

TOMAS HILARIO, VICENTE BAGUIO, J. N. BELTRAN AND MARIANO FUENTECILLA, PLAINTIFF AND APPELLEES, VS. W. E. HICKS, KUENZLE & STREIFF, ALHAMBRA CIGAR FACTORY, PACIFIC COMMERCIAL COM...

G.R. No. 14329. December 12, 1919

Ponente: STREET, J.

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STREET, J.:

This action was instituted by the plaintiffs to recover damages supposed to have been incurred by them in consequence of the alleged wrongful sale of certain land under an execution issued upon a judgment of the Court of First Instance of the Province of Lanao.

On May 13, 1913, W. E. Hicks, Kuenzle & Streiff, Alhambra Cigar Factory, Pacific Commercial Company, Manila Wine Merchants, Anderson & Company, and the San Miguel Brewery—hereafter collectively referred to as the creditors—obtained a judgment in case No. 292 in the Court of First Instance of the Province of Lanao for the sum of P30,827.40 against one A. E. Kramer, as administrator of the estate of Frank Shephard, deceased. In this action there were joined as codefendants with Kramer numerous other individuals who had become solidarily bound with Kramer on his bonds as administrator, and judgment was rendered in the same action against these sureties to the extent of the liabilities respectively assumed by them. The plaintiffs herein, to wit, Tomas Hilario, Vicente Baguio, J. M. Beltran, and Mariano Fuentecilla, were four of the bondsmen of Kramer against whom judgment was rendered in said proceeding.

From the judgment thus rendered an appeal was taken to the Supreme Court by the defendants; and on August 17, 1916, this court rendered judgment in case No. 292[1] reversing the judgment of the Court of First Instance and reducing the amount of the recovery to P2,673.18.

Soon after the original judgment had been rendered for P30,827.40, as above stated, in the Court of First Instance against the numerous parties who were defendants in that action, the creditors procured an order for the immediate execution of the judgment. An execution was accordingly issued and 48 parcels of real property were levied upon and sold on April 25, 1914, as property of one or the other of the numerous defendants, in addition to certain personal property pertaining to Kramer and other personal property belonging to C. L. Molo, one of the sureties.

At this sale there was realized from the real and personal property of Kramer, the principal debtor, the sum of P826, and from the property of the various sureties the actual sum of 1N,467. It would appear from the return of the sheriff that a larger sum had been made from the properties of the sureties, but the fact is before us that lots Nos. 5, 19, 23, and 37, though appearing as sold as properties of the sureties, yet really belonged to other persons who have vindicated their rights to the same in other actions which are now before us upon appeal from the same court. The price at which these four parcels were sold was "P4,890, which is of course to be deducted from the total value of the property as appearing in the return of the sheriff. We also take account of P260, the amount realized from the lot No. 2, but omitted from the sheriff's summary. When account is also taken of P86 realized

from personal property of C. L. Molo at a sale made by the sheriff on March 31, 1916, it will be found, as above stated, that the properties of the sureties which were sold upon April 25, 1914, actually realized the sum of P6,467, And the total amount made out of Kramer and the sureties was P7,293. It will of course be understood that, in those cases where the creditors themselves became the purchasers, no money was presumably paid out by them, it being sufficient that credit should be allowed on the judgment debt to the extent of such bids.

The result of said sale may be here conveniently exhibited in two tabulated statements, the first of which includes the parcels of land belonging to the sureties which were bid in by the creditors, while the second includes the parcels belonging to the sureties which were sold to third parties.

I

PARCELS BID IN BY CREDITORS

Name of surety

Number of lot

Price at sheriff's sale

C.L. Molo

2

P260

Do

4

400

Miguel Obach

8

28

Do

9

15

Do

10

123

Do

11

30

Do

12

90

Lucio Badelles

13

120

Do

16

290

Bernabe Duran

17

325

Do

18

150

J.C. Nadorra

20

80

Do

21

29

Do

22

70

J.M. Beltran

24

19

Do

25

50

Do

26

100

Do

28

219

Do

29

100

M. Fuentecilla

30

500

Do

31

200

Do

32

200

Tomas Hilario

33

200

Do

34

20

Do

35

20

Vicente Baguio

36

90

Do

38

69

Do

39

100

Do

40

200

Lucio Badelles

41

200

Do

42

20

Do

43

24

Do

44

20

II.

