

BRAULIO CASTILLO, ET AL., PLAINTIFFS, VS. SIMPLICIA NAGTALON, ET AL., DEFENDANTS. SIMPLICIA NAGTALON, MOVANT AND APPELLEE VS. DESIDERIO SEGUNDO, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-17079. January 29, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On November 11, 1952, a decision was rendered in Civil Case No. 529 of the Court of First Instance of Ilocos Norte (Castillo, et al. vs. Nagtalon, et al.), the dispositive portion of which reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court renders judgment declaring the plaintiffs owners pro-indiviso of the land described in the complaint with the right to possess it and that the defendants are ordered to restore the possession of the eastern portion thereof to the plaintiffs, to pay damages in the amount of P210.00 every year since 1943 until they deliver the possession of said portion to the plaintiffs, and to pay the costs."

On appeal by the defendants, the Court of Appeals affirmed said decision in all respects, with costs against the defendants-appellants therein.

The decision having become final, a writ of execution was issued under date of April 27, 1957, against all the defendants, twelve in number, to satisfy the damages and costs awarded therein which, together with the expenses incidental to such execution, amounted to P3,401.00. Consequently, ten parcels of land, three of which belonged exclusively to herein appellee Simplicia Nagtalon, one of the defendants, were levied upon and sold for P3,401.00 at the execution sale conducted on July 8, 1957. The certificate of sale was issued on the same day to Martmiano Factor, the purchaser, who was a third party not involved in the original case.

On July 8, 1958, the last day of the one-year period for redemption, appellee Simplicia Nagtalon who, as already stated, was one of the judgment debtors and the exclusive owner of three of the ten parcels of land sold in public auction, deposited with the Deputy Provincial Sheriff the sum of P317.44 representing 1/12 of the consideration of the sale plus 1% interest thereon, and prayed for the issuance of the corresponding deed of redemption as to the three parcels of land belonging to her. The purchaser, however, opposed the same on the ground that the amount thus tendered did not cover the full redemption price of the said three parcels of land which were auctioned separately at P1,240.00, P21.00, and P30.00, respectively or a total of P1,291.00 (see parcels 1, 2 and 4 of the certificate of sale executed by the Sheriff, pp. 27-28, Record on Appeal). In view of said opposition, Nagtalon filed a motion with the court to compel the Sheriff to issue the deed of redemption prayed for.

On August 26, 1958, the court, acting on said motion, issued an order holding that the liability of the defendants, as appearing in the dispositive part of the executed decision, was only joint and that the tender of movant Nagtalon of the sum corresponding to 1/12 of the purchase price was sufficient to redeem her properties sold at public auction. Thus, the Deputy Provincial Sheriff was directed to execute and deliver to movant Nagtalon the

certificate of redemption covering the three parcels of land owned by her. The purchaser's and the Sheriff's motion for reconsideration having been denied, they instituted the instant appeal.[1]

The only question to be determined in this appeal is whether the lower court committed an error in holding movant's tender of the sum of P317.44 as valid redemption of the three parcels of land owned by her, and in ordering the issuance of the corresponding certificate of redemption therefor.

It is the contention of the appellee Nagtalon, and upheld by the lower court that her obligation under the judgment is merely "joint", as the dispositive portion of the decision ordered, aside from the restoration of the land involved in the controversy, the payment by the defendants of "damages in the amount of P210.00 every year since 1943 until they deliver the possession of said portion to the plaintiffs, and to pay the costs." Appellants sustain on the other hand, that although defendants' liability was not specifically declared to be joint and several in the said dispositive part, nevertheless, considering that in the body of the decision the defendants were in effect pronounced guilty of a tortious act, their obligation constituted an exception to the general rule and made their liability therefor solidary.[2]

While this might have been a proper argument in a timely motion for modification of the judgment, it loses its efficacy at this stage of the proceedings when the decision has already become final and executory. As held by this Court, the portion of the decision that becomes the subject of execution is that ordained or decreed in the dispositive portion thereof.[3] In the absence therein of express declaration to the contrary, the liability of the defendants in this case must be taken—as did the lower court correctly—to be joint; not only and not solidary.

