

E. A. ENAGE, PLAINTIFF AND APPELLANT, VS. LA RAZON SOCIAL “VDA. E HIJOS DE F. ESCAÑO” ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 13151. September 24, 1918*

Ponente: FISHER, J.

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This is an action by plaintiff to compel defendants to permit him to redeem certain land, described in the complaint, sold under an execution against Jacinta Escaño. The court below dismissed the action. In a short decision, announced August 16 last, without prejudice to the writing of an extended opinion, we held that the judgment of the court below should be reversed and the plaintiff permitted to redeem the land in question. We shall now state at some length the grounds upon which our judgment was based.

The defendant "Vda. e Hijos de F. Escaño," a partnership, recovered a judgment in the Court of First Instance of Leyte against Jacinta Escaño. Execution was issued upon the judgment, and a levy was made upon several parcels of land belonging to the judgment debtor. After the publication of the usual statutory notices, fourteen parcels of the land were sold to the judgment creditor, one parcel to the defendant Tomas Oppus, and the remaining parcel to one Lecaros. The sheriff put the purchasers of the land into possession of the respective parcels bid in by them. Four of the parcels bid in by the judgment creditor, at the execution sale, were thereafter sold to the defendants Tikiig, Roa, and Santos. The parcel bought by Tomas Oppus was transferred by him to the defendants Galo and Perez. On June 11, 1915, the judgment debtor, Jacinta Escaño, for a valuable consideration transferred and assigned to the plaintiff herein her right to redeem the real estate sold under the judgment against her. On September 11, 1915, plaintiff gave notice in writing to the purchasers at the execution sale and to the persons holding under them, that he had become the owner by assignment of the judgment debtor's right of redemption, and that he desired to exercise the right of redeeming the property. He offered to pay the purchasers and their assigns the amounts for which the respective parcels had been sold, together with the interest and other charges. The purchasers refused to consent to the redemption. The plaintiff then made a demand upon the sheriff for the execution of a certificate of redemption, and offered to pay him, for the benefit of the purchasers at the execution sale, the amounts respectively paid by them plus interest and legal costs. The sheriff refused to permit the redemption or execute the certificate, and told the plaintiff that he must deal with the successful bidders. The plaintiff thereupon proceeded to make an estimate of the net amount of the revenue derived by the various possessors of the land in question, during their respective periods of possession, and of the difference between this amount and the amount at which the properties were bid in at the execution sale, and deposited this sum with the clerk of the Court of the First Instance. The deposit was made October 16, 1915. Plaintiff gave notice in writing of the deposit to each and every one of the purchasers at the execution sale and persons holding under them, but none of these persons, so far as the record discloses, replied to these letters, or in any other manner expressed their willingness to consent to the redemption.

On October 22 plaintiff brought this action against all the persons in possession of the real estate in question, to

compel them to permit him to redeem. The defendants answered denying that plaintiff had made a tender of the amount necessary for the redemption of the property, either to the defendants or to the sheriff. As a special defense they averred that before the assignment to plaintiff of Jacinta Escaño's right of redemption, the judgment creditor had levied upon it and bought it in at public auction; that plaintiff had not deposited in the court the full sum of P3,446, at which the property in question had been bid in; and that the alleged assignment to plaintiff of the judgment debtor's right of redemption is simulated and fictitious.

The case was tried upon the issues made by these pleadings. Most of the evidence introduced relates to the revenue received by defendants from the real estate in question during the time it had been in their possession. On April 23, 1917, the trial judge rendered his decision, in which he held that as plaintiff, before bringing suit, had not made a demand upon defendants in accordance with section 469 of the Code of Civil Procedure, for a statement of account of the rents and profits produced by the land in question during the time it was in their possession, the suit must fail, and upon that theory dismissed the action, with costs. From this judgment plaintiff has appealed to this court.

