

SANTOS EVANGELISTA, PETITIONER, VS. ALTO SURETY & INSURANCE CO., INC., RESPONDENT.*G. R. No. 11139. April 23, 1958*

Ponente: CONCEPCION, J.

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This is an appeal by certiorari from a decision of the Court of Appeals.

Briefly, the facts are: On June 4, 1949, petitioner herein, Santos Evangelista, instituted Civil Case No. 8235 of the Court of First Instance of Manila, entitled "Santos Evangelista vs. Ricardo Rivera," for a sum of money. On the same date, he obtained a writ of attachment, which was levied upon a house, built by Rivera on a land situated in Manila and leased to him, by filing copy of said writ and the corresponding notice of attachment with the Office of the Register of Deeds of Manila, on June 8, 1949. In due course, judgment was rendered in favor of Evangelista, who, on October 8, 1951, bought the house at public auction held in compliance with the writ of execution issued in said case. The corresponding definite deed of sale was issued to him on October 22, 1952, upon expiration of the period of redemption. When Evangelista sought to take possession of the house, Rivera refused to surrender it, upon the ground that he had leased the property from the Alto Surety & Insurance Co., Inc.—respondent herein—and that the latter is now the true owner of said property. It appears that on May 10, 1952, a definite deed of sale of the same house had been issued to respondent, as the highest bidder at an auction sale held, on September 29, 1950, in compliance with a writ of execution issued in Civil Case No. 6268 of the same court, entitled "Alto Surety & Insurance Co., Inc. vs. Maximo Quiambao, Rosario Guevara and Ricardo Rivera," in which judgment, for the sum of money, had been rendered in favor of respondent herein, as plaintiff therein. Hence, on June 13, 1953, Evangelista instituted the present action against respondent and Ricardo Rivera, for the purpose of establishing his (Evangelista) title over said house, and securing possession, thereof, apart from recovering damages.

In its answer, respondent alleged, in substance, that it has a better right to the house, because the sale made, and the definite deed of sale executed, in its favor, on September 29, 1950 and May 10, 1952, respectively, precede the sale to Evangelista (October 8, 1951) and the definite deed of sale in his favor (October 22, 1952). It, also, made some special defenses which are discussed hereafter. Rivera, in effect, joined forces with respondent. After due trial, the Court of First Instance of Manila rendered judgment for Evangelista, sentencing Rivera and respondent to deliver the house in question to petitioner herein and to pay him, jointly and severally, forty pesos (P40.00) a month from October, 1952, until said delivery, plus costs.

On appeal taken by respondent, this decision was reversed by the Court of Appeals, which absolved said respondent from the complaint, upon the ground that, although the writ of attachment in favor of Evangelista had been filed with the Register of Deeds of Manila prior to the sale in favor of respondent, Evangelista did not acquire thereby a preferential lien, the attachment having been levied as if the house in question were immovable property, although, in the opinion of the Court of Appeals, it is "ostensibly a personal property," As such, the Court of Appeals held, "the order of attachment * * * should have been served in the manner provided in

subsection (e) of section 7 of Rule 59," of the Rules of Court, reading:

"The property of the defendant shall be attached by the officer executing the order in the following manner:

"(e) Debts and credits, and other personal property not capable of manual delivery, by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, or with his agent, a copy of the order, and a notice that the debts owing by him to the defendant, and the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such order." (Italics ours.)

However, the Court of Appeals seems to have been of the opinion, also, that the house of Rivera should have been attached in accordance with subsection (c) of said section 7, as "personal property capable of manual delivery, by taking and safely keeping in his custody", for it declared that "Evangelista could not have * * * validly purchased Ricardo Rivera's house from the sheriff as the latter was not in possession thereof at the time he sold it at a public auction."

Evangelista now seeks a review, by certiorari, of this decision of the Court of Appeals. In this connection, it is not disputed that although the sale to the respondent preceded that made to Evangelista, the latter would have a better right if the writ of attachment, issued in his favor before the sale to the respondent, had been properly executed or enforced. This question, in turn, depends upon whether the house of Ricardo Rivera is real property or not. In the affirmative case, the applicable provision would be subsection (a) of section 7, Rule 59 of the Rules of Court, pursuant to which the attachment should be made "by filing with the registrar of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any there be."

