

UNION SURETY AND INSURANCE CO. & R. F. NAVARRO & CO., PETITIONERS, VS. METROPOLITAN THEATER COMPANY, RESPONDENT.

G.R. No. L-23119. September 30, 1970

Ponente: DIZON, J.

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DIZON, J.:

Appeal by certiorari taken by petitioners Union Surety and Insurance Company and R. F. Navarro and Company from (a) the decision of the Court of Appeals CA-G. R No. 30920-R promulgated on April 16, 1964, affirming that of the Court of First Instance of Pampanga in LRC-GLRO Record No.138, Cadastral Case No. 8, and from (b) the former's resolution of June 8 of the same year denying petitioners' motion for reconsideration.

The facts found by the Court of Appeals - which are now beyond review - are as follows:

"The Metropolitan Theater Co. plaintiff, brought action against Union Surety and Insurance Co., and R. F. Navarro and Co. defendants the collection of rentals in the amounts in the amount of P26,716.45, being a Civil Case No. 38295 of the Municipal Court of Manila. By virtue of a writ of attachment issued in said Civil case, on July 5, 1955, the Provincial Sheriff of Pampanga levied attachment on certain properties of R. F. Navarro and Company, among which being ?

A parcel of land (Lot No. 1849, Cadastral Survey of San Fernando, Pampanga) covered by TCT No. 11407-R, and

A parcel of land (Lot No. 14, Block No. 6, subdivision plan Psd-28187, being portion of Lot No. 1849, Cadastral Survey of San Fernando, G.L.R.O. Cad. Rec. No. 138) covered by TCT No. 11408-R.

Judgment was rendered in favor of the plaintiff in accordance with confession of judgment submitted by the defendants wherein it was stated among other things that?

'Defendants, with this confession of judgment, also manifest that they hereby abide by the Order of Preliminary Attachment on the properties of said defendants and issued by this Honorable Court on July 2, 1955 at the instance of plaintiff, for the satisfaction of judgment x x x'.

Upon application of the plaintiff, the corresponding writ of execution was issued, and in compliance therewith, the Provincial Sheriff of Pampanga levied execution on the attached properties above mentioned, duly registered in the Office of the Register of Deeds, and issued a notice of sale at public auction of said properties to take place on November 11, 1959, which was posted and published. At the public auction sale, the plaintiff, Metropolitan Theater Co., as judgment creditor was the highest bidder, and the Provincial Sheriff issued to it a certificate of sale, dated November 11, 1959, which was registered in the Office of the Register of Deeds of Pampanga. The period of redemption having expired without anyone exercising such right, on November 17, 1960, final certificate of sale was executed by the Sheriff in favor of said plaintiff.

"It appears that on September 9, 1955, while the abovementioned attachment in favor of plaintiff was in force, the aforementioned title certificates, TCT No. 11407-R and TCT No. 11408-R, were cancelled and in lieu

thereof TCT No. 12902 and TCT No. 12903, respectively, were issued in the name of the Union Surety and Insurance Co., Inc., on the strength of a deed of sale pur-posing to have been executed on August 20, 1954, by the R. F. Navarro and Company. On the new title certificates there was annota-ted, on September 28, 1955, at the instance of the City Fiscal of Manila, the following:

'Entry No. 38018 - Notice of levy in favor of plaintiff, the People of the Philippines, versus Eliseo Santos y Tizon, et al., accused - affecting the rights, in-terests and participation which the Union Surety & Insurance Co., Inc. may have on the lot herein described, re Criminal Cases Nos. 13923, 24864, 18730-43, etc., of the different branches of the Court of First Instance of Manila, according to the deed on file in the office.

'Date of document - September 27, 1955.

'Date of inscription - September 28, 1955, at 11:00 a.m.'

"On December 5, 1960, the Metropolitan Theater Co., filed a petition in LRC (GLRO) Rec. No. 138, Gad. Case No. 8, praying for an Order directing the Register of Deeds of Pampanga to:

‘(a) Cancel TCT No. 12902 (formerly 11407-R) and TCT No. 12903 (formerly 11408-R) of the office of the Register of Deeds of the Province of Pampanga and enter thereon new certificates of title in favor of the herein petitioner, and

‘(b) Cancel prior encumbrances in said titles, more par-ticularly, Entry No. 38018 aforementioned, upon payment of the necessary fees'.

