MANOLET LAVIDES, PETITIONER, VS. ERNESTO B. PRE, IN HIS PERSONAL AND OFFICIAL CAPACITY AS DEPUTY SHERIFF OF PASAY CITY, THE CITY SHERIFF OF PASAY CITY, VIMARCO, INC., AND COURT ...

G.R. No. 127830. October 17, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review of the decision of the Court of Appeals dated October 10, 1996, in CA-G.R. CV No. 47710. Said decision affirmed the judgment of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, in Civil Case No. 1719-G. Also for review is the Court of Appeals' resolution dated January 21, 1997, denying petitioner's motion for reconsideration.

The facts as found by the trial court and adopted by the appellate court are as follows:

> Plaintiff Manolet Lavides purchased the six (6) properties, subject of this action, from the spouses Policarpio Castro and Natalia Dy Castro, who executed the following documents: (a) `Kasulatan ng Biling Mabibiling Muli' dated March 8, 1975 (Exh. `A'), relative to the parcel of land covered by Transfer Certificate of Title No. T-34702, of the land records of Quezon (Exh. `1'), and (b) `Kasulatan ng Biling Mabibiling Muli' dated April 1, 1975 (Exh. `B'), covering the properties registered under Transfer Certificate of Titles (sic) Nos. T-88030 (Exh. `2'); T-104900 (Exh. `3'); T-75611 (Exh. `4'); T-83936 (Exh. `5') and T-97768 (Exh. `6'), all of the land records of Quezon Province. These two (2) deeds of pacto de retro sale (Exhs. `A' & `B'), were not registered nor annotated on the titles of the subject properties.
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> On May 10, 1976, Vimarco, Inc., filed with the Court of First Instance (CFI) of Rizal, Pasay City, Branch XXXVIII a complaint against the spouses Policarpio Castro and Natalia Dy Castro, for (a) sum of money with damages with petition for preliminary attachment, and this was docketed as Civil Case No. 5122-P.
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> On May 28, 1976, said Court of First Instance issued an ex-parte order for a writ of preliminary attachment. Pursuant to said order, defendant Vimarco, Inc. caused its registration on the certificates of titles over subject properties with the Register of Deeds of Quezon Province.
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> On June 25, 1976, defendants in Civil Case No. 5122-P, filed a motion to dissolve the aforementioned writ. No resolution was rendered on said motion to dissolve.
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> On October 13, 1976, acting on defendant Vimarco's motion for judgment on the pleadings, the CFI of Rizal rendered its decision in Civil Case No. 5122-P in favor of defendant Vimarco, Inc., and against Policarpio Castro and Natalia Dy Castro. This was appealed to the Court of Appeals by said spouses,[1] but on June 3, 1977, the appellate court promulgated its decision in favor of defendant Vimarco, Inc. The spouses Castro went to the Supreme Court on a petition for certiorari and mandamus[2] and on July 29, 1983, the Supreme Court rendered its decision dismissing said petition.[3]
>
> Thus, the decision in Civil Case No. 5122-P having become final and executory, the RTC of Pasay City, upon

> application by Vimarco, Inc., issued an order of execution dated November 29, 1983. In pursuance of said order of execution, defendant Deputy Sheriff Ernesto B. Pre in representation of the City Sheriff of Pasay City, caused a `Sheriff's Notice of Auction Sale on Execution Upon Real Properties', which was issued and published in the "Mabuhay News" on December 16, 23, and 30, 1983. Auction sale on properties attached by the deputy Sheriff of Pasay City was first scheduled for January 10, 1984. However, on said date, plaintiff served on said defendants a third-party claim (Exh, `B-1') over the properties covered by TCT Nos. T-34702, T-88030, T-104900, T-75611, T-83936, and T-97768, proposed to be sold at said auction sale. The auction sale was postponed for January 17, 1984.
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> Before the auction sale could proceed, plaintiff filed a separate action (Civil Case No. 1719-6) before this Court (RTC of Gumaca, Quezon, Branch 61) to assert his claim on subject properties praying that a preliminary injunctive writ be issued to maintain the status quo. Accordingly, a restraining order dated January 16, 1984, was issued and served on defendant Deputy Sheriff, on January 17, 1984, before the scheduled auction sale could be made on subject properties. The auction sale proceeded with respect to properties not claimed in this action. On March 20, 1984, this Court issued a writ of preliminary injunction.
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> The trial court then proceeded to receive evidence from the opposing parties in order to resolve the issue of which takes legal precedence: (1) the levy of the subject properties by virtue of a duly registered writ of attachment; or (2) the unregistered documents of pacto de retro sale executed before the said levy. [4]

On August 31, 1984, the RTC of Gumaca, Quezon, Branch 61, issued its decision. Its decretal portion reads:

WHEREFORE, judgment is hereby rendered against the plaintiff, and in favor of the defendant, as follows:

> (a) Dissolving the writ of preliminary injunction previously issued; consequently, the City Sheriff of Pasay City or any of his deputy (sic), can now proceed with the auction sale of the subject properties;
>
> (b) Dismissing the complaint; and
>
> (c) Dismissing the counterclaim.
>
> No pronouncement as to costs.
>
> SO ORDERED.[5]

Dissatisfied with the above judgment, petitioner seasonably appealed the decision of the trial court to the Court of Appeals, and the appeal was docketed as CA-G.R. CV No. 47710. On October 10, 1996, the Court of Appeals (Ninth Division) affirmed in toto the trial court's decision and dismissed the appeal of petitioner and in its resolution dated January 27, 1997, denied his motion for reconsideration.

