

PELAGIA ARANTE, ETC., PLAINTIFFS AND APPELLEES, VS. ARCADIO ROSEL, ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. L-5292. May 13, 1953*

Ponente: BENGZON, J.

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In this forcible entry and detainer case, the Court of First Instance of Leyte confirmed the judgment of the justice of the peace of the town of Leyte, same province, ejecting the defendants from the land in contestation. Pursuant to a writ of execution, the sheriff placed the plaintiffs in possession. However, to satisfy the award of damages and costs that officer seized another piece of land described in tax declaration No. 5467 in the name of defendant Esteban Rosel; and the notice of sale at public auction of said property was published in The Midweek Reporter on September 14, 21, and 28, 1949, respectively. Notice was also posted in the municipality of Leyte (where the land was situated) and in Tacloban, the capital of Leyte, where the property was struck down, on September 30, 1949, to the highest bidder, who turned out to be plaintiff Pelagia Arante, her offer for the land being P352.10.

No one having volunteered to redeem the property, the provincial sheriff executed, on October 10 1950 the corresponding certificate of final sale.

On January 10, 1951, Esteban Rosel filed a "Petition for relief" requesting that all the proceedings taken by the provincial sheriff be set aside on account of the following irregularities: (a) No notices were posted in three public places in Leyte, Leyte, and in Tacloban, the capital; and (b) although the assessed value of the property was P1,010 publication was not made "in a newspaper published or having general circulation in the province" once a week for twenty days before the sale.

Favourably impressed by petitioner's allegation, the district judge annulled the sale in an order dated March 13, 1951. But on March 30, 1951, the plaintiffs filed a motion for reconsideration, maintaining that the regulations about publication had been duly observed, and that the petition for relief was not allowable under Rule 38 of the Rules of Court.

Opposing the move, the defendants submitted a memorandum, reiterating the insufficiency of the notices and interposing other objections to the sale, namely: (1) the public auction took place in Tacloban, instead of the town of Leyte; (2) the price of the sale was shockingly inadequate, the value of the lot being P5,000; and (3) collusion between the sheriff and the plaintiffs.

The matter came up before another judge, who having found, there was adequate notice of the sale revoked the court's previous order of March 13, 1951. Said judge explained furthermore that the petition should be denied, first because it did not fall within the purview of Rule 38, relief being sought from acts of the sheriff, and not from orders of the Court; and second, because the defendants had already commenced a separate civil action against the plaintiffs (and the sheriff) to avoid the sale and to recover the same parcel of land.

Hence this appeal.

We have held that appeals are available against orders denying relief under Rule 38, which appellant Rosel has specifically invoked, in the discussion of his several assignments of error. However, in the light of appellees' explanations, we do not feel inclined to override the discretion which the Rule confers upon the trial judge.

One particular point is conclusive. "The relief provided for by this rule (38) is of exceptional character and is allowed only in exceptional cases: where there is no other available remedy." [1]

It appears that even before submitting the petition for relief, Esteban Rosel and his wife had already filed on November 14, 1950, a complaint against the herein plaintiffs and the provincial sheriff (Exhibit 3, civil case No. 576) alleging illegality of the auction sale of the same property, confabulation among the said defendants and damages to the Rosel spouses, and praying for annulment of such sale, restoration of the property and ample monetary compensation.

If they can prove their assertions of collusion and illegality of the public auction, the Rosels would undoubtedly be given suitable awards in that civil case No. 576. Consequently, the trial judge acted correctly in refusing to extend relief under Rule 38, for the reason that petitioners had another remedy: the civil action. (See the Rule 39, sec. 17, Rules of Court.)

Wherefore, this appeal being unmeritorious, the disputed order is affirmed, with costs. So ordered.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] Moran, Comments, 1952 Ed. Vol. I, p. 784 citing Palomares, et al. vs. Jimenez, L-4513, January 31, 1952.

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