

BASILIA CABRERA, PLAINTIFF AND APPELLEE, VS. THE PROVINCIAL TREASURER OF TAYABAS AND AND PEDRO J, CATIGBAC, DEFENDANTS AND APPELLANTS.*C.A. No. 502. January 29, 1946*

Ponente: PARAS, J.

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On October 30, 1940, the provincial treasurer of Tayabas issued a notice for the sale at public auction of numerous real properties forfeited for tax delinquency, including a certain parcel of land located in the barrio of Buenavista, municipality of Candelaria, province of Tayabas, and assessed in the name of Nemesio Cabrera, said sale to be field on December 15, 1940 at 9 a.m. and every day there after at the same place and hour until all the properties shall have been sold to the highest bidder." Copy of the notice was sent by registered mail to Nemesio Cabrera, but the envelope containing the same was returned with the remark "Unclaimed," undoubtedly because Nemesio Cabrera had already died in 1935. The land, was actually sold on May 12, 1941, for the sum of P74.34 to the appellant Pedro J. Catigbac, in whose favor the final bill of sale was executed on September 23, 1942. Thereafter the appellee, Basilia Cabrera, filed a complaint in the Court of First Instance of Tayabas against the provincial treasurer and the appellant, attacking the validity of the tax sale on the grounds that she was not notified thereof and that although the lend had remained in the assessment book in the name of Nemesio Cabrera, a former owner she has become its registered owner since 1934 when a Torrens title (No.8167) was issued to her by the register of deeds of Tayabas. From a judgment favorable to the appellee, the present appeal was taken by Pedro J. Catigbac.

Under the law (Commonwealth Act No. 470, section 35), the provincial treasurer is enjoined to set forth in the notice, among other particulars, the date of the tax sale. We are of the opinion that this mandatory requirement was not satisfied in the present case, because the announceraent that the sale would take place on December 15, 1940 and every day thereafter, is as general and indefinite as a notice for the sale "within this or next year" or "some time within the month of December." In order to enable a taxpayer to protect his rights, he should at least be apprised of the exact date of the proceeding by which he is to lose his property. When we consider the fact that the sale in favor of the appellant was executed on May 12, 1941, or nearly five months after December 15, 1940, the violation of the mandatory requirement becomes more obvious. Indeed, in his motion for reconsideration (see Record on Appeal, pp;33-41), the appellant had admitted, unknowingly perhaps, that when he went to the office of the municipal treasurer after reading the notice of sale in December, 1940, to inquire about the advertised land, he was told to return on May 12, 1941. The implication that follows is that the tax officials had really adopted the view that they could sell any of the numerous forfeited lots on any date subsequent to December 15, 1940, without new notice, lthereby making the resulting sale more private than public, likewise in violation of the law. It may be observed that as regards tax sales, unlike ordinary execution sales, the statute does not expressly authorize adjournment from day to day. The reminder may, however, be given that the tax officials will greatly be inconvenienced by following the law strictly, especially when numerous properties are, as in the present case (132

parcels) to be disposed of for tax delinquency. We will not venture to disagree, but it is believed that the officials who are ever solicitous in protecting private proprietary rights, shall have helped, to the same extent, in maintaining the solid foundation of the Government which they seek to serve and of which they themselves are a part.

What has been said is sufficient to decide this appeal, although it will not altogether be amiss to refer to details that further support the judgment of the lower court. The appellee was admittedly not notified of the auction sale, and this also vitiates the proceeding. She is the registered owner of the land and, since 1934, has become liable for the taxes thereon. For all purposes, she is the delinquent taxpayer "against whom the taxes were assessed," referred to in section 34 of Commonwealth Act No. 470. It cannot be Nemesio Cabrera for the latter's obligation to pay taxes ended where the appellee's liability began. Neither the alleged receipt by the appellee of a copy of the certificate of sale dated May 12, 1941, nor her failure to redeem thereafter, had the effect of validating the prior tax proceeding. The sale in favor of the appellant cannot bind the appellee, since the land purportedly conveyed was owned by Nemesio Cabrera, not by the appellee; and, at the time of the sale, Nemesio Cabrera had no interest whatsoever in the land in question that could have-passed to the appellant.

