

JOVITO O. VITANZO, PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BOARD OF LIQUIDATORS, AS LIQUIDATORS OF THE DEFUNCT NATIONAL COCONUT CORPORATION, IL...*G.R. No. L-25677. November 29, 1968*

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

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Direct appeal on points of law from an order of the Court of First Instance of Marinduque, in its Case No. 1292, granting a motion to dismiss the complaint for failure to state a cause of action.

The relevant facts as gleaned from the record are that one Eusebio Arceo was the registered owner of five parcels of land covered by Certificate of Title No. 99 (T-94) in barrio Batansapa, Mogpog, Marinduque, and designated as Lots Nos. 16, 17, 18, 21 and 25. Because of a final judgment for P1,786.39, plus interest, costs and attorneys' fees, rendered against Arceo and in favor of the Republic of the Philippines, represented by the Liquidators of the National Coconut Corporation, by the Court of First Instance of Manila, in its Civil Case No. 43477, a writ of execution was issued on 2 February 1962. The writ was received by the Provincial Sheriff of Marinduque on 7 July 1962, and, on the same date, the Sheriff levied on the lands above described. The execution sale was made only on 16 March 1963, and the successful bidders for Lots Nos. 16, 17, 18, and 25 were Ildefonso Labao, Marcelo Mantala, Estefania Vda. de Muhi and Victorino Moreno, respectively[1]; while Lot No. 21 was purchased by the Board of Liquidators in representation of the judgment creditor. Almost one year later, on 13 February 1964, the lawful heirs of the judgment debtor, Eusebio Arceo (who had died in the meantime), executed a notarial "Deed of Assignment in Payment of Debt" in favor of appellant Jovito Vitanzo, conveying to the latter all of their rights and interest to the lands in question. On 21 February 1964, Vitanzo filed a complaint for reconveyance against the purchasers at the Sheriff's sale, claiming that the levy and seizure of the property was not made during the lifetime of the writ; that no alias writ was ever issued. Hence, it was prayed that the levy and sale be declared null and void, and the properties ordered reconveyed to the plaintiff.

Defendants Ildefonso Labao and the Board of Liquidators filed a motion to dismiss for failure to state a cause of action, contending that the levy, made within sixty (60) days from its receipt by the Provincial Sheriff, was validly made; that the assignment in favor of Vitanzo, having been made long after the sheriff's sale, and not having been recorded, was null and void; and that, assuming that the levy was not made during the lifetime of the writ, the irregularity was the fault of the sheriff, and was not imputable to the purchasers at the auction sale.

As previously stated, the Court a quo granted the motion to dismiss as to the Board of Liquidators and Ildefonso Labao, and plaintiff Vitanzo appealed to this Supreme Court.

Sole issue raised in the appeal is the validity of the Sheriff's levy. Appellant contends it is void, since it was not made within 60 days from the issuance of the writ of execution, which he claims to be the lifetime of the writ.

We see no merit in the appeal. In *Alagar vs. Pio de Roda and Manalo*, 29 Phil. 129 (invoked by appellant), this Court held that -

"The sheriff had no authority to make any attachments after the return day of said writ. If he had been unable to attach the property during the lifetime of the writ, it should have been returned and an alias writ issued." (Case cited, at page 132) (Emphasis supplied)

The lifetime of the writ of execution, therefore, includes the last day in which the same is returnable; and under the Rules of Court, the return must be made within a maximum of sixty days after its receipt by the levying officer. Section 11, Rule 39, of the Rules of Court provides:

"SEC. 11. Return of writ of execution. - The writ of execution may be made returnable, to the clerk or judge of the court issuing it, at any time not less than ten (10) nor more than sixty (60) days after its receipt by the officer who must set forth in writing on its back the whole of his proceedings by virtue thereof, and file it with the clerk or judge to be preserved with the other papers in the case. A certified copy of the record, in the execution book kept by the clerk, of an execution by virtue of which real property, has been sold, or of the officer's return thereon, shall be evidence of the contents of the originals whenever they, or any part thereof, have been lost or destroyed."

Since it is not controverted that the Sheriff of Marinduque made the levy on the same day he received the writ of execution, there can be no doubt that the levy was properly made, within the lifetime of the writ. That the sale was held long after the sixty days within which the writ was returnable to the court that issued it does not affect the validity of the sale (*Government vs. Echaus*, 71 Phil. 318, 320).

"We are of the opinion that a valid execution issued and levy made within the period provided by law may be enforced by a sale thereafter (cf. *Alagar vs. Roda and Manalo*, 29 Phil. 129; 23 C. J. 625; vide particularly *Mosher v. Borden*, 166 N. W. 972; also *Brown v. Hopkins*, 101 Wis. 498, 77 N. W. 499; *Ludeman v. Nirth*, 96 Mich. 17, 55 N. W. 449.) The sale of the property by the sheriff and the application of the proceeds are simply the carrying out of the writ of execution and levy which when issued were valid. 'This rests upon the principle that the levy is the essential act by which the property is set apart for the satisfaction of the judgment and taken into custody of the law, and that after it has been taken from the defendant, his interest is limited to its application to the judgment, irrespective of the time when it may be sold.' (*Southern Cal. L. Co. v. Hotel Co.*, 94 Cal 217, 222.) (*Government vs. Echaus*, supra)

The appealed order of dismissal is affirmed. Costs against appellant Jovito O. Vitanzo.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.
Capistrano, J., did not take part.

[1] They also held the lots in antichresis.

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