

**AGRICULTURAL CREDIT ADMINISTRATION, PLAINTIFF-APPELLEE,
VS. LASAM FARMERS' COOPERATIVE MARKETING
ASSOCIATION, INC., ET AL., DEFENDANTS, MARTIN TAN BOON DIOK,
AND REMIGIO M. BUTA...**

G.R. No. L-29278. July 31, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

This is an appeal from the derision of the Court of First Instance of Manila in its Civil Case No. 60607. The case relates to a dispute over an International Crawler Tractor Engine and a Bullgrader, covered by a chattel mortgage executed by the Lasam Farmers' Cooperative Marketing Association, Inc. in favor of the Agricultural Credit Administration, but subsequently levied upon on execution by the Ex-Oficio Provincial en Sheriff of Cagayan and bought by Martin Tan Boon Diok in the execution sale thereafter conducted by the said officer to satisfy a judgment secured by Martin Tan Boon Diok in another case (Civil Case No. 1179-A) against the Lasam Farmers' Cooperative Marketing Association, Inc. The law question raised revolves around the prayer of appellant Martin Tan Boon Diok who wants that his execution lien be declared superior to the mortgage lien of appellee Agricultural Credit Administration.

There is no dispute about the material background facts, succinctly stated in a portion of the decision appealed from, as follows:

"The complaint alleges and the evidence shows that in May 1955 the defendant Lasam Farmers' Cooperative Marketing Association, Inc., hereinafter referred to as the Lasam Facoma, through its Manager, executed a promissory note for a facility loan in the amount of P26,877.00 with interest thereon at the-rate of 8% per annum payable in three equal yearly amortization (Exhibit A). To secure the full payment of the principal and interest of the said facility loan, the Lasam Facoma executed a Chattel Mortgage in favor of the plaintiff dated April 16, 1955 of the following described properties which defendant Lasam Facoma purchased out of the said facility loan:

"One (1) International TD-9 Crawler tractor - Engine No. 47267;

"One (1) Belt pulley attachment and rear take off for TD-9, S55769 and 22712P;

"One (1) McCormick 28 x 46 Rice Tresher;

"One (1) Endless Belt 125 ft. 7" wide;

"One (1) International 9WC-2 Bull-grader;

which Chattel Mortgage was duly registered in the Registry of Deeds of the Province of Cagayan under Inscription No. 1100; Page 364; Vol. 4; File No. 1033, on April 21, 1955, (See page 4 of Exhibit B). The defendant Lasam Facoma has paid only the amount of P3,000.00 of the principal, leaving a balance of P23,877.00 and on the interest of said principal as of March 31, 1965 amounting to P19,732.34 said defendant

has paid only the amount of P4,000.00, thereby leaving a balance of P15,732.34. That as of March 31, 1965, the total unpaid indebtedness of Lasam Facoma to the plaintiff amounted to P39,609.34 as evidenced by the Statement of Facility Loan Account as of March 31, 1965 (Exhibit C).

"In Civil Case No. 1169-A entitled 'Martin Tan Boon Diok vs. Lasam Farmer's Cooperative Marketing Association', an Alias Writ of Execution was issued by the Court of First Instance of Cagayan Second Branch, at Aparri, in favor of the judgment creditor Martin Tan Boon Diok, one of the defendants in the instant case, as a result of which the Office of the Provincial Sheriff of Cagayan levied upon the International TD-9 Crawler Tractor, Engine No. 47267 and the 9 WG-2 Bullgrader, and their accessories, two of the properties covered by the Chattel Mortgage, Exhibit B, so that on February 21, 1963, plaintiff through its Officer incharge at Tuguega-rao Office wrote the Deputy Provincial Sheriff of Aparri, Cagayan, with an affidavit attached, dated February 21, 1963, informing said Deputy Provincial Sheriff of plaintiff's prior lien and right to possess said tractor and bull-grader, a copy of which was furnished Atty. Manuel C. Manzano, counsel of Martin Tan Boon Diok in said Civil Case No. 1169-A (Exhibit D and D-1), but in spite of the written claim by plaintiff directed to the Deputy Provincial Sheriff of Aparri, Cagayan above stated, the defendant herein, Remigio M. Butacan, Ex-Oficio Provincial Sheriff, through his Deputy Provincial Sheriff, Nemesio G. Oñate, sold at public auction on March 29, 1963 the said Crawler Tractor and Bullgrader which are covered by the Chattel Mortgage, to the judgment creditor Martin Tan Boon Diok for the amount of P10,290.96 notwithstanding Martin Tan Boon Diok's previous knowledge of plaintiff's superior lien. A certificate of Sheriff's sale dated March 29, 1963 was issued, copy of which was introduced in evidence as Exhibit E." [pp. 25-28, Record on Appeal]

