

## **MARCELINA VENZON, PETITIONER, VS. SPS. SANTOS AND GLORIA JUAN, DEPUTY SHERIFF VINCENT F. SUGUI AND THE REGISTER OF DEEDS OF VALENZUELA, RESPONDENTS.**

*G.R. No. 128308. April 14, 2004*

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### **TINGA, J.:**

Before the sale of property on execution, the Rules of Court[1] require notices to be sent to the judgment debtor and to be posted in public places. In case of real property with an assessed value exceeding P50,000.00, publication of the notice is also compulsory. The sale of property on execution that does not conform to the requirements of notice and publication is void.[2]

While the Court finds that petitioner failed to prove by a preponderance of evidence her assertion that said requirements were not complied with, respondents' knowledge of petitioner's claim warrants the granting of the petition.

Petitioner Marcelina Venzon is the possessor of the Lot 12, Block 3 of the Encarnacion Gonzales Subdivision, Barrio Canumay, Valenzuela, Metro Manila, since 1961 by virtue of a contract to sell executed between her and Encarnacion Gonzales.

On July 25, 1989, in Civil Case No. C-9665, Branch 126 of the Regional Trial Court (RTC) of Caloocan City rendered a money judgment in favor of private respondent spouses Santos and Gloria Juan against spouses Benjamin and Encarnacion Gonzales. Subsequently, the court issued a writ of execution directing the sheriff to satisfy the judgment.

On October 25, 1990, respondent spouses caused a notice of attachment/levy to be annotated as Entry No. 24967 at the back of Transfer Certificate of Title (TCT) No. (39674) T-613344, covering said Lot 12, Block 3. On March 30, 1992, the property was sold at public auction with respondent spouses as the highest bidders. A certificate of sale was issued in their favor on April 20, 1992.

On August 13, 1992, petitioner filed an adverse claim, Entry No. 37879, over the same property. On December 29, 1993, petitioner instituted a Complaint for Annulment of the sheriff's sale, as well as the certificate of sale in favor of respondent spouses, with the RTC of Caloocan City, which case was assigned to Branch 131 thereof. Named defendants in the Complaint were the spouses Juan, Deputy Sheriff Vincent F. Sugui and the Register of Deeds of Valenzuela.

Simultaneous with the complaint, petitioner filed an action for specific performance and damages with the Housing and Land Use Regulatory Board (HLURB) against spouses Benjamin and Encarnacion Gonzales to compel the latter to execute a deed of conveyance over the property in petitioner's name. Petitioner alleged that she and Gonzales executed a contract to sell in 1961 but, despite petitioner's willingness to complete her last installment, the latter refused to accept payment.

On November 4, 1994, the Caloocan RTC, Branch 131, rendered a Decision in petitioner's favor. The trial court

found meritorious the allegation of petitioner that she had no knowledge of the auction sale. It held that while petitioner was not entitled to personal notice of the auction sale since she was not the registered owner of the subject property, good faith demanded that respondent spouses, who were allegedly aware of petitioner's purported right to the property, inform the latter of the impending auction sale. The trial court also faulted respondent spouses for failing to present the sheriff as witness or any document to attest to the compliance with the notices required for a valid auction sale.

Respondent spouses elevated the case to the Court of Appeals, which, in its Decision dated February 14, 1997, set aside the Decision of the RTC. The Court of Appeals held, *inter alia*, that the Rules of Court require only notice of the auction sale to the judgment debtor, Encarnacion Gonzales, not to Marcelina Venzon, a mere possessor of the property. Petitioner also failed to overcome the presumption of regularity of performance in favor of the sheriff.

The Court of Appeals also found petitioner guilty of laches, having slept on her rights for more than three years. The notice of levy was annotated at the back of the TCT No. (39674) T-61344 on October 25, 1990. Petitioner filed the complaint for annulment of the sheriff's sale and certificate of sale on December 29, 1993.

Petitioner is now before this Court seeking the reversal of the adverse Decision of the Court of Appeals and the reinstatement of the Decision of the RTC.[3]

Prior to the revision of the Rules of Civil Procedure in 1997, Section 18, Rule 39[4] thereof read as follows:

SEC. 18. Notice of sale of property on execution. – Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

....

