

CU BIE, ET AL., PETITIONERS, VS. HON. COURT OF APPEALS ET AL., RESPONDENTS.

G.R. Nos. L-17294 & L-17385. November 29, 1965

Ponente: REGALA, J.

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REGALA, J.:

Conchita Sydeeo-Hautea, Mary Sydeco de Tayengco, Ramon Militante and his children has heirs of Rosario Sydeco-Militante), Cu Bie (as heir of Cipriano Sydeco) and Salvacion Sydeco-Tayengco own in common and in equal shares a piece of land in Iloilo. This land, known as Lot No. 282 of the Cadastral Survey of Iloilo, has an area of 225 square meters and is covered by Transfer Certificate of Title No. 15994.

In 1954, Salvacion filed in the CFI of Iloilo an action for partition, naming as defendants her co-owners and a certain Maraindas T. Malvani, who, it was alleged, was in possession of the land as well as of the house and building thereon. After the answers had been filed, the parties submitted to the court an "Agreement in which they asked that the lot in question be sold at public auction and to the highest bidder for cash" and that the proceeds be divided among the co-owners.

In a decision dated July 11, 1955, the court approved the "Agreement" of the parties and directed the sheriff as follows:

"Se ORDENA al Sheriff de la Ciudad, de Iloilo para que por si, or por medio de algun delegado suyo venda en public subasta al mejor poster y al contado el Lote No, 282 de la cadastral de Itoilo cubierto por el Certificado de Transference de Titulo No. 15994, excluyendo sin embargo, de la subasta la casa regidencial y el edificio comercial construidos en el terreno, y el producto liquido de dicha venta en publica subasta, despues de pagados los gastos y coetae asi como el amillaramiento del terreno, sea dividido entre los cinco (5) condueños como sigue:

- "1. To Salvacion Sydeco-Tayengco, one fifth (1/5) share;
- "2. To Mary Sydeco Vda. de Tayengco, one fifth (1/5) share;
- "3. To the Heirs of the deceased Eosario Sydeco de Hilitante, one fifth (1/5) share;
- "4. To Conchita Sydeco-Hautea, one fifth (1/6) share; and
- "5. To Cu Bie as heir of the deceased Ciprianp Sydeco, one fifth (1/5) share."

Accordingly notice was given that the lot would be sold at public auction in the office of the sheriff at 10 a.m. on August 10, 1955. What happened at the auction sale is described in the following excerpt from the court order of January 19, 1956:

"Abierta la subasta a las 10:00 de la mañana del 10 de Agosto, 1955, el primer postor fue el abogado Sr. Jose Hautea, en representacion de su esposa Conchita Sydeco, quien ofrecio el precio de P11,250.00. Sucedieron otras posturas o pujas y el precio subio hasta P40,500.00 hacia las 11:20 de dicha mañana, rematandose por

esta cantidad a favor de la misma Conchita Sydeco de Hautea, habiendose hecho esta ultima puja conjuntamente por su esposo Sr. Jose Hautea y por la demandada Mary Sydeco. Cuando el Sheriff exigio el pago del importe de la puja, resulto que el Sr. Jose Hautea no tenia a su disposicion sino unos P7,000.00. Por esta razon, el abogado Sr. Benjamin Tirol, en representacion de los demandantes, pidio que se anulara dicha puja, y se procediera acto seguido a nueva licitacio. A petition del Sr Jose Hautea, sin embargo el Sheriff le concedio hasta las doce el mismo dia para efectuar el pago de P40,500.00. Al llegar las doce del mediodia, el abogado Sr. Jose Hautea no pudo producir sino P8,100.00 y el abogado Sr. Tirol pidio otra vez una nueva licitacion. A nueva petition del Sr. Jose Hautea, el Sheriff le concedio hasta las 3 de la tarde de dicho dia para pagar, anunciando al mismo tiempo que, de no efectuarse el pago de la suma total de P40,500.00, se iba a reanudar la subasta procediendo a otra licitacion.

"Reanudada la subasta a las 3 de la tarde no aparecio el abogado Sr. Hautea y el Sheriff no tuvo otro remedio que proceder a nueva licitacion habiendo resultado como el mejor postor Roberto H. Tirol, representado por el Abogado Sr. Orestes H. Tirol, quien ofrecio el precio de P12,000.00, cantidad esta que fue pagada en el acto y se expedio por el Sheriff el recibo correspondiente Exh. C.

"Tambien se establecio por las pruebas de los demandados que a las 12:15 de la tarde del dia de la subasta y estando ya ausente del lugar el abogado Sr. Tirol, en representacion de los demandantes el abogado Sr. Jose Hautea deposito en poder del Sheriff la ya citada suma de P8,100.00 manifestando el mismo tiempo que, en vez de su esposa como unica postora por la suma de P40,500.00 los otros tres demandados que son conductores del terreno salian tambien de postores. Por esta razon, el Sheriff, al expedir el recibo Exh. 1 por P8,100.00 hizo aparecer que la cantidad quedaba depositada por los cuatro demandados Cu Bie, Mary Sydeco, Conchita Sydeco de Hautea y Ramon Militante, el ultimo por si y como tutor de sus hijos menores de edad. Los mismos demandados han probado tambien que el 11 de agosto, 1955, un dia despues de la subasta, depositaron en poder del Sheriff otra cantidad de P985.00 para responder de los derechos de sheriffato y otros gastos de la subasta, y que Pio Sian Melliza se conformo con la petition de los demandados de que se considerara retirada la mocion del primero sobre su credito hipotecario contra Conchita Sydeco de Hautea.

