

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLANT, VS. ROMANA GANSON, DEFENDANT AND APPELLEE.*G.R. No. L-4501. April 12, 1909*

Ponente: ARELLANO, C.J.

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On the 20th of July, 1906, the Court of First Instance of Occidental Negros ordered the sale of the property of Romana Ganson, mortgaged to the plaintiff, in order to effect payment of the sum of P58,687.03 and the interest agreed upon until the full payment was made, in addition to P1,500 for costs and expenses.

By reason of the foregoing order the sheriff, on the 6th of August, 1906, proceeded to levy upon the property of the debtor that had been mortgaged to the plaintiff, to recover the sum already stated; with regard to the Hacienda San Jose, it was attached in the following manner: "A tract of land of 465 hectares, 33 ares and 82 centares, planted with sugar cane, the greater part of which was planted by the lessees D. Alejo Alegria, Alejandro Olmo, Valentin Puerta and Andres Mondragon on shares; it is bounded on the north by a mountain, on the south by the sea, on the east by the sea and the Andoon River and on the west by the Gigalaman River .and a mountain;" then follows a statement of other personal property that forms a part of the said hacienda.

The sale at public auction of the sugar-producing hacienda known as "San Jose," was advertised for the 22d of August, 1906, the same being then described with more detail with regard to its boundaries, but no mention whatever was made of the fact that it was planted with sugar cane as was stated in the attachment proceedings.

On the 12th of September, 1906, the auction sale of the hacienda took place, the property being adjudicated, as was announced at the sale, to Don Manuel Couto on behalf of the Compañia General de Tabacos de Filipinas, for the sum of P64,826.92. The sheriff informed Couto that the defendant, her heirs or assigns, were entitled to redeem the property sold within the term of twelve months from date. This fact was stated in the record which was subscribed by Couto, together with the sheriff and four witnesses.

And the court below found that on the 7th of May, 1907, the plaintiff prayed the court to confirm the sale of the property to the Compañia General de Tabacos, and this is confirmed by the appellant in his brief.

But on the following day, that is, on the 8th of the said month of May, 1907, the plaintiff filed a motion alleging among other facts the third, to wit, that the sheriff, by mistake and without any desire to contravene the order of the lower court, when selling the said property at public auction, failed to include the sugar cane in the record of the sale; the fourth, which reads: Manuel Couto on behalf of the Tabacalera was the highest bidder at the auction sale of the Hacienda San Jose with all of the improvements thereon, consequently including the sugar cane that existed on said hacienda, and offered more than 60,000 pesos for the purchase of the property of Doña Romana Ganson; the fifth in which he states: that the plaintiff never intended to offer said amount if the sugar cane on the Hacienda San Jose was not to be considered as sold with it, as improvements attached thereto, and for this reason he prayed: (1) That the court below sustain its order of the 20th of July, 1906; (2) that it be held that the sugar cane was included in the auction sale of the 12th of September, 1906; and (8) that in case this petition is denied,

the auction sale be not confirmed, and that a new sale be ordered. By its decision of the 3d of September, 1907, the court below held that the cane levied upon was not included in the auction sale of the Hacienda of San Jose held on the 12th of September, 1906, and dismissed the petition asking for the nullification of said sale, or rather, it confirmed the latter, declaring that the sale made to the plaintiff was valid and final; reserving to the plaintiff the right to bring such action as he saw fit against the provincial sheriff or his deputy for having failed to include in the sale the rights of Doña Romana Ganson to the cane on the realty sold. The court based its conclusions on the following statement of facts and of law:

That the property sold is specified in detail as may be seen from the record of the auction sale which was subscribed by the purchaser.

That it does not appear therein that the cane existing at the time on the property sold was included in the sale.

Nor was the said cane included in the notice of the, sale. And according to the foregoing proofs it is evident that the cane was not sold at the auction sale.

It is incredible that the purchaser was induced to commit error when he purchased the property, because, as appears from the evidence, he read the record of the sale before signing it and the property he purchase was set out in such detail that objects and utensils of trifling value were included, while the cane, though of great value, was omitted; the plaintiff did not protest or offer any remark with respect to the fact that no mention was made of the latter.

There is no such irregularity as would invalidate the sale, and no judicial sale should be annulled unless it is proven that some legal defect is present. It has been fully proven that, after the sale of the property at public auction, the receiver, with the concurrence of the plaintiff, charged to the "Debit" of the defendant all the expenses incurred in caring for the said cane, a fact which evidently shows that the plaintiff was fully convinced that the said cane had not been included in the sale of the property.

The plaintiff alleged that the court below committed nine errors:

First, for not sustaining the order given by it on the 20th of July, 1906.

Second, for holding that the cane situated on the Hacienda of San Jose was not included in the auction sale of the same.

Third, for considering that no good grounds exist for the annulment of the auction sale.

Fourth, for declaring that the purchaser was not in error when believing in good faith that the hacienda was being sold together with the sugar cane that existed thereon.

Fifth, for declaring that the purchaser was aware that the cane had been excluded from the auction sale, as shown by the fact that by another posterior action he requested the temporary attachment of the same.

Sixth, for basing its opinion on the fact that the purchaser asked for the judicial confirmation of the sale.

