

**VICENTE P. CAPISTRANO, PLAINTIFF AND APPELLEE, VS.  
PHILIPPINE NATIONAL BANK AND PROVINCIAL SHERIFF OF  
QUEZON, DEFENDANTS AND APPELLANTS.***G.R. No. L-9628. August 30, 1957*

Ponente: REYES, A., J.

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This is an action to cancel an execution lien annotated on a Torrens certificate of title.

The facts are not in dispute. By a deed executed on July 17, 1946, the spouses Fulgencio Moreno and Maria Salome sold to the plaintiff Vicente P. Capistrano the land described in TCT No. 19920 of the land records of Quezon province, subject to a mortgage constituted upon said land in favor of the Agricultural and Industrial Bank. Though the buyer had assumed the obligation of paying the said mortgage, the sale could not then be registered because the Rehabilitation Finance Corporation, as successor to the Agricultural and Industrial Bank, had possession of the owner's duplicate certificate of title and would not release it unless the buyer also assumed the obligation of paying a deficiency claim against the seller Fulgencio Moreno (in connection with a prior loan) for which the same land was made answerable. And the sale was still unregistered when, nearly four years later, i.e., on June 22, 1950, the land was levied upon to satisfy a judgment against Moreno in favor of the Philippine National Bank, the levy being on that same day recorded in the register of deeds of Quezon province and annotated upon the certificate of title.

On July 25, 1952, the Rehabilitation Finance Corporation, answering an inquiry from the Philippine National Bank, informed the latter that the land could no longer be "attached" to satisfy the judgment against Moreno because the same had already been sold by Moreno and his wife to Capistrano. And later, when the land was advertised for auction by the provincial sheriff, Capistrano filed a third party claim asserting his title thereto by virtue of the sale made in his favor by the Morenos on July 17, 1946.

Notified of the third party claim, the Philippine National Bank put up the necessary bond of indemnification, whereupon the provincial sheriff proceeded with the auction. And the bank having submitted the only bid, a certificate of sale was issued to it by the sheriff, which was registered on November 26, 1952 and annotated on the title certificate.

On November 16, 1953, Capistrano, after paying Moreno's mortgage obligation with the Rehabilitation Finance Corporation, obtained a cancellation of mortgage from the latter, and upon the cancellation being recorded in the registry of deeds he was issued a clean title (T-16984) except for the annotation thereon that it was subject to the execution lien in favor of the Philippine National Bank.

To cancel that annotation and at the same time have the execution sale declared void, Capistrano instituted the present action in the Court of First Instance of Quezon province. He then won. But the defendants have appealed, and the case is now before us because the question at issue is purely legal.

It is to be noted from the above statement of facts that though the land in question was deeded to Capistrano as far back as 1946, it was not until November 19, 1953 that the conveyance was registered, and during that interregnum the land was subjected to a levy of execution which was recorded in the registry long before the registration of the deed of sale in favor of Capistrano. The question presented is whether, upon those facts, the sale should take precedence over the levy instead of the levy taking precedence over the sale.

Following the doctrine laid down in *Lanci vs. Yangco* (52 Phil. 563), the trial court gave precedence to the sale. To this we cannot agree, for that doctrine has already been declared abandoned (*Philippine National Bank vs. Camus*, 70 Phil. 269; Resolution on motion for reconsideration in *Hernandez vs. Katigbak*, 69 Phil. 748), and the rule now followed is that if the attachment or levy of execution, though posterior to the sale, is registered before the sale is registered, it takes precedence over the latter (*Ramirez vs. Causin, et al.*, supra, p. 1009).

The rule is not altered by the fact that at the time of the execution sale the Philippine National Bank had information that the land levied upon had already been deeded by the judgment debtor and his "Wife to Capistrano. The auction sale being a necessary sequel to the levy, for this was effected precisely to carry out the sale, the purchase made by the bank at said auction should enjoy the same legal priority that the levy had over the sale in favor of plaintiff. In other words, the auction sale retroacts to the date of the levy. Were the rule otherwise, the preference enjoyed by the levy of execution in a case like the present would be meaningless and illusory (*Vargas vs. Tancioco, et al.*, 67 Phil. 308; *Philippine Executive Commission vs. Abadilla*, 74 Phil. 68.)

In view of the foregoing, the judgment below is reversed and plaintiff's action dismissed. With costs.

Paras, C. J, Bengzon, Padilla, Montemayor, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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