"Consta establecido igualmente como hechos convenidos por las partes que la demandada Cu Bie es ciudadana china y que el demandado Ramon Militante como tutor judicial de sus hijos menores no ha sido autorizado por el Juzgado para comprar bienes raices ni para ser pastor en dicha subasta en nombre y representacion de sus citados hijos."

Salvacion asked the court to confirm the sale to Roberto H. Tirol, divide the proceeds among the co-owners and award to her the sum of P5,642.00 as damages. (The amount is said to represent the difference between what she would have received as share had the lot been sold for P40,500.00 and what she would actually received as share in the P12,000.00 bid of Tirol). Tirol likewise asked the court to confirm the sale in his favor and to order the sheriff to execute in his favor a certificate of sale and to pay him damages for any delay. On the other hand, the four other co-owners asked the court to declare the lot as having been sold to them.

On January 19, 1956, the lower court set aside the first sale even as it confirmed the second one to Roberto H. Tirol. It also ordered Conchita and Mary to pay Salvacion the amount of P5,642.70 in damages.

From that judgment, Conchita Sydeco-Hautea, Mary Sydeco-Tayengco, Ramon Militante and Cu Bie appealed to the Court of Appeals. The appellate court upheld the sale to Tirol, but modified the decision of the lower court insofar as it awarded damages to Salvacion.

Both parties have appealed to this Court Conchita Sydeco-Hautea et al., appeal in G. R. No. L-17294, and contend that all four of them were the highest bidders at the public auction and that since they were likewise part owners of the lot on sale they did not have to pay the full amount of P40,500 of their bid but only the Sum of P8,100 corresponding to the one-fifth share of Salvacion who did not join in the bid. For this purpose, they rely on the

case of *Matias vs. The Provincial Sheriff* (74 Phil. 326) in which this Court said:

"It will be seen that the law is silent as to the manner of payment in case the successful bidder is the execution creditor himself. In the absence of a third party claimant to the proceeds of the sale, the execution creditor need not pay down the amount of the bid if it does not exceed the amount of his judgment; and if it does, he should only be required to pay the excess. x x x"

I

We do not believe that the ruling in the *Matias* case can be applied here, because that case involved an execution sale whereas this case concerns a sale in partition. And since the sale here was for cash ("al contado") the full amount of the bid should have been paid to the Sheriff.

It is asserted, however, that the sale to Roberto H. Tirol was made without notice and that the offer was inadequate. This contention is likewise without merit. If a sale is made by the sheriff for cash and the bidder to whom it was adjudicated fails to make immediate payment, the sheriff may sell the property anew on the same day without readvertising, even after the hours of sale have elapsed. (*Roussel vs. Hughes*, 159 La. 864, 106 So-332; *Williams vs. Simpson* 192 La. 1022, 190 So. H9). Here Jose Hautea was given up to 12 noon of August 10, within which to pay the amount of the bid. When he failed to meet that deadline, he was again given until 3 p.m. within which to make good the bid, with the warning that if the amount was not paid by then, the property would again be put on the auction block. Again he failed, making it necessary for the sheriff to resell the property.

Nor may the sale to Tirol be assailed on the ground of inadequacy of price. It is now settled that inadequacy of price, unless shocking to the conscience, is not a sufficient ground for setting aside a sale if there is no showing that, in the event of a resale, a better price can be obtained. Moran lists down a good number of cases on this point with which this case may be compared:

Director of Lands vs. Abarca, et al 61 Phil. 70, wherein property worth more than P60,000 was sold for P877.25. x x x

Bank of the Philippine Islands vs. Grece, m Phil. 491, herein property worth P60,000 was sold for P25,000; *Philippine National Bank vs. Gonzales*, 45 Phil. 693, wherein property worth P45,940 was sold for P15,000; *Guerrero vs. Guerrero*, 57 Phil. 442, wherein interests of the judgment debtor worth P8,505 were sold at P3,463; *Cu Unjieng & Sons vs. Mabalacat Sugar Co.*, 58 Phil. 439, wherein properties allegedly worth between P300,000 to P400,000 were sold for P177,000." (2 Comment in the Rules of Court 287 m 174-175 [1963]).

Even if the lot in question were valued at P40,500, its sale for P12,000 does not appear to be inadequate when compared with these cases.

II

And now we come to the appeal interposed by *Salvacion Sydeco-Tayengco* in G. R. No. L-17385. As stated before, the lower court awarded her damages for the failure of *Conchita Sydeco-Hautea* and *Mary Sydeco de Tayengco* to complete the amount of their bid. However when the case came up for review, the Court of Appeals denied damages to *Salvacion Sydeco-Tayengco* on the theory that partition sales become valid and binding only upon confirmation by the court so that before such confirmation, the bidder acquires no contract right thereunder.

We agree with the Court of Appeals that the sale must be finally confirmed for until confirmation, the bids are mere offers to purchase, the contract is not complete, and therefore, the purchaser cannot be in default thereunder. (Cf. Civil Code art. 1326) Hence, if the property is resold before the confirmation of the first sale, and the resale is

duly confirmed by the court, the original purchaser is released thereby from further liability upon his purchase, and cannot be held for the deficiency upon the resale. (30A Am. Jur. Sec. 272, 1050). Statutory recognition of this rule is found in Rule 69, section 6 of the Rules of Court which states that "none of the proceedings had before the commissioners shall be effectual to pass the title to the property or bind the parties until the court shall have accepted the report of the commissioners and rendered judgment in accordance with its recommendations."

Wherefore, the decision of the Court of Appeals is affirmed, without costs.

Bengzon, C. J., Bautista Angelo, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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