

CIRILO PUNZALAN, PLAINTIFF-APPELLEE VS. ALFREDO S. ASCANO, ET AL., ETC., DEFENDANTS, ALFREDO S. ASCANO, APPELLANT.

G. R. No. L-9303. July 11, 1957

Ponente: FELIX, J.

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FELIX, J.:

Cirilo Punzalan, the owner of a property situated at 120-124 Lopez Jaena, Paco, Manila, assessed at P83400, instituted this case on June 29, 1949, in the Court of First Instance of Manila (Civil Case No. 8358), to annul the sale of said property at public auction made by the Treasurer of the City of Manila in favor of Alfredo S. Ascafla for P18.21, which was the amount of real estate taxes in arrears, and for damages.

The record shows that the sale was made in accordance with the provisions of Section 2498 of the Revised Administrative Code; that after the sale the City Treasurer issued the corresponding certificate in the name of the purchaser (Exh. 3) ; that on May 28, 1949, a final and absolute deed of sale was executed by the same officer in favor of the purchaser in accordance with the provisions of Sec. 2500 of said Code; that on May 31, 1948, the City Treasurer wrote a letter (Exh. A) to Cirilo Punzalan advising him of the sale of his property; that on January 20, 1949, long before the expiration of the time granted by law for the redemption of said property, the City Treasurer again wrote another letter (Exh. B) to Cirilo Punzalan, which two letters did not reach, the addressee and were returned to the sender; that after the expiration of the period of one year, Punzalan came to learn of the sale of his property because the buyer went to see it personally; and that upon being informed thereof he took the necessary steps to redeem it but to no avail.

On these facts the lower court rendered decision on November 15, 1949, declaring the sale null and void because:

(1) The "Bagong Balita Ng Bayan", through which the corresponding notice of sale at public auction was published, had only a circulation of about twenty thousand copies and could not be' considered as a newspaper of general circulation in a city like Manila with more than half a million inhabitants at the time and more than forty thousand properties subject to assessment;

(2) The buyer Alfredo S. Ascano being at the time of the sale an officer of the Government of the Philippine Islands in charge of the Division of Foreign Fund Control of the Bureau of Treasury, was prohibited from making said purchase in accordance with the provision of Section 579 of the same Code which reads:

"Sec. 579. Inhibition Against Purchase of Property at a Tax Sale.—Officials and employees of the Government of the Phdlippirte Islands are prohibited from 'purchasing, directly or indirectly, from the. Government, any property sold by the Government for the non-payment of any public lax. Any such purchase by a public official shall be void." and

(3) On the ground of equity.

From this decision, Alfredo S. Ascano appealed to the Court of Appeals, but this tribunal certified the case to Us for the reason that the only question of fact involved in the appeal, to wit: "Whether the newspaper 'Bagong Balita Ng Bayan' was of general circulation or not", is relied by appellant on the certification issued by the Chief of Inspection Division of the Bureau of Posts, which reads;

"July 15, 1949

"To Whom it May Concern: "This is to certify that, according to the records of this office, 'Bagong Buhay', a daily publication of general circulation, was entered as second-class mail matter in the Manila Post Office on December 10, 1947, and that this second class mailing privilege granted said paper was revoked on November 1, 1948, due to the discontinuance of publication * * *".

and on the doctrine laid down by the Supreme Court in the case of *Basa vs. Mercado*, 61 Phil. 632, which reads:

"The law does not require that publication of the notice * * * should be made in the newspaper with the largest circulation. * * *

"The records show that *Ing Kalipunan* is a newspaper of general circulation In view of the fact that it is published for dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it is published at regular intervals, and that the trial court ordered the publication to be made in *Ing Katipunan* precisely because it was a newspaper of general circulation in the province of Pampanga."

This question of fact was not touched by appellee thus eliminating this point from the issues involved in the appeal.

In this instance, counsel for appellant makes the following assignments of error:

- The lower court erred in declaring the auction sale, subject of the main complaint as invalid, merely on equity; and contrary to the provisions of law involved and the weight of authority and evidence adduced in the trial;
- The lower court erred in construing the provisions of Section 579 of the Revised Administrative Code; and
- The lower court erred in awarding some kind of damages in favor of the plaintiff-appellee.

Though We are of the opinion and thus hold that the "*Bagong Balita Ng Bayan*" is or was a daily publication of general circulation, We find that the only questions that need to be considered in this appeal are (1) whether or not Section 579 of the Revised Administrative Code is applicable to the instant case; and (2) whether or not damages should have been awarded in favor of appellee. On the first point, the trial Judge said:

"Defendant Alfredo S. Ascano is an employee of the Government of the Philippine Islands, now Government of the Republic of the Philippines. He admits in his answer to the supplementary complaint, that on May 21, 1948, the date of sale, he was an employee of said Government. By expressed provision of Section 579 of the Revised Administrative Code said sale in his favor made by defendant Treasurer is null and without value and the Court has no other alternative than to comply with the mandate of the law.

"Defendant Ascano alleges that such legal provision is not applicable to him, because the City of Manila is not the Government of the Philippine Islands. This allegation is devoid of merit because the Government of the City is nothing but a political subdivision of the Government of the Philippine Islands, or better said, it is but a part of said Government to which Section 579 aforementioned refers to and, consequently, the prohibition contained therein is applicable to the employees of the Central Government as well as to those of the City of Manila; it is as applicable to the properties levied by the Government of the City of Manila."
(TRANSLATION)

Anent the damages, appellant does not raise any question as to the amount fixed by the lower court. He merely argues that the awarding of damages in favor of plaintiff-appellee was merely on an illegal presumption that the auction sale was invalid, and as he contends that the said auction sale was valid and enforceable against the whole world, hence he concludes that there is no basis in fact or in law by which a Court can look upon the appellee with

equity, for he is guilty of estoppel by his own "laches". As to said damages the trial court said:

"The Court holds that the damages alleged by plaintiff have been established and considers the sum of P500 as sufficient compensation thereof. Defendant Ascano is the only one liable for these damages because, knowing that he was prohibited by law to make the purchase in said auction, he acted in bad faith in concealing this fact and failing to inform the defendant Treasurer of his status as employee of the Government of the Philippine Islands. We have no doubt that the Treasurer of the City of Manila would not have knowingly sold the land in question in contravention of the legal provision aforesaid." (TRANSLATION)

We certainly agree with the points of view of His Honor on the two questions discussed above.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant.

It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., and Endencia, J.J., concur.

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