Thus, on April 14, 1965, the Agricultural Credit Administration instituted the present action in the Court of First Instance of Manila against the Lasam Facoma, Martin Tan Boon Diok, and Remigio M. Butacan in his capacity as Ex-Oficio Provincial Sheriff of Cagayan, to recover from the Lasam Facoma its indebtedness in the amount of P39,609.34 as of March 31, 1965, plus interest and attorney's fees; to annul the Sheriff's sale and be declared entitled to the possession of the properties covered by the Chattel Mortgage or, in the alternative, to recover from Martin Tan Boon Diok the Crawler Tractor Engine and Bullgrader referred to or its value of P19,882.00.

Upon the facts above narrated, the Court of First Instance of Manila rendered the decision dated September 22, 1966, with the following dispositive portion:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered against the defendants:

"(a) Ordering the defendant Lasam Farmers' Cooperative Marketing Association, Inc., to pay to the plaintiff constituting its total indebtedness the sum of P39,609.34 as of March 31, 1965, plus interest thereon until fully paid, and ten per cent of the total amount due the plaintiff as attorney's fees;

"(b) Declaring the Certificate of Sheriff's Sale (Exhibits 'E' and '3') null and void;

"(c) Declaring that the plaintiff's mortgaged lien over the properties described in the contract of Chattel Mortgage (Exh. 'B') is superior to the execution lien of defendant Martin Tan Boon Diok over the same properties;

"(d) In the alternative, should defendant Lasam Facoma fail to pay the amounts of money above indicated, ordering the defendant Martin Tan Boon Diok to deliver to the plaintiff within ten (10) days from the finality of this judgment International TD-9 Crawler Tractor Engine No. 47267 and International 9WG-2 Bullgrader and their accessories, or to pay the plaintiff by the said defendant of the value thereof in the amount of P19,822.00 in case delivery cannot be made;

"(e) Ordering the defendant Lasam Facoma to deliver to the plaintiff the rest of the mortgaged properties as described in the contract of Chattel Mortgage not included in the Certificate of Sale (Exhs. 'E' and 131);

"(f) Ordering the Provincial Sheriff of Cagayan or any of his Deputies to take the above-mentioned properties

in his custody to be disposed of in accordance with the Revised Rules of Court; and

“(g) Ordering the defendants to pay the cost of suit.

"SO ORDERED."

Martin Tan Boon Diok and the Ex-Oficio Provincial Sheriff of Cagayan moved for the reconsideration of this decision but their motion was denied by the court a quo in an order dated October 17, 1966; hence, this appeal.

In Our resolution of June 25, 1969, this Court resolved to dismiss the said appeal as prayed for by appellee Agricultural Credit Administration in its motion dated May 28, 1969, on the ground that appellants failed to serve copies of their brief to appellee as required under Section 1 (f) of Rule 50 in relation to Sections 1 and 2 of Rule 56 of the Rules of Court. It turned out, however, that before the issuance of the said resolution dismissing the appeal, appellants personally served copies of their brief upon appellee on June 3, 1969 and, thereafter, appellee filed with this Court copies of its own brief - a circumstance relied upon by appellants in their subsequent motion for reconsideration of the resolution dismissing their appeal as an implied abandonment or waiver of the -grounds relied upon by appellee in its previous motion to dismiss. We opt therefore to set aside the above-mentioned resolution and, in the interest of justice, reinstate the appeal and decide the same on the merits.

The only two errors assigned by appellants do not affect the whole judgment of the court a quo but only the portions thereof declaring the Certificate of Sheriff's Sale null and void and the lien of appellee's mortgage on the tractor and bullgrader and their accessories superior to that of the levy on execution made on the same properties by appellant sheriff, which are paragraphs (b), (c) and (d) only of said judgment. The said two assignments of error are as follows:

"1.

THE LOWER COURT ERRED IN DECLARING THE CERTIFICATE OF SHERIFF'S SALE (EXHIBIT 'E', AND '3') NULL AND VOID

"2.

THE LOWER COURT ERRED IN DECLARING THAT PLAINTIFF-APPELLEE'S MORTGAGED LIEN OVER THE PROPERTY IN QUESTION IS SUPERIOR TO THE EXECUTION LIEN OF DEFENDANT-APPELLANT MARTIN TAN BOON DIOK."

