

VICENTA JALBUENA, PLAINTIFF AND APPELLANT, VS. SALVADOR LIZARRAGA ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 10599. December 24, 1915*

Ponente: TRENT, J.

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On May 22, 1903, Salvador Lizarraga, as judgment creditor, caused the sheriff of the Province of Iloilo to levy upon an old sugar-mill as the property of Ildefonso Doronila, the judgment debtor and husband of the plaintiff. At the time of the levy Doronila stated to the sheriff that the mill belonged to him. The sale took place about the last of July, 1913. The purchaser at this public sale sold the mill to Lopez. The present action was instituted on November 26, 1913, by the plaintiff for the purpose of recovering the mill or its value upon the ground that the same was her exclusive property and that her husband had no interest therein. From a judgment dismissing the cause after a hearing on the merits, the plaintiff appealed.

The plaintiff knew that the old sugar-mill had been levied upon at the time the levy was made and also knew that it would be sold as the property of her husband. Notwithstanding these facts, she stood by and permitted the sale to go forward without making the slightest protest or claim until the property had passed into the hands of Lopez. Upon these facts the trial court held that the plaintiff was estopped from asserting her claim of ownership against the defendants, or either of them.' This holding is assigned as an error, and in support of this alleged error the plaintiff cites and relies upon the doctrine enunciated by this court in the cases of *Waite vs. Peterson* (8 Phil. Rep., 449); *Lopez vsr Alvarez* (9 Phil. Rep., 28); *Uy Piaoco vs. Osmena* (9 Phil. Rep., 299) ; *Ariston vs. Cea* (13 Phil. Rep., 109); and *Bonzon vs. Standard Oil Co. and Osorio* (27 Phil. Rep., 141).

An examination of the above cited cases will show that they do not support the plaintiff's contention. In the first case the interested party made a demand upon the sheriff for the return of the property levied upon. The second case had to do with the question of preferred creditors. In the third case there was also a claim made upon the sheriff for the return of the property soon after it was attached. In the fourth case there was likewise a claim made upon the sheriff for the release of the property before it was sold under execution. In the last case the court used the following language: "In this jurisdiction, under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of the land sold as the property of a judgment debtor after it has been made to appear that the judgment debtor had no title to the land and that the purchaser had failed to secure title thereto, and we find no difficulty, therefore, in accepting a liberal construction of the statute which arrives at the same equitable result." This is a correct statement of the law; but it has nothing to do with the question of estoppel.

An execution is an order to the sheriff to attach and sell the property of the judgment debtor. If he sells the property of another person, he exceeds his authority and the true owner may sue in trespass for damages or for the recovery of the property, provided he has not lost his right to do so by his own conduct. Upon this point, the rule is stated in 16 Cyc, 764, thus: "When a person having title to or an interest in property knowingly stands by and suffers it to be sold under a judgment or decree, without asserting his title or right or making it known to the

bidders, he cannot afterward set up his claim." (Citing a long array of cases from Florida, Georgia, Illinois, Kentucky, South Carolina, New York, North Carolina, Pennsylvania, and Conklin vs. Wehrman, 38 Fed., 874.)"

Bigelow on Estoppel says: "* * * it is now a well-established principle that where the true owner of property, for however short a time, holds out another, or, with knowledge of his own right, allows another to appear, as the owner of or as having full power of disposition over the property, the same being in the latter's actual possession, and innocent third parties are thus led into dealing with some [such] apparent owner, they will be protected." (Quoted with approval in the case of *Hernaez vs. Hernaez*, 32 Phil. Rep., 214.)

The foregoing quotations from Cyc. and Bigelow are in harmony with No. 1 of section 333 of the Code of Civil Procedure, wherein it is provided that—"Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

The phrase "stood by" does not import an actual presence, but implies knowledge under such circumstances as to render it the duty of the possessor to communicate it. The herein plaintiff had, as we have indicated, full knowledge of the fact that the property was going to be sold to pay the debts of her husband. She did not communicate her claim to the purchaser, and it is now too late to assert such a claim.

For the foregoing reasons, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Arellano, C.J., Torres, Johnson, Carson, and Araullo, JJ., concur.

Judgment affirmed.

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