PROPERTIES SOLD TO THIRD PARTIES

Name of surety

Number of lot

Price at sheriff's sale

C.L. Molo

1

P65

Do

3

830

Do

6

101

Miguel Obach

7

16

Lucio Badelles

14

370

Do

15

401

J.M. Beltran

27

37

The sheriff issued certificates of sale to the purchasers of the lots mentioned in the second tabulated statement, but none were issued to the creditors for the lots mentioned in the first tabulated statement, except lots 10, 12, 16, 17, 35 and 38, the explanation being that these lots were soon sold by the creditors to third persons and the certificates of these were needed in connection with said sales. As to the others the creditors did not apply for the sheriff's certificate.

In considering the rights of the parties to this litigation, as affected by the reduction of the recovery in case No. 292 by the Supreme Court, it must be borne in mind that, though the execution of the judgment of the Court of First Instance in that case was premature, the sale of the properties belonging to the execution debtors in that action was lawful. Said sale was effected under a lawful order of the Court of First Instance; and when the property was levied upon and sold at public auction, the levy was not excessive. In fact the property sold brought much less than the amount of the judgment as it then stood. Admitting, however, that the sale was in itself legal, it is evident that, when the Supreme Court reduced the amount of the recovery, it immediately became the duty of the creditors to make restitution, and, so far as practicable, to restore the parties to the position which they would have occupied if the original judgment had been for the amount finally awarded by the appellate court.

Now, in order to discover the true scope and extent of the duty of the execution creditor in a case of this kind, it is important to consider the exact nature of the judgment finally rendered in the appellate court, that is, to discover whether that judgment was really a reversal or a mere modification of the original judgment by this distinction must the question be determined whether the creditor can be compelled to make specific restitution of the properties bid in by him or can only be required to restore the excess actually realized by the sheriff's sale. The authorities are practically harmonious upon the proposition that specific restitution can be enforced in case of a complete reversal, but it is generally accepted that if the judgment is merely modified in its amount and affirmed in other respects, the creditor cannot be compelled to make specific restitution, though he can be required to restore the excess realized upon the execution over and above the amount finally awarded.

In the case before us the judgment of this court was in terms a reversal, and a new judgment was rendered for the amount found to be actually due; and we are of the opinion that, for the purposes of this litigation, such an order must be taken to operate with all the effect of a complete reversals It is undoubtedly true, as is observed by the

author of the annotation to *Cowdery vs. London and San Francisco Bank*, in volume 96 of the American State Reports, at page 126, that appellate courts sometimes, and perhaps often enter orders of reversal without having in mind the questions which may afterwards be presented because of proceedings taken under a judgment while it remained in force, and when, in view of those questions a modification rather than a reversal should have been directed, nevertheless when the order is made and free from ambiguity, it must be given effect in the form in which it is framed. "If an order declares that a judgment is reversed, it must be treated as at an end." (Id., p. 126.) In the case referred to (*Cowdery vs. London and San Francisco Bank*, 139 Cal., 298 [96 Am. St. Rep., 115]), it appeared that the Supreme Court of California had made an order reversing a judgment of an inferior court and remanding the cause with directions to the trial court to enter judgment for a smaller amount. This was held to constitute a reversal and to justify the setting aside of a sale that had been made pursuant to the original decree of the lower court in which the plaintiff had become purchaser. In discussing the point now under consideration, the Supreme Court of California said:

