

LORETO LORCA, PLAINTIFF AND APPELLANT, VS. JOSE S. DINEROS, DEFENDANT AND APPELLEE.

G.R. No. L-10919. February 28, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

This action for damages against Deputy Sheriff Jose S. Dineros was dismissed by Hon. Pantaleon Pelayo, Judge of Iloilo, on the ground that it is the Sheriff who is responsible, if at all-not this deputy.

Such decision resulted from a motion for judgment on the pleadings. The facts are short and simple:

Pursuant to a writ of execution issued in Civil Case No. 1062 entitled "Rosario Suero v. Jose Morata" Jose S. Dineros as Deputy Sheriff and in the name of. the Sheriff sold at public auction to Jose Bermejo and Rosario Suero the property attached therein, disregarding the third-party claim of Loreto Lorca (herein Plaintiff) who asserted ownership over said property. This suit for damages is the result of said auction sale. Defendant, in his answer, denied liability, pointing out that he had merely acted for and on behalf of Provincial Sheriff, Cipriano Cabaluna.

The appellant insists here that Dineros was responsible in view of sec. 334 of the Revised Administrative Code and sec. 15, Rule 39, Rules of Court, which provides as follows:

"SEC. 334-Right of Bonded Officer to Require Bond from Deputy or assistant.-A sheriff or other accountable official may require any of his deputies or assistants, not bonded in the fidelity fund, to give an adequate personal bond as security against loss by reason of any wrongdoing on the part of such deputy or assistant. The taking of such security shall in no wise impair the independent civil liability of any of the parties."

"* * * and in case the sheriff or attaching officer is sued for damages as a result of the attachment * * *."

In the light of section 330 of the Administrative Code we think the above provisions apply where the deputy acts in his own name or is guilty of active malfeasance^[1] or possibly where he exceeds the limits of his agency. In this case it is clear from the certificate of sale attached to the complaint as Annex C that Dineros acted all the time in the name of the Ex-Officio Provincial Sheriff of Iloilo; and no allegations of misfeasance are made. The Sheriff is liable to third persons on the acts of his deputy,^[2] in the same manner that the principal is responsible for the acts of his agent. That is why he is required to post a bond for "the benefit of whom it may concern," (Section 330, Revised Administrative Code) for instance the owners of property unlawfully sold by him on execution.^[3]

The complaint should not have been dismissed, appellant argues, since the court could have included the Sheriff as party defendant, in line with Rule 3, section 11 of the Rules of Court. However, what should have been done was not "inclusion" as plaintiff asked, nor "exclusion" under said section 11. It was "substitution" of the deputy by the Sheriff. Anyway, the word "may" in said sec. 11 implies discretion of the court; and we are shown no reasons indicating abuse thereof.

This is not the first time an action is dismissed for the reason that the agent-instead of his principal-was made the

party defendant. (See *Macias & Co. vs. Warner Barnes*, 43 Phil., 155; *Banque Generate Belge vs. Walter Bull & Co.*, 84 Phil., 164, 47 Off. Gaz., 138.)

Judgment affirmed, with costs against appellant.

Paras, C.J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, J.J., concur.

[1]Cf. *Singh vs. Sulce*, 49 Phil., 563.

[2]*Basco vs. Gonzales*, 59 Phil., 1, 6; *Singh vs. Sulce*, supra.

[3]*Walker vs. McMicking*, 14 Phil., 668; *Osorio vs. Cortes*, 24 Phil., 653; *Basco vs. Gonzales* supra.

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