Reading the arguments advanced by both parties in their respective briefs, We can see that the said parties are not clear as to the issue between them. Apparently, neither was the trial court. The following statement of the issue made by His Honor is accepted by both parties in their briefs:

"Whose lien is superior - the mortgage lien of the plaintiff over the properties in question created by virtue of the Chattel Mortgage Contract, Exhibit 'B', which was duly registered in the Registry of Property x x x or the lien of defendant Martin Tan Boon Diok which was created by the execution of the decision of the Court of First Instance dated February 19, 1962 rendered by said court in its case No. 1179-A x x x x" (quoted from the lower court's decision, page 30 Record on Appeal)

To be accurate, however, the issue thus stated need not be resolved here. We do not understand appellants to be denying the priority of the lien of appellee's mortgage over that of the levy on execution invoked by appellants.[1] As We see it, the pretense of appellants is that this action of appellee founded on such priority has either prescribed already or that appellee is guilty of laches in prosecuting the same, hence, the complaint herein should have been dismissed in so far as the enforcement of the lien of said mortgage is concerned.

In the matter of prescription, the pose of appellant is that the failure of the appellee to file the present action

within the one hundred twenty (120) days from the filing of the bond referred to in Section 15 of Rule 39 (1940 Rules, since this case was submitted under the same) caused his action to prescribe. Said section reads as follows:

"SEC. 15. Proceedings where property claimed by third person. - If property levied on be claimed by any other person than the defendant or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on, and, in case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. The officer is not liable for damages, for the taking or keeping of such property, to any such third person unless such claim is made and unless the action for damages be brought within one hundred twenty days from the date of the filing of the bond. But nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action. When, however, the plaintiff, or the person in whose favor the writ of execution runs, is the Commonwealth of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or attaching officer is sued for damages as a result of the attachment, he shall be represented by the Solicitor-General and if held liable therefor, the actual damages adjudged by the court shall be paid by the Insular Treasurer out of such funds as may be appropriated for the purpose."

It is explicit in this provision that the action that must be filed within said period of one hundred twenty days is that against the sheriff for damages on the bond of the judgment creditor and not an action for recovery of the property or the enforcement of a superior lien thereon. Indeed, this question raised by appellants is not new. In *Anderson vs. The Provincial Sheriff of Rizal, et al.*, 40 O. G., 5th Supplement, 73, it was held:

"The next question is one of law - whether Anderson's action to recover these properties has prescribed. The appellant contends that it has, relying upon Section 451 of the Code of Civil Procedure, as amended by Act No. 4108, which says, 'No claim to property levied on by the sheriff shall be valid against the latter, or shall be received or be notice of any rights against him, unless a claim has been made to said property by a third party as provided in this section and said claim has been enforced by the proper action within one hundred and twenty days after the sale.'

"The present action was brought more than one hundred twenty days from the date of the sale. However, the foregoing limitation refers solely to the sheriff. As against the judgment creditor or the purchaser the general law on prescription governs. This is not only manifest from the terms of the above-quoted provision, but so it is from the following clause: 'Nothing contained in this section shall prevent the owner of the property levied on from vindicating his claim thereto by any proper action within the period established by the laws governing prescription.'"

Accordingly, We hold that the action of appellee has not prescribed. Appellee brought this action as one for the recovery of movables. As such, its period of prescription would be eight years (Art. 1140, C.C.) Even on the assumption that this action is really one for the foreclosure of a chattel mortgage, still the prescriptive period would be five years (Art. 1149, C.C.). The present action was filed[2] less than two years and two months from the filing of the bond of appellant Martin Tan Boon Diok with appellant sheriff on February 28, 1963.[3]

Appellants present alternatively the contention that the failure of the appellee to file an action on the sheriff's bond within the period already discussed bars any action to recover the property sold. In other words, the theory of appellants is that the action reserved in the last sentence of the above-quoted Section 15 of Rule 39 to the effect that "nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action" does not apply when a third-party claim has been filed, since the provision requiring the filing of an action to be filed within one hundred twenty days after the filing of the bond is the only action, so appellants claim, that may accordingly be filed whenever a third-party claim has been filed. To start with, again, appellants

overlook the fact that the action referred to in the provision is an action against the sheriff only for damages on the bond and not the action for the recovery of the property or the enforcement of any lien thereon in which the purchaser is the principal defendant. Consequently, it cannot be true that the action on the sheriff's bond and the action for the vindication of any claim of third-party claimant in the property sold are mutually exclusive. They are founded on different causes of action which are not inconsistent with each other. Incidentally, We note that this alternative issue now raised by appellants was not alleged as an affirmative defense in the answer in the court below, albeit His Honor did casually make reference to it towards the end of his decision by saying, in effect, that it is also its view that such theory of appellants is untenable. Even then the same point has not been specifically assigned as error in appellants' brief. Under these circumstances, this argument of appellants could have been totally ignored by this Court.