(c ) In case of real property, by posting for twenty (20) days in three public places in the municipality or city where the property is situated, a similar notice particularly describing the property and stating also where the property is to be sold, and, if the assessed value of the property exceeds fifty thousand pesos (P50,000.00), by publishing a copy of the notice once a week for two consecutive weeks in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in English and/or Filipino, then the publication shall be made in one such newspaper.

(d) In all cases, written notice of the sale shall be given to the judgment debtor.

The purpose of the posting (and the publication) of the notice under Section 18 (c) is to let the public know of the sale to the end that the best price or a better bid may be made possible to minimize prejudice to the judgment debtor.[5]

As the plaintiff claiming lack of notice of the auction sale was posted and published in accordance with Section 18 (c), it behooved petitioner to prove such allegation. Whoever asserts a right dependent for its existence upon a negative, must establish the truth of the negative by a preponderance of the evidence.[6] This must be the rule, or it must follow that rights, of which a negative forms an essential element, may be enforced without proof.[7] Thus, whenever the petitioner's right depends upon the truth of a negative, upon him is cast the *onus probandi*, except in cases where the matter is peculiarly within the knowledge of the adverse party.[8]

It was error, therefore, for the trial court to hold that:

Defendants did not present evidence to rebut the "no notice allegation of the plaintiff. Although in the

defendant spouses' pre-trial brief, there is that general allegation that the auction sale was made in accordance with law, however, there is no showing in the record that the requirements with respect to publication/posting of notices were complied with by the defendants.

Deliberating on the absence of notice, the fact that the plaintiff did not come to know that Lot 12 was being subjected to an auction sale proves two things: one, that no notice was posted in the place where the property is located [and, two, that] there was no auction sale that took place on March 30, 1992 ....

Further, the defendants, particularly defendant sheriff, who is the most competent person to testify that a written notice of sale was made and posted in accordance with law, was not presented to the witness stand. Neither was a document presented like Sheriff's Certificate of Posting to attest to the fact that a written notice of sale was posted before the property was allegedly sold at public auction. In fact, the record is silent as (to) where the auction sale was conducted.[9]

By ruling in the foregoing manner, the trial court incorrectly shifted the plaintiff's burden of proof to the defendants. It is true that the fact of posting and publication of the notices is a matter "peculiarly within the knowledge" of the Deputy Sheriff. However, the trial court did not acquire jurisdiction over him, as he was not served with summons. At the time of the filing of the complaint, he was "no longer connected" with the Caloocan RTC, Branch 126, which issued the writ of execution.[10] Hence, he could not testify in his own behalf.

It cannot be said that the fact of posting and publication is peculiarly within the knowledge of respondent spouses. The duty imposed by Section 18 (c) is reposed upon the sheriff, who is charged with the enforcement of the writ.[11] Respondent spouses had a right to presume that he had regularly performed his duty.[12] It was not incumbent upon them to present him as a witness for, in the absence of the sheriff, the burden to prove lack of posting and publication remained with petitioner.

Petitioner utterly failed to meet her burden. Other than her bare testimony that she did not have knowledge of the impending auction sale, petitioner did not present any evidence that notices of the sale were not posted and published. Petitioner could have taken pains to find the sheriff and present him as a hostile witness, but did not do so. In the absence of clear and convincing evidence to the contrary, that presumption prevails.

Petitioner is not entitled to notice of the sale under Section 18 (d), which plainly requires notice only to the judgment debtor, who, by such notice, is given the opportunity to prevent the sale by paying the judgment debt sought to be enforced and the costs which may have been incurred pursuant to Section 20 of Rule 39.[13] As the Court of Appeals pointed out, the judgment debtor is not petitioner, but Encarnacion Gonzales. Since petitioner had no right to said notice, no cause of action could arise from the lack of service thereof to her.

The levy on execution by respondent spouses, the judgment creditors in Civil Case No. C-9665, created a lien in their favor over the right, title and interest of the judgment debtor, Encarnacion Gonzales, in said property at the time of the levy subject, however, to liens or encumbrances then existing.[14] The purchaser at the execution sale acquires only such right or interest as the judgment debtor had on the property at the execution sale.[15] At the time of the levy on execution, there was yet no annotation of petitioner's adverse claim appearing at the back of TCT No. (39674) T-613344; indeed, the adverse claim was filed only after the auction sale of the property.

