

JULIO JAVELLANA, PLAINTIFF AND APPELLANT, VS. LUIS MIRASOL AND GERONIMO NUÑEZ, PROVINCIAL SHERIFF OF ILOILO, DEFENDANTS AND APPELLEES.*G.R. No. 14881. February 05, 1920*

Ponente: STREET, J.

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In the year 1915 Julio Javellana, the plaintiff herein, recovered a judgment for the sum of P5,710.50, with interest, in the Court of First Instance of the Province of Iloilo against Maximino Mirasol and Eugenio Kilayco, and in order to satisfy the same an execution was in due time levied upon certain properties of Maximino Mirasol. On July 6, 1915, said properties were exposed to sale by the sheriff at public auction and were purchased by the judgment creditor, Julio Javellana, the highest bidder, for the sum of P5,920. Before the expiration of the period of one year allowed by law for the redemption of property sold under execution, or to be precise, on July 3, 1916, Alejandro Mirasol, a brother of Maximino Mirasol, acting in representation of another brother, Luis Mirasol, appeared before Geronimo Nunez, deputy sheriff of the province aforesaid, and, for the purpose of redeeming the properties in accordance with section 465 of the Code of Civil Procedure, placed in the hands of said officer a check, drawn on the Bank of the Philippine Islands and payable to bearer, for the sum of P6,604.74.

In making this redemption it was represented to the deputy sheriff that Luis Mirasol was a redemptioner, or person entitled to redeem, within the meaning of section 464 of the Code of Civil Procedure; and in proof of this fact Alejandro Mirasol exhibited a document bearing date of April 4, 1916, executed by the president of the Bank of the Philippine Islands, transferring to Luis Mirasol two claims, amounting to several thousand pesos, which had been reduced to judgment by the bank against Maximino Mirasol. The consideration for the transfer of these judgments is stated in the document of transfer to be P6,150, paid to the bank by Luis Mirasol.

The right of Luis Mirasol to redeem the property was not questioned by the deputy sheriff, and the check presented by Alejandro Mirasol was accepted. At the same time a receipt was delivered to Alejandro Mirasol, signed by Geronimo Nunez as deputy sheriff, acknowledging the receipt of the sum of P6,604.74, as a deposit for the purpose of redeeming the properties which had been sold as the property of Maximino Mirasol and purchased by the judgment creditor Julio Javellana. Of this amount the sum of P5,920 was stated to be the amount of the purchase price, the remainder being accrued interest.

The check which was delivered to Geronimo Nunez by Alejandro Mirasol upon the occasion of making this deposit was not immediately presented for payment to the bank upon which it was drawn but was delivered by that officer to his superior, the Honorable Amando Avanceña, at that time Governor of the Province of Iloilo, and ex officio sheriff. By him the check was retained until the expiration of his term of office, when it was turned over to his successor in office, the Honorable Gregorio Yulo. On December 13, 1916, the latter official presented the check to the bank upon which it was drawn and received payment.

Pursuant to the redemption thus effected, the deputy sheriff, Geronimo Nunez, at the request of Luis Mirasol, on

March 9, 1918, executed and delivered to the latter a public document purporting to convey to him all the right, title and interest in said property which had formerly been vested in Maximino Mirasol.

Julio Javellana, the original judgment creditor of Maximino Mirasol, and purchaser of the properties which had been sold as aforesaid, considering himself aggrieved by the redemption thereof, appeared in the Court of First Instance of the Province of Iloilo, on April 11, 1918, and filed the original complaint herein, attacking said redemption as irregular and unauthorized in point of law and as fraudulent, or simulated, in point of fact, and praying that the document of March 9, 1918, executed by Geronimo Nunez, and purporting to convey to Luis Mirasol the title to said property which had formerly been vested in Maximino Mirasol, be declared fraudulent and void, and that said instrument be cancelled by order of the court. The plaintiff further asked that the sheriff be required to issue to the plaintiff, as purchaser, a deed of conveyance of said property of a definitive character, as contemplated in section 466 of the Code of Civil Procedure.

