

**BIBIANA DEFENSOR, ET., AL., PLAINTIFFS AND APPELLANTS, VS.
VICENTE BRILLO, ET AL., DEFENDANTS ARID APPELLEES.***G.R. No. L-7255. February 21, 1956*

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

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Pedro Defensor and Bienvenida Gayho were the registered owners of lots Nos. 4715 and 4724 of the Cadastral Survey of January, Iloilo, with Certificates of Title Nos. 29521 and 29522, respectively. On March 5, 1948, Defensor and Gayno executed a deed of sale over lot No. 4715 in favor of Bibiana Defensor (Exhibit A), and another over Lot No. 4724 in favor of Buenaventura Defensor (Exhibits).

About, three weeks after the execution of Exhibits A and B, Vicente Brillo obtained judgment in Civil Case No. 1182 of the Court of First Instance of Iloilo against Defensor and Gayno for the sum of P1,000. Writ of execution was issued on August 3, 1949 and by virtue thereof, Lots Nos. 4715 and 4724 were levied upon by the provincial sheriff, which levy was duly recorded in the Registry of Property and annotated in the owner's duplicate certificates of title. On August 22, 1949 Bibiana Defensor and Buenaventura Defensor (the vendees under Exhibits A and B) filed with the sheriff a third party claim over the two lots in question; wherefore, judgment creditor Vicente Brillo filed a bond of P1,000 in favor of the sheriff, who went ahead, with the execution, sold the lots at public auction to Brillo as the highest bidder on December 13, 1949, and the owners having failed to redeem the lots within one year, executed in favor of Brillo on February 9, 1951, a final deed of sale, as a result of which Transfer Certificates of Title No's. T-9500 and T-9501 were issued in the latter's favor. Before the sale of Lots Nos. 4715 and 4724 in satisfaction of the judgment in Civil Case No. 1182, however, third party claimants Bibiana Defensor and Buenaventura Defensor commenced on November 3, 1949 the present action in the Court of First Instance of Iloilo to be declared owners of the lots in question and to have the levy on said lots in Civil Case No. 1182 annulled. Two days thereafter, or on November 5, 1949, claimants Bibiana and Buenaventura Defensor filed a notice of lis pendens in the Office of the Register of Deeds, and on the same day had their deeds of sale Exhibits A and B recorded in the books of the Register, but without the corresponding entries in the owners' duplicate, certificates of title.

No trial was had in the Court below because the parties submitted the case for decision on an agreed statement of facts (Rec. on App., pp. 18-23); and on the basis thereof, the Court rendered judgment, finding the levy in execution on the lots in question in Civil Case No. 1182 to be superior to the notice of lis pendens in this case; that the deeds of sale Exhibits A and B in favor of claimants Bibiana and Buenaventura Defensor were fictitious and made only to avoid the enforcement of the judgment in Civil Case No. 1182; and dismissed the action. From this judgment, plaintiffs appealed to the Court of Appeals, which forwarded the appeal to us on the ground that it raises any question of law.

The judgment appealed from should be affirmed.

First: The doctrine is well-settled that a levy on execution duly registered takes preference over a prior

unregistered sale (*Gomez vs. Levy Hermanoa*, 67 Phil., 134); and that even if the prior sale is subsequently registered, before the sale in execution but after the levy was duly made, the validity of the execution sale should be maintained, because it retro acts to the date of the levy (*Vargas vs. Tansioco*, 67 Phil., 308; *Chin Liu & Co. vs. Mercado*, 67 Phil., 409; *Philippine Executive Commission vs. Abadilla*, 74 Phil., 68); otherwise, the preference created by the levy would be meaningless and illusory (*Philippine Executive Commission vs. Abadilla*, *supra*).