The rule is that it is the act of registration that operates to convey registered land or affect title thereto – registration in a public registry creates constructive notice to the whole world.[16] In the absence of registration, third persons cannot be charged with constructive notice of dealings involving registered land. Thus, a person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.[17]

Nevertheless, it is also settled that a purchaser cannot close his eyes to facts that should put a reasonable man on

his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.[18]

The Petition in this case alleges that:

- The petitioner had been in possession of the property since the time of the execution of the contract to sell in 1961. She even constructed a fence thereon with the help of her son, her daughter-in-law, and also of her neighbors – in the person of none other than the respondent-spouses JUAN.
- The respondent-spouses who were neighbors of the petitioner had actual knowledge of the interest of the latter over the lot in question. As a matter of fact, they even volunteered to oversee the same for her.[19]

Respondent spouses denied these allegations in their unverified Comment before this Court, claiming that they met petitioner only after they “acquired the property at the auction sale and [after] they started cleaning the area.”[20]

Petitioner, however, adduced sufficient evidence to support her claim that respondent spouses had actual knowledge, or at least facts that should have put them on guard, that petitioner had a pre-existing claim to the property. Petitioner’s brother, Atty. Conrado Venzon, testified that respondent spouses “knew very well that [the subject] lot belongs to [his] sister and that is why [his] sister was very angry about” respondent spouses’ levying on the property.[21] Atty. Venzon, petitioner, and even the latter’s caretaker also testified that respondent spouses, and even their son,[22] actually helped in constructing the fence around the property.[23] The caretaker said that the construction of the fence took place sometime in 1967,[24] or long before respondent spouses’ levy on execution in 1990. Petitioner even asked respondent spouses to oversee the property.[25] Respondent spouses did not refute these testimonies during the trial, having waived their right to present testimonial evidence.[26]

Respondent spouses’ actual knowledge of petitioner’s interest in the property renders the lack of annotation of the adverse claim at the back of the TCT irrelevant. From respondent spouses’ perspective, petitioner, at the time of the levy, had a claim over the subject lot although the same was actually in the name of the judgment debtor, Encarnacion Gonzales. Their acquisition of such property at the execution sale is, therefore, subject to the perfection of petitioner’s claim to ownership.

The Court of Appeals found that laches had set in against petitioner. The equitable doctrine of laches is not available to shield wrongdoing on the part of whoever would invoke it.[27] As respondent spouses are guilty of bad faith in levying on the property despite actual knowledge of petitioner’s pre-existing claim, the defense of laches is not available to them.

Respondent spouses charge petitioner with violating the rule against forum-shopping by the simultaneous institution by the latter of the action before the HLURB with the action before the RTC.[28] Forum-shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court might look with favor upon the party.[29]

The HLURB Complaint is grounded upon the alleged refusal of the therein respondent Encarnacion Gonzales to accept payment of the balance of the purchase price in accordance with the contract to sell between her and petitioner, causing damage to the latter.[30] It prayed for, among other things, the conveyance of the subject property to, and an award of damages in favor of, petitioner.[31]

On the other hand, the action before the RTC arose from the purported failure of the defendant deputy sheriff, in connivance with respondent spouses, to notify petitioner of the auction sale, for which petitioner suffered damage.[32] It asked for, among other things, the annulment of the certificate of said sale as well as an adjudication of damages.[33]

Plainly, the two actions spring from different causes arising from different factual circumstances and seek different reliefs. The charge of forum-shopping is patently without merit.

WHEREFORE, the Decision of the Court of Appeals is SET ASIDE. Respondent Spouses Santos and Gloria Juan are ordered to respect the rights of petitioner Marcelina Venzon's to the subject property as stated in the contract to sell executed between petitioner and Encarnacion Gonzales.

**SO ORDERED.**

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Rule 39, sec. 18 (now sec. 15, per the 1997 Revised Rules of Civil Procedure).

[2] Ago v. Court of Appeals, 116 Phil. 839 (1962).