The appellee may be criticized for her failure to have the land transferred to her name in the assessment record. The circumstance, nevertheless, cannot supplant the absence of notice. Of course, it is the duty of any person acquiring at the time real property to prepare and submit a tax declaration within sixty days (Commonwealth Act No. 470, section 14), but it is no less true that when the owner refuses or fails to make the required declaration, the provincial assessor should himself declare the property in the name of the defaulting owner (Commonwealth Act No. 470, section 14). In this case there is absolutely no showing that the appellee had deliberately failed to make the declaration to defraud the tax officials; and it may be remarked that there can be no reason why her Torrens title, which binds the whole world, cannot at least charge the Government which had issued it, with notice thereof. A little synchronization between the offices of the register of deeds and of the provincial assessor, with perhaps very negligible additional clerical work on the part of both, will surely result in a more efficient enforcement of the tax laws.

Not having appealed, the appellee cannot now pretend that the judgment of the lower court is erroneous in so far as it failed to award damages in her favor for the sum of P500. While an appellee can on appeal make a counter-assignment of error, it must be with a view merely to sustaining the judgment, not to obtaining other affirmative relief.

The appealed judgment is affirmed, with costs of both instances against the appellant. So ordered.

Moran, C.J., Jaranilla, and Pablo, JJ., concur.

CONCURRING AND DISSENTING

FERIA, J.:

I concur except in the conclusion of the majority that the appellee may make a counter-assignment of error even in the sense therein stated, for it is misleading and erroneous, in no case may a counter-assignment of error be properly allowed. A counter-assignment of error means, as the prefix "counter" indicates, a proposition that the court committed an error opposite or contrary to that assigned by the adverse party. Appellee should not or need not make such counter assignment in order to refute or disprove plaintiff's assignment of error.

Even if by counter assignment is meant an assignment of error, it is improper and of no avail for an appellee to

make it in ordinary civil cases. It is not incumbent on appellee, who occupies a purely defensive position, to make assignments of error. (*Garcia Valdez vs. Soterapia Tuason*, 40 Phil. 943) He can not, as appellee, obtain from the appellate court more or greater relief than that granted him by the trial court though the latter's decision be erroneous in that respect. When the trial judge decides a case in favor of a party on certain ground, the appellate court may base its decision upon some other point, ignored or erroneously decided in favor of the appellant by the trial court (do. do.) Without any assignment of errors, appellee may point out in his brief any error committed by the lower court in not admitting certain evidence, or not taking into consideration certain points of law or fact, in support of the decision appealed from.

In election cases, however, the appellee may make an assignment of error, although not required to do so, because as said cases are tried de novo on appeal, *Mendoza vs. Mendiola*, 52 Phil. 267, appellee may seek affirmative relief and the appellate court grant or decide that appellee has received more votes than those adjudicated to him by the lower court.

CONCURRENTE

BRIONES, M.:

Estoy conforme con la parte dispositiva de la sentencia por el unico fundamento de que cuando se verifico la venta por morosidad en el pago del impuesto territorial, Basilia Cabrera, la demandante-apelada, era la dueña del terreno en cuestion con certificado de titulo Torrens registrado a su nombre. El art. 35 de la Ley del Commonwealth No. 470 prescribe que una copia del anuncio de la venta debiera enviarse al contribuyente moroso en su residencia si hasta ese mes conocida por el tesorero. Como acertadamente se dice en la ponencia, el "titulo Torrens es obligatorio para todo el mundo; por tanto - anexo - debe serlo mas para los agentes del fisco. En el presente caso era deber del tesorero enviar una copia del anuncio de venta a la demandante-apelada como dueña registrada del terreno, en vez de mandarla al dueño anterior que por cierto ya habia fallecido. Si esto hace imperativo que se de cuenta a las tesorerias de todo los trasposos inscritos y registrados en implementando la maquinaria oficial al efecto. Razones de equidad y eficiencia administrativa demandan la rigida adopcion de semejante practica.

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