The defendants having answered,, the cause came on to be heard in due course; and his Honor, Judge L. M. Southworth, presiding in the Court of First Instance of Iloilo, held that the redemption had been effected in good faith and in accordance with the requirements of law. Judgment was accordingly entered on October 7, 1918, declaring Luis Mirasol to be the owner of the properties in question and absolving the defendants from the complaint, with costs. From this judgment the plaintiff, Julio Avellana, appealed.

The most formidable question in the case is one of fact, namely, whether the deposit made on July 3, 1916, by Alejandro Mirasol, when he placed a check for P6,604.74 in the hands of Geronimo Nunez, was in fact an absolute and unconditional payment in good faith made for the purpose of effecting redemption, or whether it was, on the other hand, a contingent deposit, intended, with the connivance of the deputy sheriff, to be returned in a certain event to Luis Mirasol, without ever coming to the hands of the creditor, Julio Javellana.

It is not to be denied that counsel for the plaintiff-appellant have been able to marshal a number of suspicious circumstances which at first sight seem to sustain their contention that the redemption was merely colorable and that the redemptioner did not intend or desire that the redemption money should be unconditionally placed at the disposal of the purchaser, the plaintiff in this case. Nevertheless upon a careful examination of the proof we are convinced that the trial judge was correct in holding that the redemption was unconditional and made without reservation. A brief exposition of certain facts bearing on this aspect of the case will, we think, suffice to show the correctness of this conclusion.

It appears in evidence that the members of the Mirasol family whose names figure in these proceedings have long enjoyed the reputation of being people of considerable substance. But a few years ago Maximino Mirasol became heavily involved, as a result of the financial operations of one Eugenio Kilayco, in conjunction with whom Maximino Mirasol had signed a number of promissory notes. Eugenio Kilayco speedily became insolvent, and the burden of the obligations thus created necessarily fell upon Maximino Mirasol, who was himself unable to sustain the burden and was reduced to financial ruin. In this crisis Maximino Mirasol became indebted to his brothers, Luis and Alejandro; and for the purpose of protecting them, as well doubtless as for the purpose of placing his own estate beyond the reach of his creditors, Maximino Mirasol conveyed to his brothers certain properties which had come to him by inheritance. It was upon these properties that Julio Javellana, the plaintiff herein, caused the execution to be levied in 1915 to satisfy the judgment which he had recovered against Maximino Mirasol and Eugenio Kilayco, as stated in the first paragraph of this opinion. When said execution was levied Luis and Alejandro Mirasol at once notified the sheriff that they were the owners of said properties, basing their claim upon the conveyances executed in their favor by Maximino Mirasol. However, an indemnifying bond was executed by Julio Javellana, to protect the sheriff, and the latter ignored the claim. The sale accordingly took place on July 6, 1915, as already stated; and on September 6. thereafter, Luis Mirasol and Alejandro Mirasol simultaneously began

actions against Julio Javellana and others in the Court of First Instance of Iloilo to quiet their alleged titles to the properties in question and to annul the sheriff's sale. The defense interposed in those cases was that the conveyances upon which the plaintiffs relied to prove title in themselves were fraudulent and void as against the creditors of Maximino Mirasol. On February 16, 1916, the Court of First Instance sustained this defense, and absolved the defendants from the complaint. This plaintiffs thereupon appealed to the Supreme Court, where the judgment of the Court of First Instance was affirmed on February 13 [16], 1918.[1]

