

Final judgment was entered on June 28, 1889, against the said Tomas R. de Leon and in favor of the plaintiff in that case for the sum of P2,175, with interest and costs. This judgment has never been completely satisfied. On May 25, 1907, Jose Felix Martinez purchased from the said Corteza all of his interest in the said judgment against the said De Leon. On petition of the said Martinez the Court of First Instance, on the 24th of July, 1908, issued an execution against the said De Leon, directing the sheriff to satisfy the original judgment out of the property of the judgment debtor, De Leon. The sheriff, by virtue of the said execution, took possession on August 31, 1908, of the one hundred hectares of land which forms a part of the said hacienda, and which was attached on March 20, 1885, and proceeded to advertise the same for sale to satisfy the said judgment against De Leon. The plaintiff company served written notice upon the sheriff, claiming to be the owner of the said one hundred hectares. The judgment creditor, being the assignee of Marcelo Corteza, having filed an indemnity bond, the sheriff proceeded

to sell at public auction sixty of the one hundred hectares for the sum of P2,632.07, and Ricardo Nolan being the highest bidder became the purchaser.

The plaintiff company thereupon commenced, on the 19th of September, 1908, this action in the Court of First Instance of the Province of Occidental Negros against Jose Felix Martinez, the sheriff of Occidental Negros, and Ricardo Nolan, to recover the said sixty hectares which were sold at public auction. Judgment was rendered on July 3, 1909, by the court below, dismissing this action with costs. The plaintiff appealed.

The last action which was taken during the Spanish regime by the judgment creditor, Corteza, seeking to have the judgment satisfied was in 1897. The next move which he made was in 1903, when he presented a petition to the Court of First Instance asking that the registrar of deeds be ordered to certify to the Court of First Instance what mortgages, liens, etc., if any, appeared in his books against the one hundred hectares which had been attached. This petition was granted. No other action was taken until 1907, when Martinez, as assignee of Corteza, asked (on the 12th day of July) that the court direct an execution to issue against the property of the judgment debtor. The said judgment debtor appeared and interposed a demurrer on the ground that the action had prescribed (this petition being treated as a motion and not as a new action). This objection of the judgment debtor was overruled and the execution issued, but not against any special property. Under this execution it appears that certain properties were levied upon and sold but the sale was later annulled. Other executions were issued on the 30th of April and the 24th of July, 1908; and, as we have said, under this last execution the land sought to be recovered was sold at public auction.

The question to be determined is whether or not this judgment could be enforced in the manner above set forth in view of the fact that it was rendered and became final in 1889. On this point we think the provisions of the Code of Civil Procedure are applicable. This code took effect on the 1st day of October, 1901, and the execution, by virtue of which the sixty hectares in question were sold, was issued on the 24th of July, 1908; that is, a little over six years and nine months after the said code went into effect. Said execution was issued to carry into effect the original judgment without a new action having been instituted, tried, and determined.

Sections 443 and 447 of the Code of Civil Procedure are as follows:

"SEC. 443. When execution may issue. - The party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement, as hereinafter provided.

"SEC. 447. Enforcement of judgment after lapse of five years. - In all cases, a judgment may be enforced after the lapse of five years from the date of its entry, and before the same shall have been barred by any statute of limitation, by an action instituted in regular form, by complaint, as other actions are instituted."

It is urged by the appellees that the Court of First Instance decided in 1907 that the judgment had not prescribed and that as no appeal was taken from that decision it must be considered as final. On examination of this record it appears that the court below, in passing upon the judgment debtor's objection to the issuance of an execution, did hold that the judgment had not prescribed. This decision was based upon the motion of the judgment creditor, dated the 12th of July of that year, wherein he asked for an execution, the said judgment being dated the 17th of October of the same year.

If it be held that section 443 of the Code of Civil Procedure, *supra*, is applicable to the case at bar, for the reason that more than five years had transpired from the date this section became operative until the 12th of July, 1907, the date of the presentation of the motion upon which the judgment was based, then that decision would be null and void, inasmuch as it sought to enforce a judgment which had prescribed by statute.

