

ASTURIAS SUGAR CENTRAL, INC., PLAINTIFF AND APPELLEE, VS. CORAZON SEGOVIA, ET AL., DEFENDANTS. F. Z. LEDDA & CO., DEFENDANT AND APPELLANT.

G.R. No. L-15590. August 31, 1960

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

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

This appeal from the decision of the Court of First Instance of Iloilo in Civil Case No. 3743 has been certified to us by the Court of Appeals on the ground that the issues raised by the appellant involve purely questions of law.

The property, the subject matter of this action, was previously covered by Transfer Certificate of Title No. T-2319 in the name of Ponciano Ambrosio. This property was purchased by Corazon Segovia de Zayco on July 18, 1952, hence Transfer Certificate of Title T-2319 was cancelled and, in its stead, Transfer Certificate of Title No. T-6825 was issued in the buyer's name. At the time of the sale, there were various annotations appearing at the back of the old certificate which were carried over and annotated in the new transfer certificate of title. Among them were the two notices of attachment in favor of the defendant-appellant F. Z. Ledda & Co., Inc. and the plaintiff-appellee Asturias Sugar Central, Inc., respectively, to wit:

"A Notice of Attachment affecting the parcel of land described herein in connection with Civil. Case No. 11689 of the Court of First Instance of Manila, entitled 'F. Z. Ledda & Co., Inc. vs. Ponciano Ambrosio' in the amount of P2,610.00 and other conditions stipulated in the instrument dated June 4, 1951 and registered on June 7, 1951 under Entry No. 7112."

"A notice of attachment affecting the parcel of land described herein in connection with civil case No. 2151 of the Court of First Instance of Iloilo in the amount of P4,000.00, with legal rate of interest dated June 13, 1951 and registered on June 13, 1951 under Entry No. 7145."

Subsequently, F. Z. Ledda & Co., Inc. appears to have purchased at public auction the interest of Ponciano Ambrosio as a consequence of its judgment and execution sale, and a certificate of sale was issued in its name on March 3, 1952. However, the sale was neither registered in the Office of the Register of Deeds nor annotated at the back of either transfer certificates of title Nos. T-2319 or T-6825. Nonetheless, the annotation regarding the said buyer's notice of attachment still appears registered and noted at the back of said certificates of title.

Upon the other hand, the second annotation in favor of the plaintiff Asturias Sugar Central, Inc. was by virtue of a writ of preliminary attachment issued by the court, in Civil Case No. 2151, on June 11, 1951 and registered on June 13, 1951. When the decision in that case, rendered on June 16, 1953 in favor of Asturias Sugar Central, Inc., became final and executory, a writ of execution of the judgment was, upon motion of the plaintiff, issued by the court. Following a levy on execution on the parcel of land in dispute and the required publication and posting of the notice of sale, the property was sold at public auction on October 24, 1953 to the plaintiff Central. The corresponding certificate of sale was then registered in the Office of the Register of Deeds of Iloilo.

Thereafter, plaintiff-appellee Asturias Sugar Central, Inc. instituted this action to quiet the title over the property

described under Transfer Certificate of Title No. T-6825 of the land records of Iloilo City issued in the name of one of the defendants, Mrs. Corazon Segovia de Zayco. The complaint prayed, among other things, that judgment be rendered (a) declaring of no effect whatsoever the annotations and/or encumbrances appearing on the back of Transfer Certificate of Title No. T-6825 in favor of Squires Bingham Co., Inc. and F. Z. Ledda & Co., Inc. and ordering the Register of Deeds of Iloilo to cancel the same; (b) declaring the plaintiff Asturias Sugar Central, Inc. as the lawful owner of the property covered under the said certificate of title and ordering the defendant Corazon Segovia de Zayco to convey and deliver the possession thereof to it; and (c) ordering the Register of Deeds of Iloilo to cancel Transfer Certificate of Title No. T-6825 and, in lieu thereof, to issue a new certificate in the plaintiff's name.

The case was submitted on an agreed stipulation of facts, and after trial the court a quo rendered judgment—

"ordering Corazon Segovia de Zayco to deliver the property in litigation (lot and building) to plaintiff. The Register of Deeds of Iloilo is hereby ordered to cancel Transfer Certificate of Title No. T-6825 issued in the name of Corazon Segovia de Zayco and, in lieu thereof, to issue another Transfer Certificate of Title in the name of Asturias Sugar Central, Inc. The Register of Deeds of Iloilo is hereby ordered to cancel the annotations appearing on the back of Transfer Certificate of Title No. T-6825, which annotations are registered under Entry No. 7112 and Entry No. 8882, respectively.

The counterclaim of Squires Bingham Co., Inc. is hereby dismissed for lack of evidence.

The counterclaim of F. Z. Ledda & Co., Inc. is also dismissed for lack of evidence and for being unmeritorious."

From the decision, only F. Z. Ledda & Co., Inc. appealed.

There are eight (8) assignments of errors made by the appellant. Briefly, it urges that the execution sale at public auction made in its favor on March 3, 1952 should be considered preferred and binding over the second execution sale in favor of the appellee. The bone of appellee's argument, upon the other hand, is to the effect that since the prior sale was unregistered and "was not preceded by a valid levy on execution", it cannot be given such preference as the appellant maintains.