Although the City Fiscal was also notified of said petition, only the Union Surety & Insurance Co., Inc., and R. F. Navarro & Co., filed opposition to the aforesaid pe-tition with counterclaim for moral damages and attorney's fees. After the hearing of said petition, at which neither the counsel for the oppositor entities nor the City Fiscal or the Solicitor General appeared, the Court of First Instance of Pampanga is-sued an Order on January 23, 1961, the dis-positive portion whereof reading as follows:

'WHEREFORE, finding the peti-tioners' petition to be supported by evidence, the court hereby di-rects the Register of Deeds for the province of Pampanga to cancel Transfer Certificates of Title No. 12902, formerly 11407-R and 12903, formerly 11408-R, of the land records for the province of Pampanga, and to issue, in lieu thereof, new certificates of title in the name of the said petitioner, as well as to cancel junior en-cumbrances appearing in said titles, principally Entry No. 38018, upon payment of the legal fees of his office'.

"Upon ex parte motion of the Register of Deeds on the ground that the registered owners failed and refused to surrender their duplicates of title, as requested, the Court issued on January 28, 1961, an order declaring cancelled, null and void and of no further force and effect, the owner's duplicate copies of TCT Nos. 12902 and 12903 (R) of the land records of Pam-panga.

"On March 24, 1961, the Union Surety & Insurance Co., Inc., and R. F. Navarro & Company filed Petition for Relief from Judgment, to set aside the order of January 28, 1961 declaring TCT Nos. 12902 and 12903 null and void, and to declare null and void the new titles issued in favor of the Metro-politan Theater Company, an the alleged grounds of 'fraud committed by counsel for Metropolitan Theater Company resulting in the order of default', and 'excusable negli-gence which ordinary prudence could not have guarded against, and by reason of which the Union Surety & Insurance Co., Inc., and the R. F. Navarro & Company have been impaired in their rights to defend themselves in Court (Section 2, Rule 38, Rules of Court). On April 7, 1961, the Metropolitan Theater Com-pany filed Opposition to said Petition for Relief from Judgment, alleging that 'the pe-tition does not meet the requirements of the law' and 'the petition has no basis in fact'. Given in open Court on May 20, 1961, was an Order reading as follows:

'At the hearing of the petition for relief dated: March 24, 1961, which was set for hearing today, Mr. Jimenez B.

Buendia nor Mr. Antonio Barredo appeared. Considering that there are facts contained in the petition to be established by evidence which the Union Surety and Insurance Co. and R. F. Navarro and Co. failed to produce because they failed to appear, the said petition for relief is hereby overruled.

‘The Metropolitan Theater Co. and its counsel are notified in open court of this order.’

"On June 7, 1961, Attorney for the Union Surety and Ins. Company, Inc., filed a motion for reconsideration of the aforesaid Order of May 20, 1961, so as to allow R. F. Navarro and Company to present evidence on any day designated by the Court, alleging that 'the absence of the undersigned counsel was due to the assurance of Atty. Guerrero (for the Metropolitan Theater Co.) thru Mr. R.F. Navarro that the case will be postponed as he did not interpose any objection to the same but which he violated'. What happened after the filing of this motion is related in the order of December 4, 1961, which denied the same for being untenable, as follows:

'On June 7, 1961, the Union Surety and Insurance Co., Inc. and R. F. Navarro and Company filed a motion and asked for the reconsideration of the court's order of May 20, said year, denying their petition for relief. At the hearing of this motion on June 13, 1961, Mr. Raymundo F. Navarro, chairman of the board of the said companies, appeared, and moved that said hearing be postponed to another date. In spite of the objection of the Metropolitan Theater Company, the said hearing set for June 13, 1961, was postponed to June 20, said year. As the reason of Mr. Raymundo F. Navarro in asking for the said postponement was that there was a settlement in progress, the court granted the parties a period of twenty (20) days within which to inform the court whether there was, in fact, such settlement or not, otherwise, the motion for reconsideration would be overruled.