"The legal effect of the order of the supreme court was to reverse and vacate the judgment, and not merely to modify it. Upon a decision of the Supreme Court that there was material error in the action of the court below, that court may direct the character of the subsequent proceedings in the lower court, and its mandate will vary according to its views as to the proper course to be pursued. It may conclude not to reverse the judgment, but to modify it, by eliminating some portion, or by adding something to it, leaving the remaining part of the judgment below to stand affirmed and in full force and effect from the date of its original entry or rendition; or it may reverse the judgment, which means to entirely vacate it, and may remand the cause for new trial; or if a new trial is not necessary, it may upon the reversal remand it, with directions to the lower court to enter a particular judgment. To reverse is 'to overthrow; set aside; make void; annul; repeal; revoke; as, to reverse a judgment, sentence, or decree (Century Dictionary) , or, 'to change to the contrary, or to a former condition.' (Standard Dictionary). * * * The distinction between a reversal of a judgment and an affirmance with a modification is too marked and radical to justify us in disregarding it. * * * We are bound to assume that this court in this case acted advisedly and deliberately, and had good reason for ordering a reversal rather than a modification and affirmance. The part of the order directing the entry of a new judgment related solely to the proceedings after the reversal and the return of the case to the court below, and was not intended to, nor could it, change the reversal to a mere modification. Neither can the fact that it may now appear to us that the same result could have been reached by a modification justify this court in now changing the effect of the mandate."

In view of the foregoing, the final judgment entered upon appeal in case No. 292 must be considered to have been a reversal rather than a mere modification of the original judgment and upon this hypothesis we proceed to consider the effect of this reversal upon rights of the respective parties.

Upon one proposition all authorities concur, which is, that as to those properties which were sold by the sheriff to third parties, the sale is in no wise affected by the subsequent reversal of the judgment by the Supreme Court. The doctrine is everywhere accepted that the title of one who buys at a sheriff's sale, being a stranger to the proceedings, will not be affected by the subsequent reversal of the judgment, unless of course for want of jurisdiction over the subject matter or over the party whose title was sought to be divested. (10 R. C. L., 1233; 17 Cyc, 1309.) therefore, as to those properties which were sold to third parties, the obligation of the creditors is limited to the duty to account for the amount realized at the sheriff's sale in excess of the amount of the final judgment, together with interest upon such excess from the date of the sale.

The position of a creditor with respect to property bid in by him is different; and it is held with practical unanimity that the creditor buying at his own sale takes subject to the eventuality of the lawsuit and may be required, if the execution debtor so elects, to surrender the property and account for mesne profits when the judgment is finally reversed. (See cases cited in note to *Cowdery vs. London and San Francisco Bank*, 96 Am. St. Rep., 137-139; 17 Cyc, 1310; 10 R. C. L., 1233). The same rule is applicable where the attorney of the plaintiff in

the execution becomes the purchaser. (*Galpin vs. Page*, 18 Wall. [U. S.], 350 [21 L. ed., 959].)

As was said by the Supreme Court of California in *Reynolds vs. Harris* (14 Cal., 681 [76 Am. Dec, 459]), "a party obtaining through a judgment, before reversal, any advantage or benefit, must restore what he got to the other party, after the reversal;" and in a later case the same court observed "The true condition of the sale—as valid or invalid—we consider to be this: The sale was valid at the time it was made; but the plaintiff in the execution having become the purchaser, it was liable to be set aside upon the reversal or modification of the judgment by this court, or by the court below upon the return of the case, upon motion." (*Johnson vs. Lamping*, 34 Cal., 301.)

The right to obtain specific restitution of the properties bought in by the creditors carries with it as a necessary incident the right to require an accounting: as to the rents and profits. (*Delano vs. Wilds*, 11 Gray [Mass.], 17 [71 Am. Dec, 687].)