Even assuming, therefore, that the entry of appellants' sales in the books of the Register of Deeds on November 5, 1949 operated to convey the lands to them even without the corresponding entry in the owner's duplicate titles, the levy on execution on the same lots in Civil Case No. 1182 on August 3, 1949, and their subsequent sale to appellee Brillo (which retroacts to the date of the levy) still takes precedence over and must be preferred to appellants' deeds of sale which were registered only on November 5, 1949. (*Landig vs. U. S. Comm. Co.*, 89 Phil., 658; *Del Rosario vs. Santos*, 66 Phil., 254; *Gomez vs. Levy Hermanos Inc.*, 67 Phil., 134; *Worcester vs. Ocampo*, 34 Phil., 646).

This result is a necessary consequence of the fact that the properties herein involved were duly registered under Act No. 496, and of the fundamental principle that registration is the operative act that conveys and binds lands covered by Torrens titles (sections 50, 51, Act 496). Hence, if appellants became owners of the properties in question by virtue of the recording of the conveyances in their favor, their title arose already subject to the levy in favor of the appellee, which had been noted ahead in the records of the Register of Deeds.

Thus, in *Gomez vs. Levy Hermanos, Inc.*, 67 Phil., 134, this Court explained (pp. 137-138):

"The undisputed facts of this case disclose that when Levy Hermanos, Inc. attached the parcels of land in question and when said attachment was noted on the back of the certificates of title, there was nothing to show in the registry that Apolonia Gomez had any right over the land. It is true that she bought the lots with pacto de retro but the fact of her purchase was not noted on the certificates of title until long after the attachment and its inscription on the certificates. In the registry, therefore, the attachment appeared in the nature of a real lien when Apolonia Gomez had her purchase recorded. The legal effect of the notation of said lien was to subject and subordinate the right of Apolonia Gomez, as purchaser, to the lien. She acquired the ownership of the said parcels only from the date of the recording of her in the register, which took place on November 21, 1932 (section 51 of *Tabigue vs. Green*, 11 Phil., 102; *Buzon vs. Licuaco*, 13 Phil., 854; Act No. 496; *Liong-Wong-Shih vs. Sunico and Peterson*, 8 Phil., 91; and *Worcester vs. Ocampd and Ocampo*, 34 Phil., 646), and the right of ownership which she inscribed was not an absolute but a limited right, subject to a prior registered lien, by virtue of which Levy Hermanos, Inc. was entitled to the execution of the judgment credit over the lands in question, a right which is preferred and superior to that of the plaintiff (section 51, Act No. 496 and decisions cited above). If she wanted to have an absolute title, free of all lien, she had to pay the judgment credit of Levy Hermanos, Inc., or exercise, after the auction, the right of repurchase within one year granted by law, in order to redeem the property purchased by Levy Hermanos, Inc."

The present case is clearly differentiated from our decisions in *Potenciano vs. Dineros*, 97 Phil., 196 and *Barrido vs. Barreto*, 72 Phil., 187; in these cases the conveyances by the registered owners were duly presented for registration before the land was levied upon by the creditor, ' while in the case at bar the reverse obtains.

Second: There is adequate proof to support the Court below in holding that the sales Exhibit A and B, made by the former registered owners Defensor and Gayno to appellants, were fictitious and executed merely to defraud appellee Vicente Brillo of his judgment (in Civil Case No. 1182.) Note that said sales were made during, the pendency of the Case No. 1182 and just barely three weeks prior to the rendition of judgment therein. Then the sales were not recorded in the Registry of Deeds until November 5, 1949, after the sheriff had already levied on the lots in question to execute the judgment (in Civil Case No. 1182,) and also after appellants had filed in said case their third party claim with the sheriff. Finally, no effort or attempt was ever made to complete the

registration of the sales by the presentation of the owners' duplicate certificates of title to the Register so that the conveyances could be duly noted thereon. As the lower Court aptly observed, if plaintiffs had truly purchased and paid valuable consideration for the lots in question, they would have seen to it that their purchases were immediately recorded as required by law in order to perfect their titles and protect themselves against any subsequent adverse claims of third persons.

The judgment appealed from is affirmed, with costs against appellants. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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