

CONRADO POTENCIANO (DECEASED) SUBSTITUTED BY LUIS, MILAGROS, VICTOR, AND LOURDES, ALL SURNAMED POTENCIANO, PLAINTIFFS AND APPELLEES VS. NAPOLEON DINEROS AND THE PROVINCIAL SHERI...

G.R. No. L-7614. May 31, 1955

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a judgment of the Court of First Instance of Rizal, annulling an execution sale.

The trial court made the following findings of fact:

"On November 3, 1944, the Plaintiff bought from Gregorio Alcabao the parcel of land and house object of this suit, as evidenced by a deed of sale. (Appendix 'A' attached to the complaint). The following day, November 4, 1944, the plaintiff presented the deed of sale and owner's certificate of title to the Register of Deeds of Greater Manila for registration. The entry was made in the day book and the plaintiff paid the corresponding fees, amounting to P72.50 and evidenced by official receipt. (Exh. C) In entering the transaction in the entry book, the clerk who made the entry committed an error in copying the number of the certificate of title. As appearing in the entry, it is numbered at (s) TCT No. 28436, when in fact the true number of the title is 18433. There is no doubt, however, that the property sold to the plaintiff is the same as that described and covered by TCT No. 28438. In the confusion arising from the bombing of Manila, the papers presented by the plaintiff were either lost or destroyed and were not among those salvaged. Up to this time, no certificate of title has been issued to the plaintiff. Sometime in April, 1946, the defendant sued Gregorio Alcabao and his son for damages and judgment was rendered in favor of the present defendant. When the complaint was filed against said Alcabao, a writ of attachment was issued and the property in question was attached, it appearing that the property was still in the name of Gregorio Alcabao. A third-party claim was filed by the plaintiff and the discrepancy in the numbers was explained, pointing out that the description of the property as contained in the deed of sale and TCT No. 38438 tallies in every respect. The plaintiff's claim was denied, and so was his claim during the execution sale." (Pp. 49-51, Record on Appeal.)

And the record further shows that when the attachment was levied on the property in question Potenciano filed his; third party claim thereto, whereupon the sheriff required Dineros to post a bond if he did not want the property released. Dineros posted a bond, but later succeeded in having the court order the sheriff to return it to him and to disregard the third party claims on the ground that Potenciano had no right to the property attached because it was not the one purchased by him from Alcabao. When the property was later ordered sold to satisfy the judgment rendered in favor of Dineros and against Alcabao in the main case, Potenciano renewed his third party claim but, at the instance of Dineros, the same was dismissed and the sheriff ordered to proceed with the sale without need of requiring a bond from Dineros. In compliance with this order the property was sold at public auction, and, Dineros having submitted the highest bid, the sheriff, on February 10, 1951, gave him his certificate of sale and this was noted on the corresponding certificate of title two days later. Potenciano tried twice to have the proceedings in the court below annulled thru certidrari but in both cases his petition was denied by this Court.

The Rules of Court provide that a purchaser of real property at an execution sale "shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto." (Rule 39, section 24.) In other words, the purchaser acquires only such right or interest as the judgment debtor had in the property at the time of the sale. (*Cruz vs. Sandoval*, 69 Phil. 736; *Barrido vs. Barreto*, 72 Phil. 187.) It follows that if at that time the judgment debtor had no more right to or interest in the property because he had already sold it to another than the purchaser acquires nothing. Such appears to be the case here, for it is not disputed that years before the execution sale—and even before the attachment—the judgment debtor had already deeded the property and delivered his certificate of title to another, who on the following day presented the deed and certificate of title to the Register of Deeds for registration and paid the corresponding fees. The deed was entered in the day book of the Register of Deeds. In other words, it was registered. And this act of registration operated to convey the property to the buyer.

The judgment creditor contends that entry of the deed in the day book is not sufficient registration. Both upon law and authority this contention must be rejected. Section 56 of the Land Registration Act says that deeds relating to registered land shall, upon payment of the filing fee, be entered in the entry book—also called day book in the same section—with notation of the year, month, day, hour, and minute of their reception and that "they shall be regarded as registered from the moment so noted" And applying this provision in the cases of *Levin vs. Bass*[*] etc., G. R. Nos. L-4340 to 4346, decided on May 28, 1952, this Court held that "an innocent purchaser for value of registered land becomes the registered owner and in the contemplation of law the holder of a certificate thereof the moment he presents and files a duly notarized and lawful deed of sale and the same is entered on the day book and at the same time he surrenders or presents the owner's duplicate certificate of title to the property sold and pays the full amount of registration fees, because what remains to be done lies not within his power to perform."

The judgment creditor may not, as purchaser at the auction sale, invoke the protection accorded by law to purchasers in good faith, because at the time of the auction he already had notice, thru the third party claim filed by Potenciano, that the property had already been acquired by the latter from the judgment debtor.

We see no merit in the claim that the denial or dismissal of Potenciano's claim in the court below constitutes a bar to the present action. Potenciano, it is true, did not appeal from the disapproval of his claim. But it should be borne in mind that appeal is not proper in such cases. (*Queblar vs. Garduño*, 67 Phil. 316.) As was said in that case, the appeal that should be interposed "if the term 'appeal' may properly be employed, is a separate reivindicatory action against the execution creditor or the purchaser of the property after the sale at public auction, or a complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff." Such reivindicatory action is resorted to by the third party claimant by section 15 of Rule 39 despite disapproval of his claim by the court itself. (*Planas vs. Madrigal*, 94 Phil., 754; *Lara vs. Bayona*, G. R. No. L-7920, decided May 10, 1955), and it is the action availed of by Potenciano in this case.

In view of the foregoing, the decision appealed from is affirmed, with costs against the appellant.

Bengzon, Montemayor, Bautista Angela, Labrador, and Concepcion, JJ., concur.

[*] 91 Phil., 419.

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