When we come to consider the rights of the execution debtors against the creditors with respect to those parcels which, after being bid in by the creditors, were sold by them to third persons, it is easy to see that the creditors may be made to account for the value received by virtue of such sales, as well as for any rents or profits obtained by them before said parcels were sold. Upon the further question whether, since the reversal of the original judgment, the execution debtors may maintain an action to recover these parcels from the persons to whom the creditors sold, we here express no opinion, as the persons interested are not before us. When that question is raised, if it should be, those purchasers are entitled to their day in court, and much can be said on either side of the controversy. (*Di Nola vs. Allison*, 143 Cal., 106 [65 L. R. A., 419] ; *Marks vs. Cowles*, 61 Ala., 299; *McAusland vs. Pundt*, 1 Neb., 211 [93 Am. Dec, 368] ; *Wadhams vs. Gay*, 73 Ill., 422.)

What has thus far been said comes to this: That the execution debtors, who were the sureties of Kramer in the former action, are entitled to recover from the creditors any amount of money, over and above the amount finally awarded, which may have been realized from the properties sold by the sheriff at the execution sale to third parties, or from properties bid in by the creditors and afterwards disposed of by them to third parties. The execution debtors are also entitled to specific restitution of the parcels of land bid in by the creditors which still remained in the creditors' hands or subject to their disposal at the time of the institution of the present action. In connection with the right to enforce restitution, the debtors are also entitled to recover from the creditors, as damages, any amount which was, or should have been realized by the latter from said properties as rents and profits.

As already indicated, the sum of P826 was realized from the properties of the principal debtor, Kramer; and the tabulated statement No. II shows that the sum of ^1,820 was realized from the sale of the seven parcels which were bought in by third parties. To this should be added P86 realized from personal property of C. L. Molo. It thus appears that the creditors obtained a total of P2,732, either out of Kramer's properties or the properties of those sureties whose land was sold to strangers. This alone was more than enough to satisfy the reduced amount of the judgment, allowing something for costs and commissions, the true amount of which does not appear. It is also stated in the appellee's brief, though the proof upon this point seems to be wanting, that three of the original sureties, to wit, Carlos Martel Ong, Cy Pegco, and I. M. Parkinson, paid to the creditors the sum of f%000 each, by way of compromise; and against these no execution was accordingly issued. If this be true the amount finally found to be due had been paid in money with considerable excess without reference to the parcels bid in by the creditors. In this connection we deem it worth while to say that although the three sureties just mentioned, by compromising the case as to themselves, may possibly have placed themselves where they are not entitled to restitution, of any excess paid by them—though upon this point we express no opinion—nevertheless their payments were undoubtedly applicable in satisfaction of the judgment and tended to relieve the other sureties in the same manner as if the amounts paid by way of compromise had actually been realized from execution.

In sustaining the right of the execution debtors to enforce specific restitution of the parcels of land bought by the creditors and still held by them, we do not mean to hold that these plaintiffs are bound to seek the restitution of said properties. On the contrary, they undoubtedly have a right of election-and may, if they see fit, ratify or affirm the sale as to all the properties and sue the creditors for the balance over and above the amount necessary to satisfy the final judgment. Certainly, in such an action, the creditors would not be permitted to repudiate their own title; and no court could hesitate for a moment in sustaining the action of the debtor party to recover the excess. (McWaters vs. Smith, 25 La. Ann., 515.) By suing in this sense the sureties would submit to the sale as an accomplished fact and thereby confirm the creditors' title to the property bid in by them.

In this connection it will, of course, be noted that ratification of the sale and recovery of the proceeds realized are wholly incompatible with specific restitution, as applied to the same property. The plaintiffs may have their election as to which remedy they will select. But the two species of relief are mutually inconsistent and both cannot be obtained in one action.

A few words must now be said with reference to the procedure best adapted to effectuate the rights of the sureties in the rather complex situation which has supervened in the manner above stated. Upon this point we concede that a separate independent action might be maintained by one of the sureties to recover any parcel, or parcels, of land belonging to him which were bid in by the creditors and still held by them, in which action the plaintiff would also be entitled to recover rents and profits for the period during which he was kept out of possession. It would also be permissible for all of the sureties to unite in a single action for the purpose of obtaining any relief which the court could administer under existing conditions, such as: (1) The restoration of the funds realized by the creditors in excess of the final judgment; (2) specific restitution, to the original owners, of the several parcels held by the creditors, with an accounting for rents and profits; and (3) the enforcement of the resulting equities of the sureties, with respect *to the equalization of the burden among themselves. Moreover, all of this relief might properly be obtained in an action brought by one or more of the sureties, provided the other sureties should be joined as parties defendant.

