

**ASSOCIATED INSURANCE & SURETY CO., INC.,
PLAINTIFF-APPELLEE, VS. ANTONIO BANZON AND ROSA
BALMACEDA, DEFENDANT-APPELLANTS.**

G.R. No. L-23971. November 29, 1968

Ponente: DIZON, J.

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DIZON, J.:

In Civil Case No. 31237 of the Court of First Instance of Manila, Branch IV, entitled "Associated Insurance and Surety Co., Inc., vs. Maximo Sta. Maria and Antonio R. Banzon", judgment was rendered as follows:

"IN VIEW WHEREOF, the court renders judgment condemning defendants to pay jointly and severally unto plaintiff but for the benefit of the Philippine National Bank the amounts of P6,100.00, P9,346.44 and P14,811.42, all with interest at the rate of 12% per annum from date of the filing of the complaint until fully paid, (b) to pay the amount of P593.76 representing premiums and documentary stamps due on the renewal of the bonds Annexes 'E' and 'C': (c) plus 15% as attorney's fees, and costs. This 15% end the interest to be paid for the benefit only of the plaintiff; and no pronouncement as to costs."

As the above decision became final and executory, the corresponding writ of execution was issued and levy was made upon the properties of the judgment debtor Antonio R. Banzon covered by Transfer Certificates of Title Nos. 39685 and 53759 issued in his name by the Register of Deeds of Rizal. The first covered a parcel of land containing an area of 650 square meters situated in Barrio Calaanan, Caloocan, Rizal and the second, another parcel of 650 square meters situated in the same barrio of the same municipality. After the proceedings required by law in connection with execution sales, the aforesaid properties were sold, the judgment creditor, Associated Insurance and Surety Co., Inc., having been the highest bidder, for the total sum of P41,000.00. The Sheriff of Rizal issued in its favor the corresponding certificate of sale dated June 27, 1957, which was duly registered on June 30, 1959. As the period of redemption expired on June 20, 1960 without the judgment debtor, or any proper party having exercised it, the judgment creditor and purchaser obtained in due time the corresponding final certificate of sale, which was likewise duly registered.

In view of the foregoing, herein petitioner-appellee made demands upon Antonio R. Banzon to deliver to it the owner's duplicate of certificates of title Nos. 39685 and 53759 mentioned heretofore, but the latter refused to do so. As a result it filed in the Court of First Instance of Rizal in Case No. 3885, G.L.R.O. Record No. 11267 a petition for an order directing Antonio R. Banzon to present his owner's duplicate, of certificates of title Nos. 39685 and 53759 to the Register of Deeds of Rizal for cancellation, and for another order directing the Register of Deeds of Rizal to cancel said duplicates and to issue new transfer certificates of title covering the properties in the name of petitioner.

Banzon filed his opposition to the petition claiming mainly that (1) the decision of the Court of First Instance of Manila in Civil Case No. 31237 was void as far as he was concerned because he had never been summoned in connection therewith; and that (2) the levy and sale of the properties covered by the petition were likewise void

because they were conjugal properties belonging to him and his wife, Rosa Balmaceda.

After a hearing on the motion and opposition mentioned above, the lower court, on February 17, 1961, rendered a decision whose dispositive portion is as follows:

"In view of the foregoing, judgment is hereby rendered in favor of the petitioner granting the relief prayed for. The oppositors are hereby ordered to surrender to the Register of Deeds of Rizal the Certificate of Title in question for cancellation and let a new one be issued in the name of the petitioner."

In this appeal interposed by them, the Banzons seek a reversal of the above decision upon the same grounds relied upon in their opposition filed in the lower court.

This appeal is without merit.

With respect to appellants' contention that Antonio R. Banzon had not been duly served with summons in connection with Civil Case No. 31237 of the Court of First Instance of Manila, it is enough for us to quote here the pertinent portions of the well-considered decision of the lower court -

"With respect to the first contention of oppositors, the latter in effect contends that not having been served by summons, Antonio Banzon never became a party defendant to the aforesaid civil case and hence not bound by, any judgment rendered therein. It is erroneous on the part of the petitioner to contend that the objection as to lack of jurisdiction on the defendant's person has been waived for said waiver applies only when summons has been served although defectively, such as one not served by the proper officer. If the contention of the oppositor were true, that is, no summons was ever served upon him and that he was completely unaware of the proceedings in the civil case aforementioned, the properties in question could not be levied upon for that would amount to a deprivation of oppositor's property without due process of law.

"The burden, however, rests upon the oppositors to prove that there was in fact no service of summons and this, the court believes, the oppositors have failed to substantiate with sufficient evidence. It is a fundamental rule that the regularity of all official actions and proceedings will be presumed until the contrary is proved. In said civil case No. 31237, the records show, particularly the answer and the motion to dismiss, that the proceedings were conducted by counsel in behalf of all the defendants therein including the oppositor, Antonio Banzon. The presumption therefore, of the regularity of the proceedings as against said defendant will be maintained including the fact that either summons was duly served or that the defendant Banzon voluntarily appeared in court without such summons. It is therefore incumbent upon the oppositors to rebut this presumption with competent and proper evidence such as the return made by the sheriff who served the summons in question. This, however, the oppositors have not met.

"Moreover, the circumstances of the case all the more bear out the strength of this presumption when is considered that the oppositor Antonio Banzon received a notice of execution and levy of this properties and notice of the sale of the same at public auction. Had the oppositors have been prejudiced by being deprived of due process, they should have filed either a third party claim upon the property levied or an injunction proceeding to prevent its sale at public auction, nor would they have allowed the consummation of the sale and the lapse of one year with which the redemption could have been exercised. These facts gravely militate against the merits of the opposition, not only insofar as it strengthens the aforesaid presumption of regularity, but also insofar as they are indicative of the fact that the properties levied upon are not conjugal property or even if they were that the debt involved was one which redound to the benefit of the family for which the conjugal partnership may be held liable."

Appellants' second contention namely, that the properties now in question are their conjugal properties, is belied by the record before us which shows that Transfer Certificates of Title Nos. 39685 and 53759 were issued in the name of Antonio R. Banzon. Moreover, there is no sufficient evidence in the record to show that the properties

were acquired during appellants' marriage.

IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, and Capistrano, JJ., concur.

Castro and Fernando, JJ., did not take part.

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