

RUPERTO MONTINOLA, PLAINTIFF AND APPELLANT, VS. JUAN TUASON, RECEIVER FOR THE LIQUIDATORS HOLLMANN & COMPANY, AND JOSE LOCSIN, RECEIVER OF THE ATTACHED PROPERTY OF CEFERINO DOMI...

G.R. No. 10169. October 23, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Iloilo. The question presented by the plaintiff and appellant is whether or not he has a right to exercise the equity of redemption with reference to a certain piece or parcel of land sold under execution.

The facts important to the solution of the question are as follows:

First. That on the 19th day of October, 1905, Kuenzle & Streiff commenced an action in the Court of First Instance of the Province of Iloilo against Ceferino Domingo Lim for the purpose of foreclosing a certain mortgage, executed and delivered by the said Lim to Hollmann & Company on the 31st of May, 1902, for the sum of P33,174.27, with interest and costs; that Kuenzle & Streiff represented Hollmann & Company in said action. The mortgage covered a hacienda called Guadalupe, and its appurtenances.

Second. That on the 3d of February, 1906, the defendant. Ceferino Domingo Lim, answered the petition, denying generally all of the facts alleged.

Third. That on the 1st of March, 1906, and after a trial of the issues presented by the petition and the complaint, the Honorable Henry C. Bates, judge, rendered a judgment, the dispositive part of which is as follows:

"It is therefore ordered that the complaint be amended by making Juan Tuason, as receiver of Hollmann & Company, a party plaintiff, and that when so amended, judgment be entered for the plaintiff to recover the sum of P44,067.24 and his costs. This sum is due in Philippine currency.

"And it is further ordered that the same be made a mortgage lien upon the land and property described in Exhibit No. 4, and that sale of said property be made in accordance with law, in satisfaction of said judgment."

Fourth. That on the 2d of March, 1906, the original petition was amended by adding the said Juan Tuason, in his representative capacity, as the plaintiff in said cause.

Fifth. That on the 2d of March, 1906, the clerk of the Court of First Instance of the Province of Iloilo rendered a final judgment in accordance with the direction of the judge in his decision.

Sixth. That on the 2d of March, 1906, the defendant duly excepted to said judgment and presented a motion for a new trial, which motion was denied by the lower court on the 31st of March, 1906.

Seventh. That later a bill of exceptions was presented by the defendant and an appeal was regularly taken to the

Supreme Court.

Eighth. That the cause was later submitted to the Supreme Court on the 14th of January, 1908. On the 29th of January, 1908, a decision was rendered by the Supreme Court on said appeal and the judgment of the lower court was affirmed, with costs.

Ninth. That on the 2d of March, 1908, the cause was duly returned to the court from whence it came, and was received there on the 12th of March, 1908.

Tenth. That later an execution was requested by the plaintiff, for the purpose of satisfying said judgment. Evidently a writ of execution was issued sometime before the 22d of August, 1908, for the reason that on the 22d of August, 1908, the plaintiff designated certain personal and real property upon which the sheriff might levy said execution.

Eleventh. That said writ of execution was issued for the purpose of selling the property of the defendant, to pay an unpaid debt.

Twelfth. That by virtue of said writ of execution, property, real and personal, of the defendant was attached and due notice of the public sale of the same was made, and, so far as the record is concerned, the notice of the sale under said attachment was in conformity with the provisions of law.

Thirteenth. That on the 21st of November, 1910, the sheriff proceeded to sell, under and by virtue of said attachment and notice, certain real and personal property, including said hacienda Guadalupe, and did, on said day, sell the said hacienda Guadalupe to Gregorio Yulo, for the sum of P4,500, he being the highest bidder for said hacienda.

Fourteenth. That on the same day, the 21st of November, 1910, the sheriff certified that the said hacienda Guadalupe had been sold to Gregorio Yulo for the sum of P4,500 with the condition that said property was subject to the right of redemption during the period of one year from that date in accordance with the provisions of the law applicable to such a case.

Fifteenth. That on the 24th of October, 1911, the plaintiff herein, Ruperto Montinola, notified the sheriff of the Province of Iloilo that he had purchased the right of redemption of the said Ceferino Domingo Lim in the property which had been sold at public auction, and offered to pay the amount for which said property had been sold (the hacienda Guadalupe), together with all interests and costs (see page 207, record), stating that he had purchased the right of redemption belonging to Lim for the sum of P1,500; that he had purchased said right of redemption on the 12th of October, 1911, and presented the contract between himself and the said Lim as proof of his allegations (see page 210, record).

From the foregoing facts it clearly appears that while the action was originally based upon a mortgage, and that the parties had a right to collect the amount of the judgment in accordance with the provisions of the law in the collection of mortgages, yet inasmuch as they elected to collect their judgment by an ordinary execution, they are subject to the burdens which the law imposes upon that method of collecting judgments. Section 465 of Act No. 190 provides that the judgment debtor, or his successor (section 464), may redeem the property from the purchaser at any time within twelve months after the sale by paying to the purchaser the amount of his purchase, with 1 per cent per month interest thereon in addition, up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest on such last-named amount at the same rate.

The record shows that the plaintiff herein is the successor of the original judgment debtor, and that he has paid, or

offered to pay, to the purchaser or the sheriff, the amount of his purchase together with all other sums due by virtue of said section 465. Therefore, and for the reasons herein set forth, it is our opinion that the plaintiff is entitled to redeem the land in question upon complying with the provisions of the law with reference to redemption.

Therefore, the judgment of the lower court is hereby revoked, and it is hereby ordered and decreed that a judgment be entered revoking the judgment of the lower court, and that a judgment be entered giving to the plaintiff the right to redeem the parcel of land in question, and without any finding as to costs, it is so ordered.

Torres, Carson, Trent, and Araullo, JJ., concur.

Moreland, J., see concurring opinion.

CONCURRING OPINION

MORELAND, J.:

I agree to the result on the ground that Montinola purchased of the owner the hacienda in question and not on the ground that he purchased the equity of redemption merely, I have at this moment doubts, not however, yet ripened into an opinion, that the equity or right of redemption can be sold separate from the land to which it is attached. (Sec. 464, Code of Civ. Proc.) In the case at bar the trial court states that the land itself was sold to Montinola by the judgment creditor.

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