It is clear, however, that a more convenient and more expeditious mode of procedure, perfectly adapted to the situation under consideration, would be by motion in the Court of First Instance based upon the record returned by the Supreme Court in case No. 292. Such a proceeding would have the advantage that all the parties directly concerned would be already in court and all the facts appearing of record in that case would be available as proof. The final judgment of this court as evidenced by its mandate shows that said case was reversed; and it was the duty of the court of origin, upon receiving that record, to give effect to that judgment. This means of course that it was competent for that court to administer any relief necessary to unravel the intricacies that have resulted from the premature execution of its own original judgment. Moreover, the power to entertain a motion of this nature will continue to exist until the proper relief is administered or the judgment itself becomes unenforceable by the lapse of time.

By the preceding general discussion we are prepared intelligently to consider the controlling features of the present action. In this connection we note that the ten sureties whose properties had been executed and sold as aforesaid, instead of suing separately, divided themselves into three detachments, and instituted three actions with three or four plaintiffs in each. These actions are all similar to each other, and all have reached this court concurrently upon appeal (R. G. Nos. 14328,[1] 14329[2] and 14330[3]). In the present case Tomas Hilario, Vicente Baguio, J. N. Beltran, and Mariano Fuentecilla are the plaintiffs. All of the execution creditors in the prior suit are named as defendants, together with Dionisio Vidal, who acted as deputy sheriff in the sale of the properties which were sold on execution.

In the narrative part of the complaint in the present action each of the four plaintiffs exhibits a list of the various

properties belonging to him which had been sold by the sheriff in the former action, whether to the creditors or to outsiders. Indeed, the plaintiff Beltran introduces into his part of the complaint a piece of land identified as parcel M which, so far as we can see, was not seized or sold under execution at all. In their prayer for damages, the plaintiffs ask for damages in common, though evidently the right of action of each is supposed to be derived from the wrongful act committed against his own property. No attempt is made to obtain specific restitution of any of these properties, and the action sounds exclusively in damages. The damages laid in the complaint fall under the following heads: (1) The sum of P8,370, alleged to be the true value of the various properties belonging to the plaintiffs which were sold by the sheriff; (2) the value of the fruits which might, but for the sale, have been obtained by the plaintiffs from said properties from the date of the sale; and (3) a further sum of P334 annually for rent.

The defendant creditors demurred to the complaint on the ground of misjoinder of parties plaintiff. This demurrer was overruled by the trial judge on March 8, 1918, whereupon the defendants excepted and answered with a general denial of the complaint.

Upon the hearing the trial judge saw fit to award damages severally to the plaintiffs as follows: To Tomas Hilario, P6,038.76; to Vicente Baguio, P4,286.18; to J. N. Beltran, P6,346.50, and to Mariano Fuentesilla, P9,342.13—all with interest at the lawful rate from the date of the decision. These considerable sums of money seem to consist mainly of two elements, namely, the court's estimate of the true value of the properties sold, and the court's estimate of the value of rents and profits for four years from the sale till the decision was made.

It was clearly erroneous in an action of this character, to join four of the sureties as plaintiffs, their causes of action being entirely distinct. It is true that the causes of action of the several plaintiffs had their origin in the same act and were directed against the same defendant. Nevertheless the damages recoverable by one had no connection with those recoverable by another, there being no community of the interest among the plaintiffs with respect to the properties sold.

