

EMILIO D. CAMPOMANES, PLAINTIFF AND APPELLANT, VS. CANUTO BARTOLOME AND GERMANN & CO. (LTD.), DEFENDANTS AND APPELLEES.

G.R. No. 13809. October 18, 1918

Ponente: FISHER, J.

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FISHER, J.:

This is an appeal from a judgment of the Court of First Instance of Manila. Defendants demurred to the third amended complaint upon the ground that it failed to state a cause of action, that it was vague and indefinite, and that there was a misjoinder of parties defendant. The trial court sustained the demurrers upon all of the grounds stated. Plaintiff declined to amend and the case was thereupon dismissed.

It is argued by counsel for defendants that the allegations of the complaint are "not sufficient to warrant the relief prayed for." That may be true, but is in itself no reason for sustaining the demurrer. The prayer is not part of the complaint and, save in case of default, is of no importance. The question is whether the facts stated constitute any cause of action whatever. If they do that is sufficient so far as this particular ground for demurrer is concerned.

The third amended complaint reads as follows:

"The plaintiff alleges:

"1. That plaintiff is a resident of and domiciled in the municipality of Atimonan, Province of Tayabas; that the defendant, Canuto Bartolome, is and was at the time of the issuance of the execution hereinafter referred to, the sheriff for the Province of Tayabas, and that defendant, Germann & Co. (Ltd.), is a foreign corporation duly licensed to do and doing business in the Philippine Islands, with its principal offices in the Philippine Islands in the city of Manila;

"2. That in cause No. 13815 of the Docket of the Court of First Instance for the city of Manila, entitled 'Germann & Co. (Ltd.), plaintiff, vs. Emilio D. Campomanes, defendant,' said plaintiff recovered judgment against the defendant, the plaintiff herein, and secured an execution under said judgment and placed same in the hands of Canuto Bartolome, one of the defendants herein;

"3. That on or about the 11th day of August, 1916, said defendant, Canuto Bartolome, as sheriff for the Province of Tayabas, and under the execution aforesaid, did levy and seize and caused to be levied and seized the following property belonging to plaintiff, to wit:

"One petroleum motor 'Otto' 10 h. p."

(Here follows a description of the real property subjected to levy under the writ of execution.)

"4. That after the seizure of the motor aforesaid, the defendant Canuto Bartolome, in his official capacity, caused notices to be posted as required by law in the municipality of Atimonan announcing that the said petroleum motor would be sold at public auction at the residence of the deputy sheriff, No. 27, calle Libertad, Atimonan, on

September 9, 1916, at 9 a. m.;

"5. That thereafter, to wit, on or about August 31, 1916, the said defendant Canuto Bartolome, upon the request, advice and suggestion of the defendant Germann & Co. (Ltd.), directed his deputy to change said notices heretofore posted so as to read that the sale of the said motor would take place at the Municipal Presidencia of Atimonan on September 6, 1916, at 9 a. m.

"6. That thereafter and to wit, on or before September 4, 1916, the said defendant Canuto Bartolome, for the second time instructed his deputy to change the notices then posted in the municipality of Atimonan by causing them to read that the sale of said motor would take place as originally announced at 27 Calle Libertad, the resident of the Deputy Sheriff, on September 9, 1916, at 9 a. m.;

"7. That on or about August 11, 1916, the said defendant Canuto Bartolome, in his official capacity, caused to be published in 'El Ideal' a newspaper of general circulation published in the Spanish language at Manila, a notice publicly announcing that the said defendant would sell on the 16th day of September, 1916, at 9 a. m., at No. 27, Calle Libertad, Atimonan, at public auction to the highest bidder, for cash, the various parcels of land levied upon by virtue of the execution as hereinabove referred to;

"8. That on the 6th day of September, 1916, the defendant Germann & Co. (Ltd.), requested the Deputy Sheriff for the Province of Tayabas stationed at Atimonan to sell the petroleum motor hereinabove mentioned, but said Deputy Sheriff declined to conduct such sale, informing the defendant Germann & Co. (Ltd.), that he, the Deputy Sheriff, had been instructed to postpone the sale and that notices to that effect had been posted as provided by law in the municipality of Atimonan;

"9. That thereupon, the said defendant Germann & Co. (Ltd.), advised the defendant Canuto Bartolome that the Deputy Sheriff refused to conduct the sale and the said defendant Germann & Co. (Ltd.), requested, advised and instructed and under promises of indemnifying the said defendant sheriff, induced said defendant Canuto Bartolome to proceed from Lucena, Tayabas, to Atimonan for the purpose of conducting said sale;

"10. That thereafter and on the 6th day of September, 1916, at about 12 o'clock noon, and at the Municipal Presidencia of Atimonan, Tayabas, the defendant Canuto Bartolome, in his official capacity as sheriff for the Province of Tayabas, and acting under the express instructions, advice and directions and at the special instance, request and solicitation of the defendant Germann & Co. (Ltd.), conducted 'an alleged public auction' and sold the petroleum motor hereinabove described for the sum of one (P1) peso to the defendant Germann & Co. who were the only bidders at said sale;

"11. That the sale so conducted by the defendant sheriff on September 6, 1916, was not a public sale as provided for by law in that at the time of said sale, there were posted within the municipality of Atimonan notices as required by law, that the sale of said petroleum motor would take place at the residence of the Deputy Sheriff No. 27, Calle Libertad, Atimonan, on September 9, 1916 at 9 a. m.; and the fact that such notices were posted and that the sale originally fixed for September 6 had been continued to September 9 was known to the defendant Germann & Co. (Ltd.), who, for the purpose of defrauding this plaintiff, directed, instructed and insisted and by means of oral promises, induced the said defendant sheriff to conduct the sale of said petroleum motor on September 6, 1916, as hereinabove described;