The contention of appellants regarding alleged laches deserves less favorable consideration. Appellants claim that the fact that they had "no notice" or that they "lacked knowledge" "that complainant (appellee) would assert the right on which (appellee) bases (its) suit" together with the fact that appellant Martin Tan Boon Diok "had no knowledge that plaintiff would file the present case after the lapse of more than two years from the date of the execution sale" make appellee guilty of laches has absolutely no merit. As the right of appellee to bring the present action is based on provisions of law already interpreted and construed previously by this Court, appellants' posture only betrays that this appeal is, at best, half-hearted. The loose presentation of obviously untenable arguments in appellants' brief notably convey such impression. This kind of appeal must be discouraged. The fact that the trial court erroneously declared the sheriff's sale in question null and void instead of merely making it subject to the mortgage rights of the appellee does not alter this view of the Court as to the untenability of this appeal because, from all that appears in the record the foreclosure by appellee of his mortgage in question would, in effect, leave nothing of the tractor and bull-grader and their accessories, so as to make any subsequent execution sale thereof of any significance. In any event, at its base, the position taken by appellant Martin Tan Boon Diok from the inception of this case in the trial court was legally unsustainable.

Upon the foregoing premises judgment is hereby rendered modifying Paragraphs (b), (c) and (d) of the decision of the court a quo in the sense that instead of declaring the execution sale in question null and void, the same is made subject to the mortgage rights of appellee Agricultural Credit Administration; in all other re-spects, the said judgment is affirmed, with double costs against appellant Martin Tan Boon Diok in this instance, this appeal being dilatory.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

Zaldivar, J., took no part.

[1] At any rate, if such were the real issue here, the same would have to be resolved in favor of appellee. There can be no doubt that the lien of the duly recorded chattel mortgage in favor of appellee is superior to that of the levy on execution in favor of appellant Martin Tan Boon Diok or, to put it the other way, the sale on execution made pursuant to said levy must be, as it is by law, subject to the lien of appellee's mortgage, for the simple reason that appellee's mortgage was registered and was already existing at the time the levy on execution was made. Sections 22 to 24 of Rule 39 of the Rules of Court of 1940 provided very plainly, as Sections 25 to 27 of Rule 39, also, of the current Rules do likewise provide, that all sales on execution of any kind of property of the judgment debtor convey to the purchaser nothing more than the rights of the judgment debtor over said property "on the day that the execution or attachment (preliminary) was levied." To be clearer, said sections provide textually thus in both the old and the revised Rules of Court:

SEC. 22. Conveyance to purchaser of personal property capable of manual delivery. - When the purchaser of any personal property, capable of manual delivery, pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of sale. Such sale conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

SEC. 23. Conveyance to purchaser of personal property not capable of manual delivery. - When the purchaser of any personal property, not capable of manual delivery, pays the purchase money, the officer making the sale must execute and deliver to the purchase a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day that the execution or attachment was levied.

SEC. 24. Effect of sale of real property. Certificate thereof given to purchaser and filed with registrar. - Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing:

- (a) A particular description of the real property sold;
- (b) The price paid for each distinct lot or parcel;
- (c) The whole price by him paid;
- (d) The date when the right of redemption expires.

A duplicate of such certificate must be filed by the officer in the office of the registrar of deeds of the province.

It is elementary that a purchaser at the sheriff's sale acquires no better title or greater right than the judgment debtor had in the property concerned (*Villegas vs. Tan*, 57 Phil. 656, 666). In other words, the purchaser acquires only such right or interest as the judgment debtor had on the property at the time of the sale (*Cruz vs. Sandoval*, 69 Phil. 736; *Barrido vs. Barreto*, 72 Phil. 187), so it follows that if at that time the judgment debtor had no more right to or interest in the property because he had already sold it to another, then the purchaser acquires nothing (*Potenciano vs. Dineros*, 97 Phil. 196; See *Feria*, Civil Procedure, Annotated, 1967 ed., p. 761). Any doubt on the matter has been clarified in the 1964 Rules, as Section 16, a new provision of Rule 39 now provides:

SEC. 16. Effect of levy on execution as to third persons. - The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens or incumbrances then existing.

Of course, there is nothing here that declares null and void the sheriff's sale. All that is held is that the sale is subject to the right of the superior lien holder.

[2] On April 14, 1965.

[3] Per Appellants' answer in the court below, p. 15, 1 Record on Appeal; see also pp. 3 and 7, appellants' brief.

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