We find merit in appellant's contention.

Contrary to the appellee's brief, the Recorded lien dated June 7, 1951, in favor of the appellant Ledda & Co. was actually and in reality a levy on execution, as distinguished from that of the appellee, dated June 13, 1951, which was just a notice of preliminary attachment issued by the court in Civil Case No. 2151 of the Court of First Instance of Iloilo. Entry No. 7112 of the Office of the Register of Deeds of Iloilo in favor of the appellant, it appears, was registered pursuant to a writ of execution issued by the court after a final judgment in Civil Case No. 11689 of the Court of First Instance of Manila, wherein the appellant was the judgment creditor. Consequently, the recorded notice was one of attachment after final judgment, also known as a levy on execution (See Comments on the Rules of Court, Moran, 1957 ed., Vol. II, pp. 5-6; see also *Ituralde vs. Velasquez*, 14 Phil., 886).

Appellee puts much emphasis on appellant's failure to register its certificate of sale. The property being registered under the Torrens System, the priority of rights thereon is generally determined by the priority of registration, not of the execution sales, as incorrectly assumed by the appellee, but of the attachments. The auction sales being merely the completion of the attachment liens, should relate back to the latter and enjoy the same priority (*Cruz vs. Sandoval*, 69 Phil., 736; *Hernandez vs. Katigbak*, 69 Phil., 744; *Vargas vs. Tansioco*, 67 Phil., 308). Appellant's lien (levy on execution) was registered on June 7, 1951; on the other hand, the appellee registered its notice of preliminary attachment six (6) days later or on June 13, 1951, and their levy on execution on October 15, 1953.

In Cruz vs. Sandoval, 69 Phil., 739, we ruled:

"En relacion con la perdida del derecho preferente de Luciano por razon de prioridad de tiempo, solo porque este dejo de pedir que el Sheriff vendiera la finca en subasta publica, no hay ley que apoye el criterio sustentado por el Juzgado. En el presente caso se trata de determinar la preferenda de los embargos en virtud de ejecucion, no de la preferencia creada por la venta en subasta publica, verificada en ejecucion de una sentencia, y es obvio que el embargo previamente registrado es superior y preferente al posterior. La venta efectuada por el Sheriff no puede invocarla el apelado para convertir en preferente su gravamen posteriormente inscrito porque por virtud de ella no adquirio mas derechos que los tenia Tambunting al tiempo de verificarse la subasta publica. Asi como el que compra una propiedad embargada preventivamente la adquiere sujeta a los efectos del embargo (Joaquin contra Avelino, 6 Jur. Fil., 570), asi tambien el que compra un inmueble embargado en virtud de ejecucion lo adquiere sujeto a los efectos de dicho embargo. Lo resuelto en el asunto de Esguerra contra Tecson y otros, 21 Jur. Fil., 539, invocado como fundamento por el Juzgado, no es de exacta aplicacion al presente caso porque en el se trataba de una reclamacion preferente contra un deudor, que no es el caso.

Appellee contends that the preferential lien in favor of Ledda & Co. was discharged and extinguished as soon as it had acquired the property at the execution sale, even before the registration of the latter. Such a theory would render priority in recording levies and attachments entirely nugatory, since the liens would be always discharged before the sheriff's sale can be recorded.

Ledda's failure to register and annotate the execution sale in its favor on the corresponding certificate of title does not worsen the position of the Central to its prejudice. The Central, which recorded its attachment lien before the Sheriff's sale in favor of Ledda was made, had notice that the property was subject to the preferential rights of Ledda & Co. because of its prior recorded levy. Thereafter, the Central was duty bound to know and was warned that the property had been virtually condemned to pay the owner's debt to Ledda, and it was incumbent upon the Central, as junior lien holder, to watch out for subsequent developments arising under the preferential levy. It was bound to know that the property could be sold at execution and that the sale would relate back to the date that Ledda's levy was recorded. If the Central took no measures to forestall that possibility, or protect its junior lien, it only had itself to blame.

In its memorandum in lieu of oral argument, the appellant urges that the present suit was improperly instituted as an ordinary civil action, as according to it, it should have instead been brought in the original registration proceedings pursuant to Sections 78 and 112 of the Land Registration Act. This argument is incorrect. Proceedings under Section 112 of the statute referred to would be proper only if there were a unanimity among the parties, or there is no adverse claim or serious objection by any other party in interest (Tanganan and Tanganan vs. Republic of the Philippines, 94 Phil., 171; 50 Off. Gaz. 1, p. 115; Enriquez, et al. vs. Atienza, 100 Phil., 1072; 53 Off. Gaz. No. 20, p. 7231), which is not the case here.

Wherefore, the judgment of the court a quo appealed from is hereby reversed in so far as the appellant F. Z. Ledda & Co., Inc. is concerned, and another one shall be entered declaring the auction sale in favor of the appellant Ledda & Co. as preferred over that of the appellee. However, since the auction sale to the appellant is as yet unregistered and it does not appear that the appellee Asturias Sugar Central had actual notice thereof, we think that in the interest of justice, the latter should be allowed to exercise the right of redemption under Rule 39, Section 25 of the Rules of Court within a period of twelve (12) months counted from the finality of this judgment. Without special pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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