

**GAN TINGCO, PLAINTIFF AND APPELLEE, VS. SILVINO PABINGUIT.
DEFENDANT AND APPELLANT.***G.R. No. 10439. October 17, 1916*

Ponente: ARELLANO, C.J.

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It is not disputed in these proceedings that Candida Acabo was the owner of six parcels of land, all situated in the municipality of Jimalalud, Oriental Negros, of the following dimensions: The first, 8 hectares; the second, 40 ares; the third and fourth, each 20 ares; the fifth, 40 ares; and the sixth parcel, 20 ares.

According to the notarial instrument, Exhibit A, admitted in evidence without objection, these lands were sold on June 12, 1911, by their owner Candida Acabo, to one Gan Tingco, for P500.

But the purchaser Gan Tingco was unable to take possession of the six parcels of land sold him by Acabo, for they were in the possession of Silvino Pabinguit, who alleges certain rights therein. He claims to have purchased them for P375 from Faustino Abad; that Abad had become their owner through purchase from Henry Gardner; that the latter, in turn, had owned them by reason of having purchased them for P555 at a public auction held in the barrio of Martelo, municipality of Tayasan, on March 20, 1907. An effort was made to prove these facts by documents Exhibits 1, 2, and 3. Exhibit 1 is a notarial instrument, dated April 29, 1907, which purports to show that on this date Henry Gardner sold to Faustino Abad seven parcels of land for P275. Exhibit 2 is a notarial instrument which sets forth that Faustino Abad, on June 19, 1907, for the sum of P375 sold to Silvino Pabinguit six parcels of land, the area, situation and bounds of which are described in the document. Exhibit 3 is a copy which the deputy sheriff said he kept of the proceedings had by virtue of a writ of execution issued by the justice of the peace of Guijulan, in which the latter directed him to make a demand upon Candida Acabo to comply with the judgment rendered against her as a result of the complaint, filed by Silvestre Basaltos, and further ordering him, in case of her failure to comply therewith, to levy upon "fixtures and other chattels and to collect the amounts ordered, that is, P157.50, plus P300 for losses and damages, the proper costs and those of this execution." The date of the writ appears to be (for it has been corrected in an illegible manner) that of January 2, 1907, and the first execution proceedings bear the date of March 14, 1907. In the return the deputy sheriff begins by saying that he made demand upon Candida Acabo and that the latter stated that she had neither corn nor money; that he levied upon three plow carabaos, one brood caraballa and the six parcels of land in question, for their identity was expressly admitted; that their sale was announced for the 20th of March, 1907 (but the return does not show the signature of the woman upon whom the demand was made, nor does it disclose any evidence whatever to show that the owner of this property had any knowledge of this attachment or levy); that on March 20, 1907, he proceeded to sell at public auction all the property levied upon; that the justice of the peace who ordered the execution, Henry Gardner, himself appeared as the highest bidder and offered P280 for the four carabaos and P275 for all the coconut groves, that is, the six parcels of land measuring nine hectares and a fraction in area, containing bearing fruit trees, or a total sum of P555, which the said successful bidder then and there paid over; and, finally, that the same justice of the peace, Gardner, the highest bidder, himself received the sum of P157.50, the remainder of the

proceeds from the execution sale after deduction of the costs, as the person authorized so to do by the plaintiff Silvestre Basaltos; and that Gardner alone, not Basaltos nor the judgment debtor Candida Acabo, signed the record of the proceedings. Afterwards the deputy sheriff certified that the costs of the execution amounted to P52.50, and that there was a surplus of P45 to Candida Acabo's credit, which was to be delivered to her after settlement of the matter of the certificates of ownership and the arrangement of the transfer of the carabaos. These proceedings were signed only by the deputy sheriff and recite that "by authorization of Candida Acabo I have delivered the sum of P29 as the true balance in favor of the said Candida Acabo, of the P45 mentioned in the preceding statement, from which latter sum there has been deducted the amount of P16 which was paid to the treasurer of this municipality on the following accounts: Fine, P8; certificate of ownership, P4; and certificate of transfer, P4." In that manner was the record closed and it was not signed by any other person than the deputy sheriff, Alejandro Sanchez.

The justice of the peace, Gardner, and the deputy sheriff, Sanchez, were summoned to appear in the trial court on March 18, 1914. Sanchez did not put in an appearance, and on being required by telegraph to explain the reason and show why he should not be punished for contempt of court, he wired back, saying: "From 12th to 18th instant was making investigations attempted rape and theft. Will arrive there Monday, 23d. Will have enough time to finish investigation," and on the day for the hearing he presented the document Exhibit 3, referred to in the preceding paragraph.

