

SEVERINO DAGDAG, JR., PETITIONER VS. HON. DELFIN FLORES, ETC., ET AL., RESPONDENTS.*G.R. No. L-11554. May 27, 1959*

Ponente: PARAS, J.

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This is a petition for certiorari and prohibition seeking to annul the auction sale of the certificate of public convenience of Virginia Sembrano in favor of the Estate of Florencio P. Buan, conducted by the Deputy Sheriff of Ilocos Norte on November 18, 1957, pursuant to a third alias writ of execution issued by the judge of the Court of First Instance of the same province, all made respondents herein, and to prevent the approval of the sale by the respondent Public Service Commission.

In a compromise agreement conditionally approved by the Court of First Instance of Ilocos Norte in Civil Case No. 1377, Alfredo Formoso and Virginia R. Sembrano transferred to Isabel, Miguela and Maximo, all surnamed Quirit, all their rights and interests in a Public Convenience covered by Certificate No. 69144. On March 23, 1953, all the said Quirits executed in favor of above petitioner a Deed of Sale of the rights over the said certificate of public convenience. On June 27, 1956, the Deputy Provincial Sheriff of the same court, in accordance with a second alias writ of execution issued by the said court in Civil Case No. 1734, levied on the lines covered by the aforesaid certificate. Petitioner immediately filed a "Third Party Claim" with the said sheriff as a consequence of which the movant for the second alias writ of execution was required to file a bond of P1,000 so as not to stay execution. On August 4, 1956, petitioner filed with same court, against the said deputy sheriff, a complaint for damages with preliminary injunction, which was subsequently dismissed for lack of cause of action. On appeal to this Court, the order of dismissal was affirmed. Upon the issuance of a third alias writ of execution (in the said Civil Case No. 1734), the lines were conditionally sold at public auction. Thus the present petition with this Court.

Petitioner insists that he is a party in interest and is entitled to all his prayers, because there exists a "speed of Sale of Rights" by which the Quirits had transferred and sold to him their rights and interests in the said lines; that the order of the respondent sheriff fixing the bond in the amount of P2,000 to be filed by the plaintiffs in Civil Case No. 1734 is null and void.

The primary consideration in the resolution of the case at bar is the determination of the petitioner's right to institute the case. Petitioner premises his action on the Deed of Transfer executed in his favor by the Quirits.

By virtue thereof, he claims that he has acquired ownership of the certificate in question. We are brought therefore to the question—did the said Deed of Transfer ever become effective as to yield the desired consequences? The deed in question recited the transfer of the Quirits rights over the said certificate which were to have been acquired for the Sembranos by virtue of a compromise settlement, the validity and effectivity of which was in turn conditioned on its approval by the court before which the case involving the said compromise settlement was pending. The court's approval was further subject to a prior approval of the transfer by the Public Service Commission. The said compromise settlement conditionally approved by the said court did not therefore become

effective, the conditions imposed for its approval not having been fulfilled. There was no approval by the Public Service Commission. Our Civil Code provides:

"Article 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition."

Inasmuch as petitioner's grantors or transferors acquired no rights over the said certificate, nothing passed unto the former. A grantee cannot acquire better rights than what his grantor had.

We have pointed out that the transfer without the approval and consent of the Public Service Commission, of a property covered by a franchise is not binding against said Commission and against third persons, and that the original grantee continues to be responsible under the franchise. (See case of *Montoya vs. Ignacio*, 94 Phil., 182; 50 Off. Gaz. [1], 108; *Flores vs. Miranda*, supra, p. 266; 57 Off. Gaz. [44], 7938).

In view of the foregoing the present petition is dismissed, with costs against petitioner. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Endencia, JJ., concur. .
Concepcion, J., concurs in the result.

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