"12. That thereafter, the defendant sheriff, acting in his official capacity, delivered to the defendant, Germann & Co. (Ltd.), possession of said petroleum motor 'Otto,' although the purchase price thereof, to wit: one (P1) peso, had not and has never been credited against the amount due Germann & Co. (Ltd.), by reason of the judgment and execution hereinabove referred to, and the said defendant, Germann & Co. (Ltd.), are now in possession and

detaining said petroleum motor 'Otto' against the will and consent of this plaintiff and without legal right and just title;

"13. That the said petroleum motor 'Otto' is reasonably worth three thousand (P3,000) pesos and plaintiff had made preparations to bid a reasonable sum for aforesaid motor on September 9, 1916, but was unable to be present at the sale held on September 6, 1916, by reason of lack of notice.

"14. That on September 16, 1916, the said defendant Canuto Bartolome, as sheriff for the Province of Tayabas, sold the parcels of land, hereinabove referred to, at public auction to the defendant Germann & Co. (Ltd.), for eight hundred and fifty-four (P854.42) pesos and 42/100, same being the full amount of the judgment, interest and costs rendered against this plaintiff in the case entitled 'Germann & Co. (Ltd.), vs. Emilio D. Campomanes' giving no credit on the judgment for the one (P1) peso, the purchase price of the motor hereinabove referred to;

"15. That on September 5, 1917, plaintiff tendered and paid to Germann & Co. (Ltd.), Inc., the sum of nine hundred and fifty-four (P954.03) pesos and 03/100, Philippine currency, same being the amount of the purchase price paid by the said Germann & Co. (Ltd.), Inc., at sheriff's sale for the various parcels of land hereinabove described, together with interest at the rate of one (1%) per centum per month from September 16, 1916, to September 5, 1917, said sum being paid within the time allowed a judgment debtor to redeem real estate sold under execution, and said plaintiff did further demand from said Germann & Co. (Ltd.), a reconveyance of the aforesaid parcels of land as more fully appears from the letter dated September 5, 1917, and the receipt signed by the attorneys of said Germann & Co. (Ltd.), Inc., marked respectively Exhibits A and B and made a part hereof;

"16. That on the 5th day of September, 1917, the defendant Germann & Co. (Ltd.), reconveyed to this plaintiff the various parcels of land more particularly described in paragraph 3 hereof;

"17. That demand has been made upon said defendants and each of them to return to plaintiff said petroleum motor 'Otto' or to pay its value, to wit, three thousand (P3,000) pesos, but the defendants and each of them have refused and neglected and continue to refuse and neglect to return said petroleum motor or pay the value thereof;

"18. That by reason of the unlawful acts of defendants herein complained of, plaintiff has been deprived of the use of said petroleum motor and by reason of such deprivation has been damaged by incurring attorney's fees in the sum of four thousand seven hundred (P4,700) pesos and has suffered general damages in the sum of one thousand (P1,000) pesos.

"Wherefore plaintiff prays that judgment be rendered in favor of plaintiff and against the defendants, Canuto Bartolome and Germann & Co., (Ltd.), jointly and severally, for the return to plaintiff of said petroleum motor 'Otto' or if said return is impossible, to pay the value thereof, to wit, three thousand (P3,000) pesos, and that judgment be further rendered in favor of plaintiff and against the defendants, Canuto Bartolome and Germann & Co. (Ltd.), in the sum of five thousand seven hundred (P5,700) pesos and for costs and for general relief."

We are of the opinion that the complaint is neither vague nor indefinite and that the court erred in sustaining the demurrer upon that ground.

We are also of the opinion that upon the facts averred there was no misjoinder of parties defendant. It is the duty of a sheriff to act in accordance with the law in the sale of property seized upon execution, and one of the most important requirements of the statute (section 454, Code of Civil Procedure) is that notice of the time and place of sale shall be given. If the sheriff sells without such notice, or at a time and place other than that designated in the notice, he acts without warrant of law (Cyc, vol. 35, pp. 1689-1690). If his illegal conduct is the result of inducement or promise of indemnity by the judgment creditor, as is here averred, the sheriff and such judgment creditor are joint tortfeasors and are liable in solidum for all damages caused by their wrongful acts. (Worcester

vs. Ocampo, 22 Phil. Rep., 42, 96.)

Cases are cited by appellees to show that the failure to give the statutory notice does not affect the validity of an execution sale. It may be that such is the rule with respect to innocent purchasers for value at such sales, as to which it is unnecessary for us to express an opinion at this time. vWe hold, however, that when the judgment creditor has induced the sheriff to sell without compliance with the statutory requirements, and such judgment creditor buys in the property at such sale, the proceeding is absolutely void, and that no title is vested in the judgment creditor by reason of such purchase.

It follows, therefore, upon the hypothesis presented by the averments of the complaint, that notwithstanding the alleged sale the engine in question continued to be the property of the judgment debtor, the plaintiff herein, and that when he subsequently discharged his liability to Germann & Co. (Ltd.), by paying the judgment in full, he was entitled to demand the return of the engine, from the defendants, or to recover of them in solidum its value, together with any damages which he may have suffered by reason of its unlawful detention. The third amended complaint states a good cause of action against both defendants.

The judgment of the lower court is reversed, and the case is remanded for further proceedings in accordance with this opinion. In accordance with section 487 of the Code of Civil Procedure, the appellees will pay the costs of this instance. So ordered.

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

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