Henry Gardner, in testifying for the defense, stated that the deputy sheriff had executed in Gardner's favor a certificate of his purchase at auction sale, but witness did not know where the document was and did not need it because he, in turn, has sold everything he had purchased at that sale; that he was formerly justice of the peace of the municipality of Guijulan, of Tayasan, and knew of a complaint by Silvestre Basaltos against Candida Acabo; that afterwards when the auction was held, he took part therein, but that as he subsequently learned that he was forbidden to do so, he sold what he had purchased to Faustino Abad, Candida Acabo's son, who was but a boy at the time; that the writ of execution was returned to him and he made a record of the matter; that he had it in the justice of the peace court and left it there when he ceased to hold office, in 1909.

Faustino Abad testified that Henry Gardner did actually sell to him for P275 the coconut groves which Gardner had purchased at auction; that it was true that on April 29, 1907, witness was only 19 years old; that he knew that the coconut groves were those that had belonged to his mother Candida Acabo; and that he, in turn, sold the said coconut groves to Silvino Pabinguit for P375, on June 19 of the same year. Both Gardner's deed of sale to Abad and the latter's to Pabinguit were certified by the same deputy sheriff Alejandro Sanchez as notary public of the municipality of Tayasan.

This same Alejandro Sanchez, being then the justice of the peace of Tayasan, testified as a witness for the defense. He began by recognizing the aforesaid deeds as having been certified by him in his capacity of notary public of Tayasan, and afterwards stated that he had something to do with a writ of execution issued by the justice of the peace of Guijulan, Henry Gardner, upon certain real estate belonging to Candida Acabo (it does not so appear in the writ, wherein only fixtures and other chattels are referred to); that, in consideration of the P555 which Gardner paid at the time of the auction, witness, without any reservation whatsoever, delivered to Gardner the carabaos and lands knocked down to him at the sale; and that after he had received from Gardner the purchase price he returned it to him, just as he would have delivered it to the plaintiff Silvestre Basaltos, of whom Gardner claimed to be the representative duly authorized as such by this plaintiff.

Candida Acabo testified that Alejandro Sanchez, while sheriff of Tayasan, did not take possession of her lands by reason of the levy; that the only property which he levied upon was four carabaos, and she did not know whether they had been sold at auction; and that Sanchez had not told her that her lands had been levied upon, or that they

had been sold at auction.

Silvino Pabinguit testified that in the month of February he was in Guijulngan searching for the record of the auction sale of Candida Acabo's property; that four persons made the search; and * * * the record was not found. This last statement was made by Alejandro Sanchez.

The Court of First Instance of Oriental Negros rendered judgment in behalf of the plaintiff, Gan Tingco, declaring him the owner of the lands described in the complaint, and ordered the defendant, Silvino Pabinguit, to restore the plaintiff to their possession. No express finding was made as to the costs.

The defendant appealed, with right to a review of the evidence. The appeal was heard by this court, it having been brought before it by bill of exceptions.

The appellant alleges that the trial court erred in holding that, notwithstanding the sale of the lands in question at public auction, Candida Acabo did not cease to be the owner of these properties, because there were certain irregularities and defects in the said auction.

In the judgment appealed from several of these defects are specified and it is unnecessary to treat of them in detail. With respect to the legality of the proceedings had up to the time of the sale of the lands, there is certainly room for doubt. No evidence is found that Silvestre Basaltos filed any complaint against Candida Acabo before the justice of the peace court of Guijulngan and that any judgment was rendered on January 2, 1907, enabling the plaintiff to recover from the defendant 150 cavanos of corn, or in default thereof the sum of P157.50, and in addition P300 for losses and damages and court costs. Only the writ of execution appears in the record. The original copy of the return to the writ of execution was not presented, because it was not found; there was offered in evidence only what the sheriff said was a copy of the return, and he delayed as long in presenting it as he did in obeying the summons of the court to appear as a witness. No copy of that judgment was delivered to the judgment debtor, in violation of the provisions of section 446 of Act No. 190. The sheriff sold lands belonging to the judgment debtor, and it does not appear that the provisions of section 445 of the same Act were complied with, to wit, that if real estate be levied upon and sold by virtue of the execution, the clerk must record the execution and the officer's return thereon and certify the same under his hand, as true copies, in a book to be called the "Execution Book." The justice of the peace, in his writ, certainly did not order the levy upon or sale of real estate, but only fixtures and other chattels; but the sheriff's return includes real estate levied upon and sold at public auction. The purchaser at public auction, the same justice of the peace, could not exhibit the instrument which he said the sheriff executed in his behalf, because, as he said, he did not know where it was and that he did not need it. We are not sure that Candida Acabo, a simple country woman, was not despoiled of her lands under the pretexts of debt, judgment, and execution.