From this statement it will be seen that the cases instituted by Luis Mirasol and Alejandro Mirasol to recover the properties in question were still pending upon appeal at the time when the period for the redemption of those properties was about to expire in July, 1916. Luis Mirasol and Alejandro Mirasol, the plaintiffs in those actions, were therefore in a quandary upon the problem of saving something out of the wreck of their brother's fortune; for it was obvious that if the sixth day of July, 1916, should pass without redemption and the decision of the lower court in the appealed cases should be finally affirmed, the properties in question would be irretrievably lost. In this dilemma Luis Mirasol decided to purchase the credits of the Bank of the Philippine Islands against Maximino Mirasol, which had already been reduced to judgment, and to proceed in the character of judgment creditor to redeem the properties from Julio Javellana. Accordingly on April 4, 1916, the purchase of the judgments of the Bank of the Philippine Islands was accomplished in the city of Manila by Mirasol; and a few days later he transmitted to his brother Alejandro, in the city of Iloilo, the sum of P7,000, with instructions to redeem the properties. The steps taken by Alejandro pursuant to these instructions have already been narrated.

It naturally would have occurred to persons circumstanced like the Mirasols that, in case of the reversal of the judgment in the appealed cases, the money which was thus used to effect redemption might be lost, since it must have been considered exceedingly doubtful whether in that event the creditor could be compelled to return it. Parting from this suggestion, the case of the plaintiff-appellant supposes that Alejandro Mirasol, with a view to the eventual recovery of the check in case of the reversal of the pending cases, entered into a collusive agreement with Geronimo Nunez, whereby the latter agreed to conceal the fact of redemption until the outcome of the appealed cases should be known and in case of reversal to return the check unused. In this connection it is shown that Geronimo Nunez is related in some way to the Mirasols, and the inference is suggested that he would be disposed to act in the matter in a way friendly to their interests. As might be expected the existence of this agreement is denied by both the principals, Alejandro Mirasol and Geronimo Nunez, and the conclusion that there was collusion of any sort rests entirely upon circumstantial evidence.

It will be noted that the appellant's theory of the case upon this point has as its principal basis a concealment of the redemption, but this view of the case is refuted by the proven fact that there was no concealment of the redemption. The delay of the sheriff in converting the check into money and his failure to offer the proceeds to Julio Javellana, or his attorney, possibly require some explanation; and this is in our opinion found in the attitude of procrastination which was deliberately adopted by Julio Javellana himself under the advice of his attorney after the fact of the redemption of the property had been brought to their attention.

Ruperto Montinola, one of the attorneys for Julio Javellana throughout all this litigation, says that on July 4, 1916, he left Iloilo for other parts and was absent from that city for three days. He says that soon after returning he was informed by some one in the corridor of the courthouse that Alejandro Mirasol had deposited a sum of money in the hands of the sheriff, whereupon he at once wrote a letter, asking information of the sheriff, and on the same day [July 10] received a notification from Geronimo Nunez, informing him that on July 3, 1916, Alejandro Mirasol, "as a creditor of Maximino Mirasol," had deposited in the sheriff's office the sum of P6,604.70, for the redemption of the properties in question. Geronimo Nunez says that on July 3, 1916, or the very day when the deposit was made, he called up the office of Montinola to inform him of the fact that the redemption of the

property had been effected but was told that Montinola was not in. The effort of the witness to reach Montinola was again repeated on the two succeeding days but without success, owing to the absence of Montinola from the city. Finally, on or about July 10, Montinola himself asked this witness to send him a formal notification of the redemption. In the light of this testimony there can be no question that Montinola knew of the redemption very soon after July 3, 1916; and we have from his own lips the further statement that when he next saw his client, Julio Javellana, he, as attorney, advised him that they should wait since it was the duty of the redemptioner to tender payment directly to the creditor.

We attach no importance to the circumstance that the official notification says that the redemption was effected by Alejandro Mirasol "as creditor" instead of Alejandro Mirasol "as attorney in fact for Luis Mirasol." This error in our opinion is merely an example of those inaccuracies which naturally creep into recitals hastily written by persons not intent upon the exactitude of their statements.

The advice which Montinola gave his client, namely, to wait, furnishes, we think, a natural and reasonable explanation of all the delay that thereafter occurred in connection with the cashing of the check; and we cannot believe that this delay was the result of a plot to withhold the proceeds of the check from Julio Javellana, its rightful owner. Concealment there was none. The contention of the appellant on this question is in our opinion untenable.