The trial judge, therefore, committed error in overruling the demurrer based on the ground of the mis joinder of parties plaintiff. If this erroneous ruling stood alone, we might entertain a doubt as to whether it constitutes reversible error, since section 503 of the Code of Civil Procedure prohibits this court from reversing a judgment on formal grounds or for such error as has not prejudiced the real rights of the excepting party. Moreover, we cannot be insensible of the conditions under which justice is administered in the remote and obscure parts of these Islands—a circumstance which operates upon us as a strong deterrent against reversal upon any grounds other than such as are intimately connected with the merits.

In the case before us, however, the errors committed are numerous; and we have no doubt that the incorrect procedure of joining several—but not all—of the sureties as plaintiffs in one action contributed materially to the resulting confusion. This error was therefore, in our estimation, prejudicial to the real rights of the defendants, and the overruling of their demurrer constituted reversible error.

It is unnecessary for us to comment in detail upon all features of the case as it was presented and decided in the trial court, but as the case must go back, we deem it our duty to refer to certain mistakes so that the same errors may not be again repeated in the lower court.

In addition to misjoinder of parties plaintiff, the complaint in this cause presents the defect of uniting inconsistent causes of action, in that, it seeks damages for the value of the properties sold and also for rents and profits. Certainly, if the plaintiffs are entitled to recover the value of the properties alleged to have been wrongfully sold, that would be the extent and end of the liability of the defendants with respect to those properties. The right to recover mesne profits is evidently derived from the right to specific restitution, which precludes the possibility

of holding the defendants liable for the value of the properties. The plaintiffs are bound to adopt a theory of the case which is selfconsistent. If restitution of certain properties and damages for rent and profits are desired, the parties entitled thereto should ask the court to set the sale aside as to those properties.

The defendants at the trial informally disclaimed all right, title, and interest with respect to the properties involved in this litigation; and it is to be presumed that the original owners have already recovered possession of such of the parcels as were bid in by the creditors and not sold by them. This would of course render it unnecessary to include in the complaint a prayer for specific restitution; and the accounting for profits may be the only relief which is desired as against the creditors as to those properties. But all this is entirely incompatible with the recovery of the damages for the value of the same properties as allowed by the trial court.

We note, furthermore, that, as to the properties which were sold by the sheriff to third persons, the trial judge apparently held the creditors liable for the full value as fixed by him upon evidence adduced at the hearing. This was erroneous, as the liability of the creditors in regard to those parcels does not extend beyond the amount which was realized at the sheriff's sale. Again, as we have already suggested, the liability of the creditor with respect to such parcels as they sold to third persons soon after the sheriff's sale took place should be limited to what they received, with' the profits, if any, obtained by them while those properties were in their possession.

Before closing we deem it advisable to say that while this decision must, so far as the application of general principles is concerned, control the future course of this controversy, it is not intended that the particular facts stated herein should be taken to have been conclusively found. This is said because the proof submitted in all these cases is incomplete, and we have been compelled, in order to make a full exposition of the material facts, to take into account certain things which can hardly be said to have been properly proved.

Finally, in the interests of justice, no less than with a view to correct and speedy procedure, we suggest that the ten sureties who are plaintiffs in these three causes (R. G. Nos. 14328, 14329 and 14330) would do well, immediately upon the return of these records, to take a voluntary dismissal under subsection (4) of section 127 of the Code of Civil Procedure and to file a motion in case No. 292 asking for appropriate relief in the premises. Upon the filing of such motion the creditors will have an opportunity to formulate their defense; and the court will allow both parties to submit such proof relevant to the issues thus presented as they see fit to adduce.

The judgment is reversed and the cause remanded with directions that the demurrer interposed by the defendants in the trial court be sustained. No special pronouncement will be made as to costs of either instance. So ordered.

Arellano, C.J., Torres, Araullo, Malcolm, and Avanceña, JJ., concur.

Judgment reversed, case remanded with instructions.

[1] Hicks vs. Kramer (R. G. No. 9866; not published)

[1] Obach vs. Hicks, decided December 12, 1919, not published

[2] This same case.

[3] Molo vs. Hicks, decided December 12, 1919, not published.

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