Leaving out of account that things which should have been proven at trial were not proven, it is a positive fact that Henry Gardner, justice of the peace of Guijulngan, was the purchaser at public auction of Candida Acabo's lands and carabaos levied upon as a result of the judgment, and that he delivered the price of the sale, P555, to the sheriff; but the latter returned this sum to the justice of the peace, who said that he was authorized by Silvestre Basaltos, the supposed creditor, to receive the same. At the finish the sheriff delivered nothing to the owner Acabo, all the proceeds of the auction sale having been expended in one way or another without the consent of the judgment debtor appearing of record.

Aside from everything else, the trial court was impressed by the circumstance that in the public auction the purchaser was the justice of the peace himself. This, in the judge's opinion, was unauthorized, because article 1459, No. 5, of the Civil Code, prohibits judges from acquiring by purchase, even at public or judicial sale, either in person or by an agent, any property or rights litigated in the court in the jurisdiction or territory within which

they exercise their respective duties; this prohibition includes the taking of property by assignment.

The appellant alleges that the property purchased by justice of the peace Gardner was not the subject of litigation in the justice court; that the action was to recover a certain sum of money, and that he had ordered the property sold on execution.

This raises, therefore, a question as to the true meaning of paragraph 5 of article 1459 of the Civil Code.

The Ley de Bases, in accordance with which the Civil Code was enacted, provides as follows, in Base No. 26:

"The forms, requirements and conditions of each particular contract shall be determined and defined subject to the general list or table of obligations and their effects, with the understanding that the legislation in force and the legal principles evolved therefrom by judicial decisions, etc., etc., shall serve as a basis."

One of the bodies of law which constitute the legislation now in force is the Novisima Recopilacion. In Law 4, Title 14, Book 5 of the same is found the following provision: "We order that in public auctions held by direction of our alcaldes, neither the latter nor any other person whomsoever in their name shall bid in anything sold at such public auctions." The word alcaldes means judges. The caption of Title 14 is "Alcaldes or Provincial Judges," and the entire title deals with the exercise of judicial jurisdiction. Prior to the enactment of the Civil Code, the Penal Code was also in force. Article 400 of the latter prohibits, under penalty, any judge from taking part, either directly or indirectly, in any operation of exchange, trade or profit with respect to things not the product of his own property, within the territory over which he exercises jurisdiction. Judging from the legal precedents on which the Civil Code is based, it would not seem too much to conclude that the said article of the Civil Code does not make any distinction between property in litigation. In effect, it appears to be as delicate a matter for a judge to take part in the sale of property that had been the subject of litigation in his court, as to intervene in the auction of property which, though not directly litigated in his court, is nevertheless levied upon and sold as the result of a writ of execution issued by him. What the law intends to avoid is the improper interference with and interest of a judge in a thing levied upon and sold by his order.

If under the law Gardner was prohibited from acquiring the ownership of Acabo's lands, then he could not have transmitted to Faustino Abad the right of ownership that he did not possess; nor could Abad, to whom this alleged ownership had not been transmitted, have conveyed the same to Pabinguit. What Gardner should have done, in view of the fact that the sale, as he finally acknowledged, was void, was to claim the price that had been deposited in court, and the justice of the peace of Guijulan should have declared the auction void and have ordered a new sale to be held, besides correcting the errors that had been committed in the proceedings. To the reasons already stated, there is to be added the additional one, with respect to the sale made by Faustino Abad to Silvino Pabinguit, that Abad was a minor at the time—a circumstance that deprived him of capacity to sell (Civil Code, art. 1263). Abad had no ownership to transmit to anyone and, besides, he had no personality to enable him to contract by himself, on account of his lack of legal age.

Sanchez, the sheriff, the sole notary who certified all these deeds of conveyance in order that Pabinguit might become owner of those coconut lands with which his own lands adjoined, was in such a hurry that, as he testified at the trial, on the very same day of the auction he had already executed in behalf of Henry Gardner the final deed of sale of the said lands, without allowing time for their possible redemption. Section 466 of Act No. 190 prescribes that if redemption has not been requested, this deed is to be executed within the twelve months subsequent to the sale.

This court finds no reason whatever why it should not affirm the judgment appealed from. It is therefore hereby affirmed with the costs of this instance against the appellant. So ordered.

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

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