Respondent maintains, however, and the Court of Appeals held, that Rivera's house is personal property, the levy upon which must be made in conformity with subsections (c) and (e) of said section 7 of Rule 59. Hence, the main issue before us is whether a house, constructed by the lessee of the land on which it is built, should be dealt with, for purposes of attachment, as immovable property, or as personal property.

It is our considered opinion that said house is not personal property, much less a debt,¹ Credit or other personal property not capable of manual delivery, but immovable property.. As explicitly held, in *Laddera vs. Hodges* (48 Off. Gaz., 5374), "a true building (not merely superimposed on the soil) is immovable or real property, whether it is erected by the owner of the land or by a usufructuary or lessee. This is the doctrine of our Supreme Court in *Leung Yee vs. Strong Machinery Company*, 37 Phil., 644. And it is amply supported by the rulings of the French Court * * *."

It is true that the parties to a deed of chattel mortgage may agree to consider a house as personal property for purposes of said contract (*Luna vs. Encarnacion*,⁴⁸ Off. Gaz., 2664; *Standard Oil Co. of New York vs. Jaramillo*, 44 Phil., 630; *De Jesus vs. Juan Dee Co., Inc.*, 72 Phil., 464). However, this view is good only insofar as the contracting parties are concerned. It is based, partly, upon the principle of estoppel. Neither this principle, nor said view, is applicable to strangers to said contract. Much less is it in point where there has been no contract whatsoever, with respect to the status of the house involved, as in the case at bar. Apart from this, in *Manarang vs. Ofilada* (99 Phil., 108; 52 Off. Gaz., 3954), we held:

"The question now before us, however, is: Does the fact that the parties entering into a contract regarding a house gave said property the consideration of personal property in their contract, bind the sheriff in advertising the property's sale at public auction as personal property? It is to be remembered that in the case at bar the action was to collect a loan secured by a chattel mortgage on the house. It is also to be remembered that in

practice it is the judgment creditor who points out to the sheriff the properties that the sheriff is to levy upon in execution, and the judgment creditor in the case at bar is the party in whose favor the owner of the house had conveyed it by way of chattel mortgage and, therefore, knew its consideration as personal property.

"These considerations notwithstanding, we hold that the rules on execution do not allow, and we should not interpret them in such a way as to allow, the special consideration that parties to a contract may have desired to impart to real estate, for example, as personal property, when they are not ordinarily so. Sales on execution affect the public and third persons. The regulation governing sales on execution are for public officials to follow. The form of proceedings prescribed for each kind of property is suited to its character, not to the character which the parties have given to it or desire to give it. When the rules speak of personal property, property which is ordinarily so considered is meant; and when real property is spoken of, it means properly which is generally known, as real property. The regulations were never intended to suit the consideration that parties may have privately given to the property levied upon. Enforcement of regulations would be difficult were the convenience or agreement of private parties to determine or govern the nature of the proceedings. We, therefore, hold that the mere fact that a house was the subject of a chattel mortgage and was considered as personal property by the parties does not make said house personal property for purposes of the notice to be given for its sale at public auction. This ruling is demanded by the need for a definite, orderly and well-defined regulation for official and public guidance and which would prevent confusion and misunderstanding.

"We, therefore, declare that the house of mixed materials levied upon on execution, although subject of a contract of chattel mortgage between the owner and a third person, is real property within the purview of Rule 39, section 16, of the Rules of Court as it has become a permanent fixture of the land, which is real property. (42 Am. Jur. 199-200; *Leung Yee vs. Strong Machinery Co.*, 37 Phil., 644; *Republic vs. Ceniza, et al.*, 90 Phil., 544; *Ladera, et al. vs. Hodges, et al.*, [C.A.], 48 Off. Gaz., 5374.)" (Italics ours.)

The foregoing considerations apply, with equal force, to the conditions for the levy of attachment, for it similarly affects the public and third persons.

It is argued, however, that, even if the house in question were immovable property, its attachment by Evangelista was void or ineffective, because, in the language of the Court of Appeals, "after presenting a copy of the order of attachment in the Office of the Register of Deeds, the person who might then be in possession of the house, the sheriff took no pains to serve Ricardo Rivera, or other copies thereof." This finding of the Court of Appeals is neither conclusive upon us, nor accurate.

