

SANTIAGO CODESAL AND AQUILINA OCAMPO, PLAINTIFFS AND APPELLEES, VS. ROMANA ASCUE, ADMINISTRATRIX OF THE ESTATE OF PEDRO MARTINEZ, DECEASED, DEFENDANT AND APPELLANT.

G.R. No. 11403. October 28, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

This appeal presents two questions:

- (1) Are the facts stated in the complaint sufficient to justify the granting (a) of a preliminary injunction; and (b) of a final or perpetual injunction?
- (2) Are the plaintiffs and appellees the owners of the parcel of land described in the complaint?

The lower court, in a very carefully prepared opinion, answered both of said questions in the affirmative. From that judgment the defendant appealed and presented, through her assignments of error, the above questions.

The facts involved in the present litigation may be stated as follows:

- (1) That some time prior to the commencement of the present action, Romana Ascue, as administratrix of the estate of Pedro Martinez, deceased, commenced an action in the Court of First Instance of the city of Manila, known as cause No. 7373 against Matias Caoibes et al., to recover a sum of money;
- (2) That in said action (No. 7373) a judgment was rendered in favor of the plaintiff and against the defendants, for a sum of money;
- (3) That upon said judgment an execution was issued and placed in the hands of the sheriff; that the sheriff, at the direction of the plaintiff in said action (No. 7373) attached a certain piece or parcel of land particularly described in paragraph 2;
- (4) That the plaintiffs herein being informed of said attachment, and alleging that they were the owners of said parcel of land, notified the sheriff of that fact; that said notice was given in accordance with the requirements of the law; that notwithstanding said notice the sheriff persisted in his determination to sell said parcel of land under said execution, the defendant herein having executed and delivered to the sheriff the bond required by law.

Due to the persistence of the sheriff in his determination to sell said parcel of land under said execution, the present action was commenced for the purpose of enjoining him from executing said sale. The Court of First Instance granted a temporary injunction upon the presentation of the petition, and after hearing the respective parties, and after having reached the conclusion that the plaintiffs were the absolute owners of said parcel of land, made said temporary injunction final. From that judgment the defendant appealed to this court and presented the questions above indicated.

After a careful examination of the evidence, we are persuaded that a preponderance of the same fully sustains the

conclusion of the lower court, to wit, that the plaintiffs are the owners in fee simple of the parcel of land in question. That being true, was the lower court justified in granting an injunction prohibiting the sale of the same, under an execution, against persons other than the plaintiffs? That question seems to be so fully and completely answered by attorney for the appellees, by his argument and citation of authorities in his reply brief, that little else need be said except to add that section 164 of Act No. 190 amply justified the court in issuing the extraordinary equitable remedy of injunction when it was made to appear that the sheriff, under a writ of execution, was threatening to sell the property of A to pay the debt of B. The court was fully justified, when that question was presented, in granting a preliminary injunction and when the fact was fully established, in making the temporary injunction final. (*Arbotante vs. Tan Bunjua*, 21 Phil. Rep., 530, 549.)

A sheriff has no authority to attach the property of any person except that of the judgment debtor. If he does so the writ affords him no justification, for the act is not in obedience to the mandate of the writ of execution. (*Rhodes vs. Patterson*, 3 Cal, 469.)

An execution against the goods of A gives no authority to the sheriff to take the goods of B. So long as the officer confines his acts to the authority of the process he is not liable, but all of his acts which are not justified by the writ are without authority of law. The inevitable consequence, therefore, of the principle that no man shall touch the property of another without the permission of the owner or the sanction of the law, is that no plea of exemption or station, however exalted or consecrated, can exonerate a trespasser. This principle is conservative of property. Without its integrity and universality, private rights would be insecure and the law would be unequal and tyrannical. The sovereign power of the State, with its eminent domain, cannot take from the humblest citizen his property for public use, without allowing him just compensation. If an execution against one man would excuse the sheriff for taking and selling the property of another, every citizen would be at his mercy and none could call his estate his own. (*Boulware vs. Craddock*, 30 Cal., 190; *Lammon vs. Feusier*, 11 U. S., 17; *City of Newton vs. Levis*, 79 Fed..Rep., 715.)

A preliminary injunction maintaining the status quo may properly issue whenever the questions of law or of fact to be ultimately determined in a suit are grave and difficult, and injury to the moving party will be immediate, certain and great, if it is denied, while the loss or inconvenience to the opposing party will be comparatively small or insignificant if it is granted. An injunction may be granted when the commission or continuance of some act complained of during the litigation would probably work injustice, or that the acts complained of are in violation of the plaintiff's rights. (*City of Newton vs. Levis*, supra.)

The injunction in the present case was not an attempt to try title of real property, but an effort on the part of the plaintiffs to protect their rights under an absolute title already acquired. While it is true that the plaintiffs might have permitted the sheriff to have sold their property for the purpose of paying the debts of another and have resorted to an action upon the sheriff's bond, yet, in our opinion, the plaintiffs were justified in seeking the remedy which they obtained in the present case for the purpose of saving their property, and for the purpose of preventing a cloud being cast upon it.

From all of the foregoing, we are persuaded that the judgment of the lower court should be and is hereby affirmed, with costs. So ordered.

Torres, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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