Defendant, "Vda. e Hijos de F. Escaño," made no effort in the court below to prove the averments of their special defense relating to the alleged purchase by that firm of Jacinta Escano's right of redemption before its assignment to plaintiff, and that feature of the case must, therefore, be disregarded. They made some effort to prove that plaintiff did not in fact make a tender before bringing his action, either to the purchasers or their assigns, or to the sheriff, but we are of the opinion, and so find that the weight of the evidence is in favor of the contentions of the plaintiff in this regard.

The trial judge has failed to comply with the provisions of section 135 of the Code of Civil Procedure. Under the terms of that section, to which we have frequently directed the attention of the lower courts, it is the duty of the trial judge to make a special finding upon each and every issue of fact presented by the pleadings. It is true that in this case the opinion of the trial judge as to the law applicable made it unnecessary, from his standpoint, to make findings, but it is to be remembered that the purpose of requiring findings is to enable this court, in the event of an appeal, to examine the evidence in the light of the opinion which the trial judge has formed as to the relative credibility of the witnesses. In this case, for instance, as we disagree with the opinion of the trial judge concerning the principles of law involved, it becomes necessary to determine the facts upon the evidence, without the assistance of the judge who heard the witnesses testify. Had the appellant, by appropriate motion, requested the trial judge to make complete findings, his failure or refusal to do so, if assigned as error, might be cause for the return of the case to the lower court for compliance with this requirement, or the performance of that duty might be recorded by mandamus. However, in this case neither of the parties has asked the lower court to make findings, and to avoid the delay and expense of returning the record below we have examined the evidence and established our own conclusions as to the material facts.

With respect to the contention that plaintiff should have deposited in court the entire amount for which the defendants bought the lands at the sheriff's sale, plus interest and costs, we hold that it was not necessary for him to make such deposit to save his right of redemption, and, therefore, the fact that he did not deposit the full amount is of no importance. The proof shows that he did in fact tender defendants, and the sheriff, in writing, the full amount due them. The tender having been refused, it is not necessary that he should repeat it or make a deposit of the amount. (*Fructo vs. Fuentes*, 15 Phil. Rep., 362.)

Section 466 of the Code of Civil Procedure expressly provides that the payment of the redemption money may be made "to the purchaser or redemptioner or for him to the officer who made the sale." The possessors having refused to consent to a redemption and plaintiff having made a demand therefor from the sheriff, it was the duty of that officer to receive the money and execute a certificate of redemption.

It was contended in the trial court, and in this view the trial judge concurred, that as the purchasers of the land at the sheriff's sale had been given possession, no action would lie against them to enforce plaintiff's right of redemption until after the rendition of an account of the rents and profits of the land, voluntarily or under judicial compulsion, pursuant to section 469 of the Code of Civil Procedure. That section reads as follows:

"The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another, redemption, is entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents have been received by the judgment creditor or purchaser, or his or their assignee from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and, if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits, thus received, the period of redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor."

It seems clear that if the redemptioner seeks to exercise his right without awaiting a liquidation of the rents and profits in accordance with this section he would be bound to pay the full amount due under section 465, and a tender of anything less than this would be insufficient. Should the redemptioner elect to pay the full amount due and demand an immediate execution of the certificate of redemption, without awaiting the liquidation of the rents and profits it may be that he would be entitled to maintain an action for their recovery after the redemption, but as to this we express no opinion. But when the purchasers in possession, as in this case, have rejected a tender of the full amount of the purchase price, plus interest and costs, and the redemptioner is compelled to apply to the court for relief, we are of the opinion that the right of redemption and the liquidation of the rents and profits may be enforced in the same action. Upon the opposing theory the redemptioner might have to maintain a suit for an accounting, and thereafter a subsequent suit to enforce his right to redeem. It would seem from the language of section 469 that it is his privilege to adopt this circuitous method of procedure—that he may have an accounting without first committing himself to redeem—but there is no reason why he should be compelled to do so. Multiplicity of suits is to be avoided rather than commended, and we are of the opinion, and so hold, that an action for an accounting and to enforce the right of redemption may properly be joined.

