

ELISEO GUEVARA, JESUS GUEVARA, ELENA GUEVARA, VERONICA GUEVARA, MARGARITA GUEVARA, PEREGRINO GUEVARA, MARIA GUEVARA, EUGELIA GUEVARA, PETRA EVANGELISTA, FOR HERSELF AND AS GUARD...*G.R. No. L-24358. March 31, 1971*

Ponente: MAKALINTAL, J.

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For the satisfaction of a final judgment for damages rendered by the Court of First Instance of Rizal (Quezon City, Branch IV) in its Civil Case No. Q-2171 (Bernabe Flores, et al. vs. Petra Evangelista, et al.), the judgment creditors caused the levy on execution of a parcel of land more particularly described as follows:

"A PARCEL OF LAND, located at Rizal Street, Barrio of Bayanbayanan, Marikina, Rizal. Bounded on the North by property of Natalia Gregorio; on the South Callejon; on the East Rizal St., and on the West by Marikina River, with an area of 439.37 square meters, more or less, with an as-sessed value of P880.00 together with all the improvements thereon with an as-sessed value of P1,800.00, with a total assessed value of P2,680.00, covered by Tax Declaration No. 10252."

then declared for taxation purposes in the names of the judgment debtors, namely: Petra Evangelista and her children Nita, Priscilla, Ernesto, Amalia and Carmen, all surnamed Guevara. These judgment debtors are the widow and children, respectively, of the deceased David Guevara, whose negligence, as found by the trial court in civil case No. Q-2171, caused the death and injury of several persons.

The provincial sheriff of Rizal scheduled the auction sale of the property levied upon on February 25, 1963. But prior thereto the brothers and sisters of the deceased David Guevara, together with the judgment debtors, sought to prevent the sale at public auction by staking third-party claims, asserting rights of ownership by way of inheritance over a ten-eleventh portion of the parcel of land levied upon and one-half of the value of the house situated thereon. On account, however, of an indemnity bond posted by Bernabe Flores, one of the judgment creditors, the provincial sheriff of Rizal proceeded with the auction sale, at which said Bernabe Flores was the successful bidder. Immediately thereafter Bernabe Flores assigned his right as such purchaser to Maximo Calalang, the judgment creditors own counsel.

The judgment debtors in civil case No. Q-2171 having failed to redeem the property within the one-year period for redemption, the provincial sheriff of Rizal executed in favor of Bernabe Flores an "Officer's Deed of Absolute Sale" dated January 4, 1965. Thereafter Bernabe Flores moved in the court below for a writ of possession directing the judgment debtors "to vacate the above-described property or relinquish possession of the same to Bernabe Flores, his heirs, representatives and assigns." This was opposed by the judgment debtors, who pointed out that the parcel of land sold at the execution sale was owned and possessed by the third-party claimants who had filed their claim with the provincial sheriff and, in fact, had earlier brought the corresponding action in court (Civil Case No. 7720, Court of First Instance of Rizal, Br. X) to vindicate the same. The opposition was

overruled; the court a quo granted the writ of possession prayed for and accordingly directed the pro-vincial sheriff of Rizal to place Bernabe Flores and/or his representative in possession of the property. But the pro-vincial sheriff of Rizal was unable to enforce the writ of possession due to the resistance of the third-party claimants, who had meanwhile taken possession by virtue of their claim of ownership over the same.

In an order dated March 23, 1965, the lower court served notice upon the third-party claimants to vacate the premises in question on or before March 31, 1965, on pain of being punished for contempt. Soon thereafter they and the judgment debtors came to this Court on the instant petition for prohibition with preliminary injunction, principally to prevent enforcement of the aforementioned "writ of possession". On March 31, 1965 this Court issued the writ of preliminary injunction asked for, enjoining respondents . . ." from enforcing the order of March 23, 1965, in Civil Case No. Q-2171 (Bernabe Flores, et al. vs. Petra Evangelista, et al.) of the Court of First Instance of Rizal, for the purpose of preserving the rights of the parties to the case, until further orders from this Court."

The issue here is whether or not under the facts the third-party claimants' assertion of ownership over a portion of the land sold on execution may defeat the purchaser's right to have possession of the same after the expiration of the one-year redemption period allowed by law.

Section 35 of Rule 39 provides: "(I)f no redemption be made within twelve (12) months after the sale, the purchaser or his assignee is entitled to a conveyance and possession of the property (sold on execution);. . ." This, of course, is on the assumption that the property belonged to the judgment debtor or to one who claims under him as his successor after the execution.

"... As the purchaser in the present case has x x x already received the definitive deed of sale and become the owner of the property bought, he should be entitled to its possession and cannot be excluded therefrom by one, who, according to the same complaint, merely claims to be a 'successor in interest of the judgment debtor', unless it is adjudged that this alleged successor has a better right to the property than the purchaser. Such adjudication, however would at this stage of the proceedings be premature and without basis." (Belleza vs. Zan-daga, et al., 98 Phil. 702)

Would such right to possession be defeated by the fact that a third party, not privy to the judgment debtor, claims to be the owner of the same property? It has been held that "where a parcel levied upon execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession" (Saavedra, et al. vs. Siari Valley Estates, Inc., et al., 106 Phil. 432, 436; see also Omaña vs. Gatulayao, 73 Phil. 66; Gozon vs. De la Rosa, 77 Phil. 919; Santiago vs. Sheriff of Manila, 77 Phil. 740). Such a hearing, however, was not necessary in this case for two reasons: (1) The third party-claimants here were not in possession of the disputed land when it was sold at public auction on February 25, 1963, pursuant to the writ of execution. By the judgment-debtors' own admission in their opposition to the motion for a writ of possession, the third-party claimants occupied the said land only after they had commenced Civil Case No. 7720 on June 10, 1963. They were not in possession when they filed their third-party claim on February 13, 1963. (2) When the land was levied upon and when it was sold on execution it was declared for taxation in the names of the judgment debtors, who were the ones then in possession. Quite obviously the third-party claimants' belated move to take possession was designed to defeat the purchaser's right to the same in accordance with the provision of Section 35 of Rule 39, by virtue of the definite deed of sale in his favor, which may be defeated and set aside only by an adverse final adjudication against him of the third parties' claim of ownership.

The said claim is not foreclosed by the writ of possession issued by the lower court, being precisely the subject of litigation in Civil Case No. 7720 of the Court of First Instance of Rizal. Since the issuance of such writ was proper, the court a quo acted within its jurisdiction when it poised the threat of contempt against any willful

defiance thereof by the third-party claimants.

WHEREFORE, the petition is dismissed and the writ of preliminary injunction heretofore issued is dissolved. Costs against petitioners.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., reserves the filing of a dissenting opinion.

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