

PHILIPPINE SURETY & INSURANCE CO., INC., PETITIONER, VS. BEATRIZ ZABAL, RESPONDENT.*G.R. No. L-21556. October 31, 1967*

Ponente: REYES, J.B.L., J.

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In this petition for review, petitioner Philippine Surety and Insurance Company, Inc. takes exception from the ruling of the Court of Appeals (in CA-G. R. No. 31014-R) that notice to the occupant of a real property is a prerequisite to valid levy of execution upon that property, and reversing the decision of the Court of First Instance of Manila (in Civil Case No. 49395).

Pursuant to a writ of execution duly issued by the Court of First Instance of Manila in favor of herein petitioner surety company to enforce a money judgment against Amado de la Merced and Candido Fajardo, the solidary judgment-debtors in Civil Case No. 42056, the Sheriff of Manila, on June 17, 1960, levied on all the interests and participation of Candido Fajardo in a parcel of land registered in his name, under TCT No. 21180. Notice of the levy was duly re-registered in the register of deeds of Manila, and annotated in the corresponding title.

On August 28, 1961, Beatriz Zabal presented for registration a deed of sale dated August 28, 1959, whereby Candido Fajardo appeared to have conveyed to her the parcel of land covered by TCT No. 21180. Thereupon, the Register of Deeds cancelled the certificate in the name of Fajardo and issued in lieu thereof TCT No. 64730 in the name of Beatriz Zabal. But, as the notice of levy in favor of the surety company was carried at the back of the new certificate, Zabal went to the Court of First Instance of Manila (in Civil Case No. 49395), praying for the cancellation of the annotation, on the ground that she was already the owner of the land when it was registered, and that the levy on the property was irregular and improper.

Therein defendants Philippine Surety & Insurance Company, the Sheriff of Manila and the Register of Deeds for Manila, set up as defense the alleged superiority of the lien, created by the prior registration of the levy, over the sale in favor of the plaintiff. The trial court thereafter ruled adversely against the plaintiff and ordered the dismissal of the complaint.

On appeal by the plaintiff to the Court of Appeals, however, the decision of the trial court was reversed. The appellate court, ordering the dissolution of the attachment and the cancellation of the notice of levy at the back of TCT No. 64730, said:

"x x x the rule (that registration of an attachment makes it superior to a prior unregistered sale) presupposes a valid levy and plaintiff challenges the efficacy of the levy. She testified without contradiction that she has been in occupation of the property even prior to the sale on August 28, 1958 and particularly June 17, 1960 when the levy was made, yet she was not served a copy of the notice of levy, order or attachment and description of the property, in violation of the requirements of Section 7(a) of Rule 59. A proceeding by attachment being in derogation of the common law, the officer must comply with the statutes in making the levy. Under a statute similar to Section 7(a), Rule 59, it has been held that failure to comply with such a requirement is fatal to the validity of the levy (Schwartz vs. Cowell, 12 P. 252, 71 Cal. 306; Fountain vs. 624 Pieces Timber, 140 Fed.

381; 6 CJ p. 234 Sec. 443 nn 9 & 10). Otherwise stated, service on the occupant, if any 'must appear from the return or else the service on its face is unauthorized and invalid' (Hall vs. Stevenson, 19 Or 153, 23 P. 887, 20 Am. St. Rep. 803; Anderson vs. Moline Plow Co., 101 Iowa 747, 69 NW 1028 cited in 4 Am. Jr. Sec. 575, p. 903). Moreover, the required notice to the defendant debtor under Section 5 of the same Rule has been held essential to the validity of an attachment lien; so where the return of the sheriff shows that this step was not taken, the attachment is invalid and no lien in favor of the attachment creditor is acquired thereby (Philippine National Bank vs. Atilas, 58 Phil. 240, 253; cf. Chua Hermanos vs. Register of Deeds of Batangas, 50 Phil. 670, 674). It results that the notice to the occupant is essential to the validity of the attachment, non-compliance with which renders the attachment invalid and ineffective particularly to herein plaintiff who was in possession as vendee."

Section 7 of old Rule 59 (now Sec. 7 of Revised Rule 57), prescribes the procedure or mode of effecting an attachment, thus:

"SEC. 7. How various classes of real and personal property attached; duty of registrar of deeds. -- The property of the defendant shall be attached by the officer executing the order in the following manner:

"(a) Real property, or growing crops thereon, standing upon the records of the registrar of deeds of the province in the name of the defendant, or not appearing at all upon such records, by filing with the registrar of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any there be. Where the property has been brought under the operation of the Land Registration Act, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered. The registrar must index attachments filed under this paragraph in the names both of the plaintiff and of the defendants;" (Underscoring supplied.)