It was contended in the court below that plaintiff was not entitled to redeem, because it was not made to appear that when making demand upon the defendants to permit him to redeem, he produced, for their inspection, a copy of the judgment, a copy of the assignment, and the affidavit required by section 467 of the Code of Civil Procedure. It is not contended that the refusal of the purchasers, or their assigns, or of the sheriff, to permit the redemption was due to any doubt on their part regarding the identity of the purchaser, his possession of the deed of assignment of the right of redemption, or the amount due them. On the contrary, the refusal to permit such redemption was absolute and was based upon the contention that the right of redemption had been bought in at a subsequent execution sale before the assignment to plaintiff. Had the purchasers and their successors, or the sheriff, expressed a willingness to permit the redemption upon the presentation of the documents enumerated by section 467, plaintiff's failure to produce them would have been sufficient ground for a refusal to execute the certificate of redemption. But the refusal to consent to the redemption being positive and based upon other grounds, the production and exhibition of those documents by the plaintiff would have been an idle ceremony, and it would be contrary to the spirit of our law to permit its omission to deprive plaintiff of a substantial right. It is true that there are many of the earlier decisions of the American courts which hold that redemption statutes,

being in derogation of the Common Law, must be strictly construed. The modern tendency, however, is to give a liberal construction to such statutes. We quote, with approval from the opinion of the Supreme Court of Illinois in the case of *Schuck vs. Gerlach* (101 111., 338), as follows:

"Redemptions are looked upon with favor, and, where no injury is to follow, a liberal construction will be given our redemption laws, to the end that the property of the debtor may pay as many of debtor's liabilities as possible."

"When the time in which the debtor may redeem from a valid sale of his property has expired he has no further right to, or interest in, the property sold (*Jones vs. Thompson*, 26 Ill., 177; *Massey vs. Wescott*, 40 Ill., 160; *Pearson vs. Pearson*, 131 Ill., 464; *Smith vs. Mace*, 137 Ill., 68); and any excess over the amount necessary to redeem must be lost to him, unless, by redemption, it is further applied in payment of his debts. To facilitate this humane purpose, as well as to protect junior judgment and decree creditors, successive redemptions are allowed. The statute, being remedial, is to be construed liberally to effectuate the remedy and carry out its evident spirit and purpose.

We are all the more inclined to adopt the rule of liberal construction in this jurisdiction for the reason that the present statute, far from being more advantageous to debtors than the former law, is in many respects, less favorable to them. (Arts. 1463 et seq., *Ley de Enjuiciamiento Civil* of 1888.) Furthermore, such liberal construction is expressly enjoined upon us by section 2 of the new Code of Civil Procedure.

Upon this consideration we permitted the plaintiff to redeem, upon the payment of the difference between the amounts at which the respective parcels were bid in at the sheriff's sale and the rents and profits thereof, as disclosed by the evidence, holding that by reason of their unwarranted refusal to permit the redemption the defendants were possessors in bad faith since the commencement of the action, and directing the lower court, upon motion of the plaintiff, and notice to defendants, upon such evidence as the parties might produce, to proceed to determine the amounts for which defendants were respectively liable as possessors in bad faith, in accordance with article 445 of the Civil Code, from the date of the filing of the complaint until the restoration of actual possession of the land to plaintiff, and to render judgment in favor of plaintiff for the amounts in which they may be respectively found indebted to him by reason of such unlawful possession. Defendants were also required to pay the costs of both instances.

It may be that the result of this action will be to prevent the Escafto firm from recovering the full amount of its judgment against Jacinta Escano, at least to the extent of the full value of this land. If such is the result the sole cause is the failure of the judgment creditor to bid the reasonable value of the land at the sheriff's sale. When a judgment creditor permits the debtor's land to be sold for less than it is worth, he exposes himself to the risk of the loss of the surplus value by the assignment of the right of redemption or its exercise by another creditor. The debtor's right to make such assignment is his only means of compelling the judgment creditor to bid for the land an amount reasonably approximating its value.

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

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