

MARIANO BELLEZA, PLAINTIFF, AND APPELLANT, VS. ANICETO ZANDAGA AND THE PROVINCIAL SHERIFF OF LA UNION, DEFENDANTS AND APPELLEES.*G.R. No. L-8080. March 28, 1956*

Ponente: REYES, A., J.

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This is an appeal from an order of the Court of First Instance of La Union, dismissing plaintiff's complaint.

The said complaint alleges that plaintiff had become the owner of a piece of land by purchase at an execution sale, the deed of definitive sale having been issued to him on July 25, 1947; that on July 31 of that year the deputy sheriff, Emilio Cle Guzman, put him in possession of a piece of land which the barrio lieutenant, Aniceto Zandaga, pointed out as the one described in the deed but which in fact proved to be different; that upon discovering this fact and that the land bought by him and described in the deed was being occupied by Zandaga, plaintiff demanded possession thereof but the demand was refused, Zandaga claiming that he was "the successor in interest" of the judgment debtor; and that by Zandaga's willful and malicious act in concealing the identity of the property covered by the deed plaintiff was deprived of its possession and enjoyment of its fruits. The complaint pray that defendant Aniceto Zandaga be ordered to show his title to the land and that should his title prove inferior to that of plaintiff, the latter be declared the rightful owner of the property and defendant Zandaga ordered to deliver possession thereof to him, together with his share of the products of the lands, and also, to pay damages, attorney's fee and costs and furthermore to declare the provincial sheriff subsidiarily liable should his co-defendant Aniceto Zandaga be unable to pay what might be adjudged by the court.

Instead of answering the complaint, both defendants moved for dismissal on the ground that the complaint did not state a cause of action, and the motion having been granted, plaintiff appealed directly to this Court as the question involved is purely legal.

Briefly stated, the case is that of a purchaser of real property at an execution sale already in receipt of a definitive deed, who, having been prevented from taking possession of said property by an alleged successor in interest of the judgment debtor, comes to court for relief, asking that he be declared the rightful owner of the property and, consequently,, entitled to its possession and to damages.

It is settled that upon receipt of the definitive deed in an execution sale, legal title over the property sold is perfected (S3 C. J. S. 654). And this court has also held that the land bought by him and described in the deed deemed within the period allowed for that purpose, its ownership becomes consolidated in the purchaser, and the latter, "as absolute owner * * * is entitled to its possession and to receive the rents and fruits thereof." (Powell vs. Philippine National Bank, 54 Phil., 54, 63:) As the purchaser in the present case has, according to the allegations of the complaint—which are deemed hypothetically admitted by the motion to dismiss—already received the definitive deed of sale and become the owner of the property bought, he should be entitled to its possession and cannot be excluded therefrom by one, who, according to the same complaint, merely claims to be a "successor in

interest of the judgment debtor," unless it is adjudged that this alleged successor has a better right to the property than the purchaser. Such adjudication, however, would at this stage of the proceedings be premature and without basis. To dismiss the complaint now, merely upon motion, is in effect to declare that the judgment debtor's alleged successor has a better right to the property than the purchaser, a legal conclusion which cannot be deduced from the facts alleged. (See 44 Am. Jur. 77.)

It would appear that the trial court dismissed the complaint in the belief that plaintiff's remedy was under , section 32 of Rule 39, which reads:

"Sec. 32. When purchaser of property may recover price from judgment creditor. When he may have judgment revived.—The purchaser of real property sold on execution, or his successor in interest, who fails to recover possession thereof, or is evicted there from, in consequence of irregularities in the proceedings concerning the sale, or because the judgment has been reversed or set aside, or because the property sold was exempt from, execution, or because a third person has vindicated his claim to the property, may in a proper action recover from the judgment creditor the price paid, with interest, or so much thereof as has been delivered to t3ie judgment debtor, or may, on motion after notice, have the original judgment revived in his name for the whole price with interest, or so much thereof as has been delivered to the judgment debtor. The judgment so revived shall have the same force and effect as would an original judgment of the date of the revival and no more."

But while this provision of the Rules gives the purchaser of real property sold on execution who fails to recover possession thereof, or is evicted therefrom, recourse against the judgment creditor or the judgment debtor, it does , not bar him from his right to recover possession where that right has not yet been denied by the courts.

It follows that, at least as against the defendant Aniceto Zandaga, plaintiff's complaint stated a cause of action. As to the defendant provincial sheriff, there is no sufficient allegation in the complaint-to make him subsidiarily liable.

Wherefore, the order of dismissal is revoked with respect to the defendant Aniceto Zandaga and the case remanded to the court below for further proceedings. The dismissal. as to the provincial sheriff shall stand unless proper amendment to the complaint is made within the time to be fixed by the lower court.

The appellee Aniqeto Zandaga shall pay costs.

Parás, C J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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