The directive, however, to execute the deed of redemption of the three parcels of land belonging to the movant, upon payment of her pro-rata share of the obligation, is not in order. It appears from the Sheriff's Certificate of Sale (pp. 27-28, Record on Appeal) that said three parcels of land were bidden and so sold for the sums of P1,240.00, P21.00, and P30.00, respectively, or for a total amount of P1,291.00. Although it may be contended that the sale of these properties to satisfy movant's 1/12 share of the obligation, which was only P317.44 might have been improper, yet by not objecting to the sale of her properties at the opportune time, and by offering instead to redeem the same, she impliedly admitted the regularity of the Sheriff's sale and estopped her from impugning later its validity on this ground alone. (See *Tiaoqui vs. Chaves*, L-10086, May 20, 1957.) Her claim made for the first time at this late hour when her offer of redemption is opposed, that she had no knowledge of the purchase price of her parcels of land, for the reason that she was not furnished with a copy of the certificate of sale, and that the same was not registered with the registry of deeds, is of no avail. There is no pretense that the provisions of Section 16, Rule 39, of the Rules of Court, regarding notice of the execution sale, were not duly observed. Appellee, as judgment debtor whose properties were levied upon and made subject to such public sale, could have attended the sale, directed the conduct thereof,[4] and even prevented the disposition of her properties insofar as it exceeded the amount due from her individually as one of the judgment debtors. Having failed to do so, she cannot later be heard to complain solely on this ground, against the regularity thereof[5] which becomes binding on her.

In connection with appellee's contention that the sale was unregistered, it may be stated that while under Section 24, Rule 39, of the Rules of Court, a duplicate of the certificate of sale must be filed by the executing officer in the office of the register of deeds of the province, noncompliance therewith does not necessarily affect the validity of the sale. Execution sales made in accordance with the provisions of Section 19, Rule 39 of said Rule are considered final and any irregularity committed in the course thereof will not vitiate their validity, unless it appears that injury has been caused thereby.[6] In the instant case, there is no showing that appellee's alleged lack of knowledge of the exact purchase price of the properties was attributable to the executing officer's failure to register the sale and, even assuming, arguendo, that it is, such situation could have been averted had appellee

availed of the privilege granted her under said Section 19 of Rule 39.

The procedure for the redemption of properties sold at execution sale is prescribed in Section 26, Rule 39, of the Rules of Court. Thereunder, the judgment debtor or redemptioner may redeem the property from the purchaser, within 12 months after the sale, by paying the purchaser the amount of his purchase, with 1% per month interest thereon up to the time of redemption, together with the taxes paid by the purchaser after the purchase, if any. In other words, in the redemption of properties sold at an execution sale, the amount payable is no longer the judgment debt but the purchase price. Considering that appellee tendered payment only of the sum of P317.44, whereas the three parcels of land she was seeking to redeem were sold for the sums of P1,240.00, P21.00 and P30.00, respectively, the aforementioned amount of P317.44 is insufficient to effectively release the properties. However, as the tender of payment was timely made and in good faith, in the interest of justice we incline to give the appellee opportunity to complete the redemption purchase of the three parcels, as provided in Section 26, Rule 39 of the Rules of Court, within fifteen (15) days from the time this decision becomes final and executory. In this wise, justice is done to the appellee who had been made to pay more than her share in the judgment, without doing an injustice to the purchaser who shall get the corresponding interest of 1% per month on the amount of his purchase up to the time of redemption.

Should appellee fail to complete the redemption price as herein indicated, the sheriff may either release to appellee the two smaller lots and return to her the balance of her deposit, or return the entire deposit without releasing any of the three lots, as the appellee may elect.

As thus modified, the decision of the lower court is hereby affirmed, without pronouncement as to costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

[1] This appeal was originally filed in the Court of Appeals, but was certified to this Court, on the ground that the issues raised are purely of law.

[2] Article 2194, New Civil Code.

[3] *Oriental Commercial Co., Inc. vs. Abeto and Mabanag*, 60 Phil. 723, 728; *Nery Edwards vs. Arce*, 98 Phil., 688; 52 Off. Gaz., 2537; *Robles vs. Timario*, 107 Phil., 809; 58 Off. Gaz., (8) 1507; *Segarra vs. Maronilla*, 108 Phil., 1086; 60 Off. Gaz., (42) 6791.

[4] Section 19, Rule 39, Rules of Court

[5] See *Herman vs. La Urbana*, 59 Phil. 621.

[6] *Herman v8. La Urbana*, supra; See also *Tria, et al. V8. Villareal, et al.*, 69 Phil. 478.

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