To effect a levy upon a realty, the sheriff is required to do two specific things: (1) file with the register of deeds a copy of the order, description of the attached property and notice of attachment, and (2) leave with the occupant of the property copy of the same order, description and notice. These are prerequisites to a valid levy, non-compliance with any of which is fatal. For the weight of authority is to the effect that a special statutory provision, respecting the manner of carrying out levy of attachment, must be strictly complied with, and departure therefrom shall invalidate the levy.[1] Thus, in *Llenares vs. Valdeavella and Zoreta*, 46 Phil. pp. 358, 360, 361, this Court said:

"The levy of an execution is defined as the acts by which an officer sets apart or appropriates for the purpose of satisfying the command of the writ, a part or the whole of a judgment debtor's property. In the absence of statutory provisions no special formalities are required for a valid levy, and in regard to real property it has usually been held sufficient if the seizure of the property is made known to the occupants thereof and endorsed on the writ. But it is otherwise where, as in this jurisdiction, the matter is regulated by statute; there a substantial compliance with the statute is indispensable.

"The statutory provisions to this case are found in sections 450 and 429 of the Code of Civil Procedure. Section 450 states that property 'may be attached on execution in like manner as upon writs of attachment.' This provision while permissive in form must, nevertheless, be regarded as mandatory. No other method of effecting the levy is prescribed and it is an old rule that powers through the exercise of which a person may be divested of his property are always strictly construed and that the provisions regulating the procedure in their exercise are mandatory is to the essence of the thing to be done. (Lewis' Sutherland on Statutory Construction, 2d ed., sec. 627.)"

After quoting the provisions of section 429 of Act 190, similar to that of the Rules heretofore quoted, this Court proceeded to rule:

"In the present case it is admitted by the plaintiff that notice of attachment for the execution was not filed with the registrar of deeds and that there was no copy thereof served on the defendants. It is therefore clear that the attempted levy was not made in accordance with the provisions of the statute, and, according to the great weight of authority, a proper levy is indispensable to a valid sale on execution. A sale unless preceded by a valid levy, is void, and the purchaser acquires no title. (Leath vs. Deweese, 162 Ky., 227; Jarboe vs. Hall, 37 Md., 345.)"

Registration of levy was also declared invalid where the Sheriff's notice did not contain a reference to the number of the certificate of title covering the levied property, the volume and page in the registry book where the title is registered,[2] or where the notice was not accompanied by a copy of the order of attachment.[3]

The evident purpose of the law in imposing these requirements is to make the levy public and notorious, to prevent liens from attaching secretly and by surreptitious entries and indorsements, and to enable the affected party to inquire into the date and circumstances surrounding the creation of the encumbrance,[4] as well as to give him ample opportunity to file timely claim to the property levied upon.

Since the Court of Appeals, in this case, found that no notice of the levy was given to respondent who was then in occupancy of the land - a factual finding which we cannot now review - it is obvious that there was no valid levy on the land and, therefore, its registration in the registry of deeds and annotation in the title were also invalid and ineffective.[5] Petitioner's case is not even helped by the allegation that Fajardo, in whose name the land was registered was duly notified of the attachment. Where notice to the occupant is required by law for the validity of a levy, personal service of the copy of the writ, description of the property and notice to the owner, who is not the occupant, does not constitute compliance with the statute.[6]

There being no valid levy nor sale thereunder, the question of priority of rights between the parties does not really arise.

In view of the conclusion thus reached on the main issue, there is no necessity to pass upon the nature and character of the deed of sale executed by Candido Fajardo in favor of respondent, which is also here assailed by petitioner. The issue was not raised in the Courts below.

WHEREFORE, finding no error in the decision under review, the petition is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] 7 C.J.S., Sec. 217; Ames v. Parrott, 61 Neb. 847, 86 NW 503; Langer v. Nultemeier, 55 ND 132, 212 NW 617. See also Schwartz vs. Cowell, 12 P. 252; Walter v. Scofield, 167 Mo. 537, 47 SW 276.

[2] Siari Valley Estates, Inc. vs. Lucasan, L-13281, Aug. 31, 1960.

[3] Chua Pua Hermanos vs. Register of Deeds, 50 Phil. 760.

[4] See Ames v. Parrot, supra.

[5] Llenares vs. Valdeavella, supra; Sola vs. Mogate, (CA) 47 O.G., No. 12, 6271; Zimmerman v. Boynton, 229 NW 3, 59 ND 112; also Brown v. McCloskey, 135 NYS 2d 251.

[6] Williams v. Olden, supra.

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