'On June 23, 1961, Mr. Raymundo F. Navarro sent an offer to the Metropolitan Theater Company to redeem or repurchase the properties covered by the certificates of title aforementioned, and in reply thereto, Mr. Ramon F. Fernandez, the managing director of the Metropolitan Theater Company informed the former in the letter dated July 10, 1961, that the disputed properties were not for sale, as similar offers were already made.

'As the proposed settlement could not be carried out, the court reset the hearing of the motion for reconsideration for August 12, 1961, which was again postponed to September 13, said year, at the request of the same movants. As the presiding judge was confined in the hospital on September 8, 1961 and operated on the day following, such hearing was postponed until further assignment.

'When the said Judge resumed holding court on October 9, 1961, the clerk of court, upon his order, reset the hearing of the said motion for October 31, same year, which was again postponed to November 4, 1961 upon motion of the Union Surety and Insurance Co., Inc. and R. F. Navarro and Company. At this hearing the court found attached to the record an urgent (motion) for postponement filed by another counsel, the Barredo Law Office, and a manifestation of the prior counsel for the movants, wherein a copy of a telegram of the Solicitor General was copied, asking that the consideration of the oft-repeated motion be postponed. Consequently, the motion for reconsideration was again postponed to November 11, 1961. On this date, the Republic of the Philippines filed, through the Solicitor General, its motion to intervene dated November 10, said year, which was set for hearing on November 18, 1961.

'This hearing was postponed to December 2, this year, for the reason that, as already stated in the beginning, there was no showing that the Metropolitan Theater Company has been notified thereof. x x x

And then the court said:

'In view of the foregoing facts the intervention sought by the Republic of the Philippines only concerns the aforesaid motion for reconsideration. x x x

'There is likewise no controversy that, after the issuance of these new titles (TCT Nos. 12902 and 12903), it was

when the notice of levy in favor of the Republic of the Philippines was annotated therein on September 28, 1955 in connection with criminal cases Nos. 13923, 24864 and others of the Court of First Instance of Manila under entry No. 38018. x x x

'x x x. The intervention sought by the Republic of the Philippines cannot be considered proper.

'At any rate, the Republic of the Philippines is not precluded from en-forcing its right, if it has any, in a separate civil action for the annulment of all processes which transpired in the sale of the disputed properties. With regard to the motion for reconsideration, in which the Republic of the Philippines wishes to intervene, the court finds the ground upon which it is predicated to be untenable'.

"A copy of the aforesaid order of December 4, 1961 was received by the Union Surety and In-surance Co., Inc., and R. F. Navarro and Company on December 16, 1961, and on January 10, 1962, they filed a Notice of Appeal and Appeal Bond manifesting their intention to appeal from the said Order, on the alleged ground that 'the same is contrary to evidence and to law'."

In the brief submitted by petitioners - who were oppositors-appellants in the Court of Appeals - they urged said Court to reverse the order of the Court of First Instance of Pampanga ordering the cancellation of TCT Nos. 12902 and 12903 etc. on the strength of the follow-ing errors allegedly committed by the latter:

"I

THE LOWER COURT ERRED IN ORDERING THE REGISTER OF DEEDS FOR THE PROVINCE OF PAM-PANGA TO CANCEL TRANSFER CERTIFICATES OF TITLE NOS. 12902, FORMERLY 11407-R AND 12903, FORMERLY 11408-R, OF THE LAND RE-CORDS FOR THE PROVINCE OF PAMPANGA AND TO ISSUE IN LIEU THEREOF NEW CERTIFICATES OF TITLE IN THE NAME OF THE METROPOLITAN THEATER COMPANY AS WELL AS TO CANCEL JU-NIOR ENCUMBRANCES APPEARING ON SAID CERTI-FICATES.