If the original judgment had been entered the next day after the Code of Civil Procedure went into effect, and if

the statute of limitations had not been interrupted, then it is clear 'that the said judgment could not have been enforced in this manner after the expiration of five years, but it could: have been revived under the provisions of section 447 of the Code of Civil Procedure, supra. This being true, we see no reason why the provisions of section 443 should not apply to judgments rendered prior to the passage of the Code of Civil Procedure, provided the full five years had expired after its passage before the judgment was made effective, as in the case at bar. This holding is not in conflict with the provisions of section 38 of the said code, wherein it is stated that -

"Provided, nevertheless, That all rights of action which have already accrued * * * must be vindicated by the commencement of an action or proceeding to enforce the same within ten years after this Act comes into effect."

This provision applies to rights of action' and not to judgments. The general rule for the construction of statutes relating to prescription is that such statutes apply to all cases alike. The legislature having this in mind enacted this section 38 as a saving clause to protect rights of action which had accrued before the passage of this law. No saving clause was made with reference to judgments. So it is clear that it was the intention of the Commission that section 443 apply to judgments which had been entered before the passage of the Code of Civil Procedure.

The court below, in passing upon the judgment creditor's motion, dated the 12th of July, 1907, held that the action taken by the said judgment creditor in 1903 operated to interrupt the five-year statute of limitations.

As we have said, the action taken by the judgment creditor in 1903 consisted only of a petition dated the 24th of January, 1903, directed to the court, asking the court to order the registrar of deeds to certify to the said court what mortgages, or liens, if any, appeared in his books against the property of the judgment debtor heretofore attached. The court granted this request on the 23d of March of the same year and no action whatever was taken thereafter in the matter until the 12th of July, 1907. The presentation of that petition, asking the court to direct the registrar of deeds to furnish that information, and the granting of said petition, can not be held to have had the effect of interrupting the provisions of said section 443. This section is positive in its terms, and provisions are made in section 447 for the revival of a judgment which has prescribed. Five years was considered a sufficient length of time for a judgment creditor to enforce his judgment. There is nothing in section 443 to the effect that any action taken by the judgment creditor shall operate to extend the five-year period.

In the case of Buell vs. Buell (92 Cal., 393), judgment was entered in favor of the appellant on the 28th of February, 1877. Execution on this judgment was stayed by various orders of the court, made at the request of the appellee, until January, 1878. On the 17th of January, 1878, the appellee commenced an action against the appellant to obtain an injunction restraining the appellant from taking out an execution on or enforcing the collection of his judgment. An injunction was issued and remained in full force until the 10th of December, 1885, when it was dissolved by a decree of the court. On the 30th of September, 1885, the appellant applied to the court for an order directing the clerk to issue an execution on his judgment. This request was granted and an execution issued and placed in the hands of the proper officer, but was subsequently returned wholly unsatisfied. On the 16th of September 1889, the appellant made another application for an execution which was granted and placed in the hands of the sheriff, with instructions to levy upon the property of the appellee. This last writ of execution was recalled by the court and an appeal was taken from this order recalling the said execution. The Supreme Court, speaking through Mr. Justice Belcher, said:

"The question, then, is, did the court have jurisdiction and authority to make the order for the issuance of the writ? Section 681 of the Code of Civil Procedure provides: 'The party in whose favor judgment is given may at any time within five years after the entry thereof have a writ of execution issued for its enforcement.' And it has been held that when the judgment is for the recovery of money, execution can only be issued thereon within five years after its entry.

"It is claimed by appellant that the time during which execution was stayed should be excluded from the computation of the five years. But this claim can not be sustained, the contrary rule having been expressly declared by this court (Solomon vs. Maguire, 29 Cal., 237; Cortez vs. Superior Court, 86 Cal., 278). * * * The order under review was in excess of the jurisdiction of the court. The court had no power to enforce same after the lapse of five years."

The California court having held that an order staying proceedings did not operate to suspend the running of the statute, a fortiori the mere presenting of a petition, as was done in the case at bar, asking the court to direct the registrar of deeds to furnish it certain information, should not operate to suspend the five-year limitation.

So we conclude that the execution issued in July, 1908, by virtue of which the sixty hectares of land in question were sold at public auction, was null for the reason that the court was without jurisdiction to issue the same, the judgment upon which it was based having ceased to be operative.

The judgment appealed from is, therefore, reversed and judgment entered in favor of the plaintiff company, directing the immediate return of the sixty hectares of land in question to the possession of the plaintiff company. Without special ruling as to costs. So ordered.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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