Seventh, for not having annulled the sale, and for confirming it, notwithstanding the consequent injustice and loss to which the purchaser is subjected.

Eighth, for declaring that it finds no irregularity impairing the sale.

Ninth, for not annulling the sale and ordering a new one, and for holding it valid, as well as confirming it without a petition from the parties.

The court below has not committed the first error assigned because it was not necessary to sustain its order for the

sale when the same had already been effected and the mortgaged property, which was that stated in the order, was all sold; the cane which it is pretended was included in the word mortgaged was not set out therein.

Neither did it commit the second error assigned because it is one question whether the cane, as fruit, is or should be considered a part of the soil that produces or has produced the same, and another question whether as a matter of fact it had been advertised for sale and included in the sale that was carried out. As a matter of fact it was not included in the advertisement of the sale, nor in the sale itself; the subject-matter of the contract of purchase and sale is expressed in the record subscribed to that effect by the vendor, the purchaser, and the witnesses to the act, and this proof is conclusive.

And the third, fourth, fifth, sixth, seventh, and eighth errors assigned need not be taken into consideration for the reasons given in the judgment, and the result of the evidence.

In the attachment proceedings it was clearly stated, without protest to the contrary, that the sugar cane had mostly been planted by the lessees hereinbefore named.

The trial court found that the only thing for which the sheriff who executed the sale deserved to be censured, was for not having included in the sale the proportional right that the defendant had to the cane, of the lessees, and hence the reservation of the right of action against the sheriff which constitutes one of the findings in the judgment.

It is quite true that the cane was not included in the sale, because it should not be sold, belonging, as it did, to the lessees. The only thing that should have been included was the right of the defendant to such proportion as might be due to her by reason of the said lease on shares.

There could be no error on the part of the purchaser, inasmuch as by the purchase of the hacienda he did not become the owner of the cane. Had he considered himself to be the owner of the same, he would have attended to the expenses in connection therewith from the 13th of September, 1906, the day after the sale, until the 25th of November, when the receiver rendered his accounts, instead of charging said expenses to the defendant, as owner of the crops under cultivation on the hacienda.

There is not the least evidence of such an error of fact on the part of the plaintiff. And it is not necessary to decide at the present time whether, in the sale of realty, the fruits existing thereon should be included therein, no protest having been made against the attachment proceedings wherein appear the rights of third persons who are not contending in this suit, and with respect to whom the decision of the question in one sense or the other, can produce no effect; the decision should refer exclusively to the fruits produced by the industry of the person who alienates the property. In this case the planting was done by a third person with the consent of the owner of the realty by virtue of a contract of lease on shares between the said parties. The only thing that could be considered to have been sold with the realty is that which, as the result of said contract, appertained to the owner of the land. Certainly the right which the purchaser believed he had can not prevail against a third person who took no part in the sale; *res inter alios acta, aliis non nocet*.

If there was no foundation for such a belief of fact and of law, nor for considering that an error was committed in any way, then the case does not come within the provisions of section 257 of the Code of Civil Procedure in order that the lower court may refuse, for good cause shown, to confirm the sale effected, nor is it within the power of the court to set aside a contract which was not only perfected, but consummated, unless it be by reason of error duly proven, as provided by the Civil Code.

On the 11th of February, 1907, which is the date of the letter addressed by the plaintiff's attorney to the sheriff (Exhibit T, 5 of the defendant), application had already been made for the temporary attachment of the said cane.

Although the said temporary attachment was merely asked for ad cautelam, the letter read:

"Present also to the registrar a copy of Bates' order together with a description of the cane and the notification of its attachment, causing a statement to be entered in said register that this cane, as maintained by the plaintiff, belongs to the defendant and appears in the name of Azcona, and is under the control of the receiver Pomar."

It is not inferred from this letter, as the appellee desires, the explicit confession that it attributes to the appellant that the cane is the property of the defendant in opposition to that claimed by the plaintiff, but he probably suggested this form of registration so as to reject the pretended ownership of the lessees. But be that as it may, it is quite evident that, five months after the plaintiff had acquired the hacienda, at auction, he himself caused the cane existing thereon to be entered in the registry of property as the property of the defendant; and in this state of affairs, after it appeared that the cane had been excluded from the purchase of the hacienda by an act of the purchaser himself, the latter asked, by his writing of the 7th of May 1907, that the sale of the hacienda be confirmed. It may be seen, therefore, that it is impossible to maintain that said confirmation was asked for on the understanding that the cane was included, or should be included in the purchase of the hacienda.

After asking that the purchase or sale by public auction held on the 7th of May, 1907, be confirmed, and upon requesting on the following day, the 8th, that the same be declared null, the court below was placed under the necessity of rendering a decision, and it did so in the terms contained in the judgment appealed from, precisely as requested by the appellant. It can not, therefore, be conceived how there can be said to be error "in not having annulled the auction sale, and in having confirmed it declaring it valid without the request of the parties," as alleged in the last assignment of error, when the petition did not contain a single, request, but a double one.

In view of the foregoing we hold that the judgment appealed from should be and it is hereby affirmed, with the costs of this instance against the appellant.

Torres, Mapa, and Carson, JJ., concur. Johnson, J., did not sit in this case.

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