II

THE LOWER COURT ERRED IN HOLDING THAT THE EVIDENCE GIVEN EX-PARTE BY THE DEPUTY PROVINCIAL SHERIFF AND OTHER WITNESSES WAS SUFFICIENT TO SUPPORT PETITION TO CANCEL TRANSFER CERTIFICATES OF TITLE NOS. 12902 AND 12903 AND IN FAILING TO NOTE THAT THERE WAS NO ORDER OF CONFIRMATION OF THE SHERIFF'S SALE WHICH, TO BE BINDING AND EFFECTIVE, MUST BE WITH NOTICE TO APPELLANTS AND DUE HEARING.

III

THE LOWER COURT ERRED IN ISSUING EX--PARTE THE ORDER DATED JANUARY 28, 1961, DECLARING TRANSFER CERTIFICATES OF TITLE NOS. 12902 AND 12903 OF THE LAND RECORDS FOR THE PROVINCE OF PAMPANGA CANCELLED AND MAKING THEM NULL AND VOID AND OF NO FORCE AND EFFECT, IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

IV

THE LOWER COURT ERRED IN ALLOWING THE EX-PARTE HEARING OF THE PETITION BEFORE DEPUTY CLERK OF COURT ON JANUARY 14, 1961 WHEN IT HAS NOT BEEN SHOWN THAT A REPLY TO THE OPPOSITION AND COUNTER-CLAIM WAS RECEIVED BY APPELLANTS AND THEREFORE THE ISSUES HAD NOT YET BEEN JOINED.

V

THE LOWER COURT ERRED IN ORDERING THE CANCELLATION OF TRANSFER CERTIFICATES OF TITLE NOS. 12902 AND 12903 OF THE LAND RECORDS OF THE PROVINCE OF PAMPANGA, CONSIDERING THAT THE LAND COVERED BY SAID CERTIFICATES OF TITLE WAS, IN FEBRUARY, 1955, AS APPRAISED BY REALTOR A. U. VALEN-CIA AND COMPANY, ALREADY WORTH P536,546.10, WHILE THE CERTIFICATE OF SALE SHOWS AN ACCOUNT OF APPELLANT R. F. NAVARRO AND COM-PANY IN THE SUM OF ONLY P25,664.70 PLUS P500.00 FOR ATTORNEY'S FEES AND P7.00 COSTS SO THAT THE LEVY BY THE SHERIFF VIOLATED SECTION 14, RULE 39 OF THE RULES OF COURT.

VI

THE LOWER COURT ERRED IN NOT VACATING OR SETTING ASIDE ITS ORDER OF MAY 20, 1961 AND IN NOT ALLOWING APPELLANTS AN OPPORTUNI-TY TO PRESENT EVIDENCE IN SUPPORT OF THEIR PETITION FOR RELIEF FROM JUDGMENT.

VII

THE LOWER COURT ERRED IN DENYING THE PETITION FOR RELIEF FROM JUDGMENT FILED BY APPELLANTS JUST BECAUSE THE LATTER DID NOT APPEAR DURING THE HEARING OF MAY 20, 1961 TO PRESENT EVIDENCE IN SUPPORT OF THEIR PETITION."

The Court of Appeals did not sustain petitioners' appeal. In this instance they limit themselves to the following contentions: firstly, that the ex-parte hearing held in the Court of First Instance of Pampanga on the petition to cancel Transfer Certificates of Title Nos. 12902 and 12903 "was a denial of the petitioners' right to be heard"; secondly, that the levy made by the Pro-vincial Sheriff of Pampanga upon petitioners' properties violated "the provisions of levy and execution as provided by the Rules of Court".

Petitioners' first contention is clearly without merit.