The Record on Appeal, annexed to the petition for certiorari, shows that petitioner alleged, in paragraph 3 of the complaint, that he acquired the house in question "as a consequence of the levy of an attachment and execution of the judgment in Civil Case No. 8235" of the Court of First Instance of Manila. In his answer (paragraph 2), Ricardo Rivera admitted said attachment and execution of judgment. He alleged, however, by way of special defense, that the title of respondent "is superior to that of plaintiff because it is based on a public instrument," whereas Evangelista relied upon a "promissory note" which "is only a private instrument"; that said public instrument in favor of respondent "is superior also to the judgment in Civil Case No. 8235"; and that plaintiff's claim against Rivera amounted only to P866, "which is much below the real value" of said house, for which reason it would be "grossly unjust to allow plaintiff to acquire the property for such an inadequate consideration". Thus, Rivera impliedly admitted that his house had been attached, that the house had been sold to Evangelista in accordance with the requisite formalities, and that said attachment was valid, although allegedly inferior to the rights of respondent, and the consideration for the sale to Evangelista was claimed to be inadequate.

Respondent, in turn, denied the allegation in said paragraph 3 of the complaint, but only "for the reasons stated in its special defenses" namely: (1) that by virtue of the sale at public auction, and the final deed executed by the

sheriff in favor of respondent, the same became the "legitimate owner of the house" in question; (2) that respondent "is a buyer in good faith and for value"; (3) that respondent "took possession and control of said house"; (4) that "there "was no valid attachment by the plaintiff and/or the Sheriff of Manila of the property in question as neither took actual or constructive possession or control of the property at any time"; and (5) "that the alleged registration of plaintiff's attachment, certificate of sale and final deed in the Office, of Register of Deeds, Manila, if there was any, is likewise, not valid as there is no registry of transactions' covering houses erected on land belonging to or leased from another." In this manner, respondent claimed a better right, merely under the theory that, in case of double sale of immovable property, the purchaser who first obtains possession in good faith, acquires title, if the sale has not been "recorded * * * in the Registry of Property" (Art. 1544, Civil Code of the Philippines), and that the writ of attachment and the notice of attachment in favor of Evangelista should be considered unregistered, "as there is no registry of transactions covering houses erected on land belonging to or leased from another." In fact, said article 1544 of the Civil Code of the Philippines, governing double sales, was quoted on page 15 of the brief for respondent in the Court of Appeals, in support of its fourth assignment of error therein, to the effect that it "has preference or priority over the sale of the same property" to Evangelista.

In other words, there was no issue on whether copy of the writ and notice of attachment had been served on Rivera. No evidence whatsoever, to the effect that Rivera had not been served with copies of said writ and notice, was introduced in the Court of First Instance. In its brief in the Court of Appeals, respondent did not aver, or even intimate, that no such copies were served by the sheriff upon Rivera. Service thereof on Rivera had been impliedly admitted by the defendants, in their respective answers, and by their behaviour throughout the proceedings in the Court of First Instance, and, as regards respondent, in the Court of Appeals. In fact, petitioner asserts in his brief herein (p. 26) that copies of said writ and notice were delivered to Rivera, simultaneously with copy of the complaint, upon service of summons, prior to the filing of copies of said writ and notice with the register of deeds, and the truth of this assertion has not been directly and positively challenged or denied in the brief filed before us by respondent herein. The latter did not dare therein to go beyond making a statement—for the first time in the course of these proceedings, begun almost five (5) years ago (June 18, 1953)—reproducing substantially the aforementioned finding of the Court of Appeals and then quoting the same.

Considering, therefore, that neither the pleadings, nor the briefs in the Court of Appeals, raised an issue on whether or not copies of the writ of attachment and notice of attachment had been served upon Rivera; that the defendants had impliedly admitted—in said pleadings and briefs, as well as by their conduct during the entire proceedings, prior to the rendition of the decision of the Court of Appeals—that Rivera had received copies of said documents; and that, for this reason, evidently, no proof was and introduced thereon, we are of the opinion, and so hold that the finding of the Court of Appeals to the effect that said copies had not been served upon Rivera is based upon a misapprehension of the specific issues involved therein and goes beyond the range of such issues, apart from being contrary to the aforementioned admission by the parties, and that, accordingly, a grave abuse of discretion was committed in making said finding, which is, furthermore, inaccurate.

Wherefore, the decision of the Court of Appeals is hereby reversed, and another one shall be entered affirming that of the Court of First Instance of Manila, with the costs of this instance against respondent, the Alto Surety & Insurance Co., Inc. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

*91 Phil., 531

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