

JUAN IJM LIIN UAN, PLAINTIFF AND APPELLANT, VS. VICENTE LAAG AND NEMESIO LAAG, DEFENDANTS AND APPELLANTS.

G.R. No. No. 22538. November 28, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The plaintiff prays that he be declared the owner of the land described in his complaint, that the defendants be ordered to vacate it, and to pay him the sum of P500 as damages.

On December 23, 1918, the defendants were declared in default. Before the plaintiff presented his evidence, the defendants, on January 14, 1919, filed a motion praying" that the order of default be set aside, alleging that through their ignorance they had taken the summons as the plaintiff's attempt to execute a judgment in a former case, also by default. The plaintiff objected to this motion on January 17, 1919, and on the 24th of the same month the court issued an order to that effect, setting aside the order of default. The plaintiff excepted and filed a motion for reconsideration which was denied with his exception.

The defendants then answered making a general denial and set up as a special defense a counterclaim and cross complaint.

After trial, the court rendered judgment disallowing the damages claimed by the plaintiff, and, in part, the counterclaim, holding that half of the land belongs to the plaintiff and the other half to the defendants and their brothers. as children of Dorotea Siroy.

The plaintiff appeals from this judgment assigning the following errors as committed by the trial court:

- In setting aside the order of default.
- In not holding that the land belonged to Rufino Laag exclusively.
- Even under the hypothesis that the land was the conjugal property of Rufino Laag and Dorotea Siroy, yet the court erred in not holding that the sale thereof by virtue of an execution issued against Rufino Laag cannot be annulled on the ground that the conjugal property between said spouses had not yet been liquidated.
- In holding that half of the land belongs to the plaintiff and the other half to the defendants and the other heirs of Dorotea Siroy.

We find no merit in the first assignment of error. The petition to set aside the order of default, in substance, alleged an error which the court considered excusable when it sustained said motion, using its discretion, which it has not been proved has been abused, taking into consideration all the circumstances of the case.

The preponderance of the evidence is to the effect that the land in question was the conjugal property of Rufino Laag and Dorotea Siroy. The second assignment of error, therefore, has not been demonstrated.

The solution of the question raised in the third assignment of error depends upon whether or not the sale of the land at public auction, in compliance with a judgment against Rufino Laag, was a sale by the latter, an act of administration of the conjugal property.

If so, the plaintiff is right inasmuch as, according to the decision in the case of Nable Jose vs. Nable Jose (41 Phil., 713) and as was later held in the case of Manuel and Laxamana vs. Losano (41 Phil., 855), the surviving husband, as liquidator of the conjugal partnership, has the power to alienate the property thus administered by him and which appears in his name, without prejudice to the right of any interested person to ask that the husband be held liable for any loss or damage resulting from his failure to liquidate the conjugal property or to obtain judicial authorization for the alienation of the property while said liquidation is pending, or to compel the husband, by appropriate means, to liquidate the conjugal property in accordance with the law.

But the fact is that the sale at public auction was not an act of administration of Rufino Laag and was not even the latter's act. Consequently, the doctrine laid down in the cases just mentioned is not applicable here. What is applicable to the predecessor of the herein plaintiff, because the former is the one who bought the land at public auction in the course of the execution of a judgment, is the doctrine of caveat emptor, by virtue of which the sheriff does not guarantee the title to the property which he sells. (Municipality of Albay vs. Benito and Hongkong and Shanghai Banking Corporation, 43 Phil., 576.)

We find no merit in the third and fourth assignments of error which are a consequence of the preceding ones.

The judgment appealed from is affirmed with the costs of this instance against the appellant.

Johnson, Street, Malcolm, Yillamor, Ostrand, and Johns, JJ., concur.

Judgment affirmed.

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