Hence, the instant petition assigning the following errors:

> I
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> THE COURT OF APPEALS ERRED IN HOLDING THAT THE APPELLEE CORPORATION HAS A SUPERIOR RIGHT OF CLAIM TO THE SUBJECT PROPERTIES.
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> II
>
> THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE APPELLEE CORPORATION'S ACTUAL KNOWLEDGE OF THE PETITIONER'S CLAIM OVER THE SUBJECT PROPERTIES IS EQUIVALENT TO REGISTRATION AND THEREFORE WAS IN BAD FAITH.
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> III
>
> THE COURT OF APPEALS ERRED IN FINDING THAT THE PREVIOUS ORDER OF PRELIMINARY

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ATTACHMENT IN CIVIL CASE NO. 5122-P HAD BEEN DECIDED WITH FINALITY.

IV

THE COURT OF APPEALS ERRED IN NOT AWARDING PETITIONER'S CLAIM FOR DAMAGES AND ATTORNEY'S FEES.[6]

Carefully examining petitioner's assigned errors, we find that the pivotal issue in this case is whether the respondent court erred in holding that a levy on execution, pursuant to a decision affirmed by the Supreme Court, is superior to a prior unregistered pacto de retro sale of the same properties.

On record, four facts stand undisputed in this case. First, the deeds of sale of the properties in question by Policarpio and Natalia Castro to petitioner were unregistered. Second, the disputed properties are covered by the Torrens System of land registration. Third, the writ of attachment issued by the then CFI of Rizal, in Pasay City, was duly recorded and annotated. Lastly, the decision dated July 29, 1983 of the Supreme Court in G.R. No. L-47410 is already final and executory.

The law applicable to the facts of this case is Section 50 of the Land Registration Act (Act No. 496), substantially reproduced in Section 51 of Presidential Decree No. 1529, the Property Registration Decree. Section 50 of Act No. 496 provides in part:

An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. x x x But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of the register of deeds of the province or city where the land lies.

The deeds of sale from which petitioner draws title were what we call pacto de retro. They were neither registered nor annotated on the certificates of title of the disputed realties. At the time the properties were levied upon, the titles were still in the name of the Castro spouses. Under the cited Section 50 of Act No. 496, the deeds of pacto de retro sale in petitioner's favor cannot bind private respondent Vimarco, Inc., because they were unrecorded and they "operate only as a contract between the parties".

Moreover, the disputed parcels are registered lands under the Torrens System. Under this system, registration is the operative act, which gives validity to the transfer or creates a lien upon the land. As Act No. 496 clearly provides in Section 50, "registration is the operative act to bind or affect the land insofar as third persons are concerned". As early as Villasor v. Camon, 89 Phil. 404 (1951), we held that it is the act of registration with the Register of Deeds which validates dealings with properties registered under the Torrens System. This rule was affirmed recently in Calalang v. Register of Deeds of Quezon City, 231 SCRA 88 (1994) and in Sajonas v. Court of Appeals, 258 SCRA 79 (1996). The only exception made in Fernandez v. Court of Appeals, 189 SCRA 780, 789 (1990), is a situation where a party has actual knowledge of the claimant's actual, open, and notorious possession of the disputed property at the time that the levy or attachment was registered. In such a situation, the actual notice and knowledge is equivalent to registration, because to hold otherwise would be to tolerate fraud and the Torrens System cannot be used to shield fraud.[7]

Petitioner insists that private respondent Vimarco, Inc., had actual knowledge of his ownership and possession of the properties in this case. But the records show no evidentiary support for his assertion. What the records show is that the private respondents acquired knowledge of petitioner's claim only when he filed his third-party claim with

the Deputy Sheriff of Pasay City on January 10, 1984.

In contrast, the levy on execution was not only recorded with the Register of Deeds, it was also annotated on the certificates of title as early as 1976. Settled in this jurisdiction is the doctrine that a prior registration of a lien creates a preference.[8] Even subsequent registration of the prior sale will not diminish this preference, which retroacts to the date of the levy.[9] As pointed out in Defensor v. Brillo, 98 Phil. 427 (1956), to hold otherwise would render the preference nugatory and meaningless. Lastly, the attachment or levy of property of a judgment debtor creates a lien, which nothing can subsequently destroy except the very dissolution of the attachment or levy itself.[10] Inasmuch as the petitioner's deeds of pacto de retro sale over the subject parcels were unregistered, the rights of the petitioner over them became subordinate and subject to the duly recorded and annotated attachment and levy.

Petitioner's contention that the CFI's order of preliminary attachment in Civil Case No. 5122-P did not become final lacks merit as well as basis. Where a decision has been rendered, the court in effect had denied all pending motions.[11] The attachment remains effective up to the present. To rule otherwise would only result in the continued delay in the payment of an admitted indebtedness many years overdue, and thereby defeat the just claim of legitimate creditors.

WHEREFORE, the petition is DENIED, and the assailed decision of the Court of Appeals in CA-G.R. CV No. 47710 AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Docketed as CA-G.R. No. SP-06276.

[2] Docketed as G.R. No. L-47410.

[3] See Castro v.Court of Appeals, G.R. No. L-47410, 123 SCRA 782 (1983).

[4] Rollo, pp. 59-61.

[5] Records, p. 335.

[6] Supra, note 4 at 15.

[7] Republic v.Register of Deeds of Quezon, G.R. No. 73974, 244 SCRA 537, 547 (1995); Gustilov.Maravilla, G.R. No. 23386, 48 Phil. 442, 448 (1925).

[8] PNB v.Javellana, G.R. No. L-5270, 92 Phil. 525, 530 (1953).

[9] Vargas v. Tancioco, G.R. No. 45899, 67 Phil. 308, 311 (1939).

[10] Santos v.Aquino, Jr, G.R. No. 86181-82, 205 SCRA 127, 133 (1992).

[11] Ong v.Fonacier, G.R. No. L-20887, 17 SCRA 617, 622 (1966).

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