As found by the Court of Appeals, petitioners filed an opposition to the petition filed by herein respondent in LRC (GLRO) Record No. 138, Cadastral Case No. 8, for the cancellation of TCT Nos. 12902 and 12903 etc., in which pleading were alleged facts constituting a counterclaim - manifestly beyond the jurisdiction of the Court in said land case where it was acting in the exercise of limited jurisdiction. Petitioners do not deny that on January 3, 1961 they received a copy of respondent's petition and that, upon their motion, the hearing to be held thereon was postponed and reset for January 14, 1961. It is not denied either that when respondent's petition was called for hearing on the latter date, petitioners failed to appear, and that, in view thereof, after receiving the evidence presented by respondent in support of its petition, the Court issued its order of January 23, 1961 whose dispositive portion reads as follows:

"WHEREFORE, finding the petitioner's petition to be supported by evidence, the court hereby directs the Register of Deeds for the province of Pampanga to cancel Trans-fer Certificate of Title No. 12902, formerly 11407-R and 12903 formerly 11408-R, of the land records for the province of Pampanga, and to issue, in lieu thereof, new certifi-cates of title in the name of the said petitioner, as well as to cancel junior encum-brances appearing in said titles, principally Entry No. 38018, upon payment of the legal fees of his office."

It appears further that on March 24, 1961 peti-tioners filed a petition for relief from judgment pray-ing therein, inter alia, that the order declaring Transfer Certificates of Title Nos. 12902 and 12903 null and void be set aside upon the ground of "fraud committed by counsel for Metropolitan Theater Company", and "excusable negli-gence which ordinary prudence could not have guarded against by reason of which the Union Surety and

Insurance Company, Inc. and the R. F. Navarro and Company have been impaired in their right to defend themselves in Court (Section 2, Rule 38, Rules of Court)".

After a hearing held in connection with said petition and respondent's opposition thereto, the Court, on May 20, 1961, issued an order of denial.

The above shows beyond peradventure of doubt that petitioners were given full opportunity to be heard below not only in connection with respondent's motion for cancellation of certificates of title but also in connection with their own petition for relief.

Neither do We find merit in petitioners' second contention to the effect that the levy made by the Provincial Sheriff of Pampanga upon the properties mentioned heretofore was in violation of the provisions of the Rules of Court on levy and execution because while the judgment in favor of respondent was only for a little over P26,000.00, the properties levied upon and sold at public auction were worth more than half a million pesos. To be borne in mind is the fact that the present is an appeal by certiorari from the decision of the Court of Appeals in CA-G. R. No. 30920-R, promulgated on April 16, 1964 and from its resolution of June 8 of the same year. That case, in turn, was an appeal by herein petitioners from the order issued by the Court of First Instance of Pampanga in LRC(GLRO) Record 138, Cadastral Case No. 8 on December 4, 1961 overruling or denying their motion of June 7 of said year seeking reconsideration of the Court's order of May 20, 1961 denying their petition for relief from judgment. It is obvious, therefore, that the issue raised in the Court of Appeals was simply whether or not the Court of First Instance of Pampanga erred in issuing said order of denial notwithstanding the grounds relied upon by herein petitioners in their aforesaid motion for relief from judgment, namely: that fraud was committed by counsel for the Metropolitan Theater Company resulting in the failure of their counsel to appear at the hearing on the motion of said Company for the cancellation of the Transfer Certificates of Title 12902 and 12903, and that their counsel's failure to appear was due to an excusable negligence. It is clear, therefore, that the question of the alleged great excess of the value of the properties levied upon and sold at public auction over the money payable under the judgment to be satisfied was not involved in the case resolved by the Court of Appeals.

Moreover, the judgment debtors had one full year within which to redeem said properties, but they not only failed to do so but they did nothing to raise this question before the lower court during that period of redemption.

This appeal does not involve the order of the Court of First Instance of Pampanga denying the motion for intervention filed by the Republic of the Philippines, from which the latter did not appeal. It should be noted, however, that the order of denial said the following:

"At any rate, the Republic of the Philippines is not precluded from enforcing its right, if it has any, in a separate civil action for the annulment of all processes which transpired in the sale of the disputed properties. With regard to the motion for reconsideration, in which the Republic of the Philippines, wishes to intervene, the court finds the ground upon which it is predicated to be untenable."

WHEREFORE, finding no error in the appealed decision, the same is hereby affirmed, with costs.

Reyes, J.B.L., Acting C.J., Makalintal, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur. Zaldivar and Barredo, JJ., took no part.

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