[3] Petitioner subsequently informed this Court by way of Manifestation that the HLURB rendered a Decision, dated October 9, 1997, ordering:

- Respondents [Benjamin and Encarnacion Gonzales] to execute the deed of conveyance for Lot 12, Block 3 of the Encarnacion Gonzales Subdivision in favor of complainant [Marcelina Venzon] immediately after receipt of the last and full payment of the purchase price; and to cause the issuance of title therefor in favor of complainant;
- Respondents to pay P10,000.00 as moral damages and P5,000.00 as exemplary damages;
- Respondents to pay P5,000.00 as and by way of attorney's fees;
- Respondents to pay cost of suit. (Rollo, pp. 123-124.)

The HLURB decision allegedly became final and executory on April 12, 2000.

[4] Now Section 15 of the same Rule, providing:

SEC. 15. Notice of sale of property on execution. – Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three (3) public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(b) In case of other personal property, by posting a similar notice in the three (3) public places above-mentioned for not less than five (5) days;

(c) In case of real property, by posting for twenty (20) days in the three (3) public places above-mentioned a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand (P50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city;

(d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the

same manner as personal service of pleadings and other papers as provided by section 6 of Rule 13.

The notice shall specify the place, date and exact time of the sale which should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon. The place of the sale may be agreed upon by the parties. In the absence of such agreement, the sale of real property or personal property not capable of manual delivery shall be held in the office of the clerk of the Regional Trial Court or the Municipal Trial Court which issued the writ or which was designated by the appellate court. In the case of personal property capable of manual delivery, the sale shall be held in the place where the property is located.

[5] *Torres v. Cabling*, A.M. No. P-97-1249, July 11, 1997, 275 SCRA 329.

[6] *I Rice*, F.S. *The General Principles of the Law of Evidence* §437.

[7] *Ibid.*

[8] *Ibid.*

[9] *Rollo*, pp. 42-43.

[10] *Id.* at 40.

[11] *RULES OF COURT*, rule 39, sec. 8.

[12] *Id.*, rule 131, sec. 3 (m).

[13] *Torres v. Cabling*, *supra*, note 5. Now Section 18, Rule 39, per the 1997 Revised Rules of Civil Procedure, which states:

SEC. 18. No sale if judgment and costs paid. – At any time before the sale of property on execution, the judgment obligor may prevent the sale by paying the amount required by the execution and the costs that have been incurred therein.

[14] *RULES OF COURT*, rule 39, sec. 16 (now sec. 12 of the 1997 Revised Rules on Civil Procedure).

[15] *China Banking Corporation*, 364 SCRA 638; *Potenciano v. Dinerros*, G.R. No. L-7614, May 31, 1955.

[16] *Gonzales v. Court of Appeals*, G.R. No. 110335, June 18, 2001, 358 SCRA 598; *PRES. DEC.* No. 1529, secs. 51-52.

[17] *Chu, Sr. v. Benelda Estate Development Corporation*, G.R. No. 142313, March 1, 2001, 353 SCRA 424.

[18] *Spouses Uy v. Court of Appeals*, 411 Phil. 788 (2001).

[19] *Rollo*, p. 13.

[20] *Id.* at 140.

[21] *TSN*, August 11, 1994, p. 6 (Records, p. 106).

[22] *TSN*, August 11, 1994, pp. 13-14 (Records, pp. 112-113).

[23] *TSN*, August 9, 1994, p. 5 (Records, p. 77); *TSN*, August 11, 1994, p. 9 (Records, p. 108).

[24] *TSN*, August 11, 1994, p. 15 (Records, p. 114).

[25] *TSN*, August 9, 1994, p. 7 (Records, p. 79).

[26] *TSN*, September 2, 1994, p. 3 (Records, p. 231); Order dated September 2, 1994 (Records, p. 227).

[27] Rañeses v. Intermediate Appellate Court, G.R. No. 68747, July 13, 1990, 187 SCRA 397.

[28] Rollo, p. 130.

[29] Bangko Silangan Development Bank v. Court of Appeals, G.R. No. 110480, June 29, 2001, 360 SCRA 322.

[30] Rollo, pp. 94-95.

[31] Ibid.

[32] Records, pp. 2-3.

[33] Id. at 4.

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