

CONSOLACION C. VDA. DE VERZOSA, PAZ VERZOSA, JOSE VERZOSA, VICENTE VERZOSA, CRISPULO VERZOSA, AND RAYMUNDO VERZOSA, PLAINTIFFS AND APPELLANTS, VS. BONIFACIO RIGONAN, SEGUNDO NAC...

G.R. No. L-6459. April 23, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiffs instituted this action in the Court of First Instance of Ilocos Norte praying that judgment be rendered (1) declaring null and void the actuations of the clerk of court and of the sheriff of said province on the ground that they are in contravention of law; (2) declaring null and void the order of the court dated July 18, 1941 on the same ground; (3) ordering defendants to pay plaintiffs damages in the amount of P10,000; and (4) ordering defendants to pay the costs of action.

The averments of the complaint are: Luis Verzosa, on February 5, 1931, executed a real estate mortgage for the sum of P3,500 in favor of Ignacio Valcarcel on a parcel of land situated in the municipality of Dingras, Ilocos Norte. On July 13, 1932, the mortgage creditor filed an action to foreclose the mortgage (Civil Case No. 3537) and after trial, at which the parties submitted a compromise agreement, the court rendered decision in accordance with said agreement. On April 20, 1934, a writ of execution was issued by the clerk of court ordering the sheriff to sell at public auction the property described therein for the satisfaction of the judgment. On November 28, 1934, or seven months after the issuance of the writ, the sheriff returned the writ with a statement of the action he had taken thereon. On December 12, 1934, the clerk of court issued another writ of execution, and the sheriff, acting thereon, announced the sale of twenty parcels of land belonging to the judgment debtor instead of the parcels of land described in the writ. On January 15, 1935, the sheriff sold several parcels of land to Bonifacio Rigonan and Rafael Valcarcel, and on May 21, 1936, the sheriff issued a final deed of sale in their favor.

On March 10, 1936, counsel for judgment creditor requested the clerk of court to return the writ to the sheriff so that other property may be levied in execution for the satisfaction of the balance of the judgment which remained unsatisfied, which request was granted. And on October 15, 1936, the sheriff sold other parcels of land in favor of Bonifacio Rigonan and Irineo Ranjo, the latter in behalf of Rafael Valcarcel, heir of the judgment creditor who had already died.

On July 7, 1938, counsel for judgment creditor again requested the clerk of court for an alias writ of execution, but instead of submitting to the court said request for resolution, the clerk of court issued a decree reiterating the original writ which was carried out by the sheriff. On February 17, 1941, Rafael Valcarcel sold to Bonifacio Rigonan and Segundo Nacnac one of the parcels of land sold by the sheriff for P100, and on July 18, 1941, an order was issued placing Bonifacio Rigonan in possession of said property.

The present action was instituted on September 19, 1950 praying for the nullification of the actuations of the clerk of court and the provincial sheriff as stated in the early part of this decision.

Defendants filed a motion to dismiss on the following grounds: (1) that the action of the plaintiffs has prescribed; (2) that there is a former judgment which bars said action; and (3) that the complaint states no cause of action. Copy of the decision above referred to was made a part of the motion.

The above motion having been submitted to the court for decision, the latter found that the action had already prescribed it appearing that the actuations which are sought to be nullified took place more than ten years ago. As regards the ground that there is a prior judgment which bars the present action, the court ruled that the same cannot be entertained because it involves a question of fact which does not appear admitted in the complaint. The court expressed the opinion that no affidavit or evidence can be considered on a motion to dismiss because the sufficiency of a complaint should be tested on the basis of the facts alleged therein. The court, however, allowed the plaintiffs to amend their complaint within five days from receipt of the order in accordance with the discretion given to it by the rules of court.

Taking advantage of this grace, plaintiffs submitted an amended complaint wherein they reiterated the same facts with some clarifying modifications. Defendants reiterated their motion to dismiss on the same grounds. And finding no substantial difference between the original and the amended complaints, the court ordered the dismissal of the case without pronouncement as to costs. After the case had been taken to the Court of Appeals, it was later certified to this Court on the ground that the appeal involves purely questions of law.

A cursory reading of the amended complaint will reveal that the actuations of the clerk of court, as well as of the sheriff, which are sought to be nullified are: the writ of execution issued by the clerk of court on December 12, 1934, as well as the sales and other actuations executed by the sheriff by reason of said writ of execution; the decree of the clerk of court issued on May 21, 1936, as well as the sales and other actuations of the sheriff made in pursuance thereof; the decree of the clerk of court issued on July 7, 1938, as well as the actuations of the sheriff made in compliance with said decree; and the assignment made by Rafael Valcarcel of his right and interest in the land sold on February 17, 1941 to defendants Bonifacio Rigonan and Segundo Nacnac. And as a necessary consequence, plaintiffs also asked for the nullification of the order of the court dated July 18, 1941 placing Bonifacio Rigonan in possession of the land sold to him.

It appears from the above recital that the acts and decrees which are sought to be nullified took place, more than ten years prior to the filing of the present action, and since under Article 44 of Act No. 190 an action of this nature prescribes in ten years, it follows that the action of the plaintiffs is already barred by the statute of limitations. If the aforesaid acts can no longer be nullified, it also follows as a legal consequence that no action can be taken on the order of the court issued on July 18, 1941 directing the sheriff to place Bonifacio Rigonan in possession of the parcel of land sold to him because of the principle that possession must follow ownership unless ordered otherwise.

As regards the second ground invoked in the motion to dismiss no affidavit or extraneous evidence can be considered to test the sufficiency of a complaint except the facts alleged in the same complaint. We hold that under Section 3, Rule 8, a motion to dismiss may be proved or disproved in accordance with Rule 123, Section 100, which provides: "When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." And in our opinion the copy of the decision attached to the motion, which is not disputed, may be considered as sufficient evidence under the rule to prove the existence of a prior judgment between the same parties. In this sense, the second ground of the motion to dismiss may also be entertained to test the sufficiency of the cause of action of the plaintiffs.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Labrador, Concepcion, and Diokno, JJ., concur.

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