The contention is made in the appellant's brief that the position of Luis Mirasol as a litigant in the prior appeal is inconsistent with his position as litigant in this case; and he is supposed to be estopped from now claiming in the character of redemptioner the property which he then claimed in the character of owner. We are unable to see any force in the suggestions; as the positions occupied by this litigant are based upon alternative rather than upon opposed pretension. No one can question the right of a litigant to claim property as owner and to seek in the same proceeding alternative relief founded upon some secondary right. The right of redemption, for instance, is always considered compatible with ownership, and one who fails to obtain relief in the sense of absolute owner may successfully assert the other right. That which a litigant may do in any one case can of course be done in two different proceedings.

The proposition is advanced with apparent confidence in the appellant's brief that if judgment had been reversed by the Supreme Court in the cases brought by the Mirasol brothers against Julio Javellana, the latter could have retained the redemption money, supposing that he had seen fit to reduce it to possession. As to this it is perhaps unnecessary here to express a definite opinion. Nevertheless in view of the emphasis placed on the point in the appellant's brief, we deem it desirable to express a doubt as to the correctness of the proposition thus stated. The act of Luis Mirasol in redeeming the property pending the decision of those appeals was not an officious act in any sense. It was on the contrary necessary to the reasonable protection of his right as a subsequent judgment-creditor of Maximino Mirasol—a right in no wise involved in the issues of the appealed cases. Consequently, if those cases had been reversed, the title by virtue of which Julio Javellana had obtained the redemption money would have been destroyed, and in all probability the law would have imposed upon him the obligation to restore what he had thus acquired. (*Hilario vs. Hicks*, p. 576, ante.)

In the discussion of this case a number of subordinate questions have been argued or suggested themselves as to the proper interpretation of the provisions of the Code of Civil Procedure which treat of redemption from execution sales, among which may be noted the following, namely, whether the redemption was rendered ineffectual by reason of the fact (1) that a check was used as a medium of payment instead of money, (2) that the tender of payment was made to the officer who conducted the sale instead of directly to the purchaser, and (3) that the redemptioner failed to produce to said officer the documents specified in section 467 of the Code of Civil Procedure in proof of his right to redeem. A few words upon these points will not come amiss; and by way of

preface we may be permitted to repeat the following words from a decision of the Supreme Court of Illinois, which have heretofore been quoted with approval by this Court: "Redemptions are looked upon with favor, and where no injury is to follow, a liberal construction will be given to our redemption laws, to the end that the property of the debtor may pay as many of the debtor's liabilities as possible." (*Enage vs. Vda. e Hijos de F. Escano*, 38 Phil. Rep., 657.)

Upon the first point, we are of the opinion that the redemption was not rendered invalid by the fact that the officer accepted a check for the amount necessary to make the redemption instead of requiring payment in money. It goes without saying that if he had seen fit to do so, the officer could have required payment to be made in lawful money, and he undoubtedly, in accepting a check, placed himself in a position where he would have been liable to Julio Javellana if any damage had been suffered by the latter as a result of the medium in which payment was made. But this cannot affect the validity of the payment. The check as a medium of payment in commercial transactions is too firmly established by usage to permit of any doubt upon this point at the present day.

As to the second point, direct authority for making payment to the officer who conducted the sale is found in section 466 of the Code of Civil Procedure, and it was manifestly unnecessary for the redemptioner to seek out the purchaser, Julio Javellana, for the purpose of making payment to him. (*Enage vs. Vda. e hijos de F. Escano*, 38 Phil. Rep., 657.)

The third point, which relates to the production of the document necessary to prove the right of the redemptioner to make the redemption, is of somewhat greater significance. Section 467 of the Code of Civil Procedure provides, as may be recalled, that where the assignee of a judgment seeks to redeem he must produce, in proof of his right, to the person to whom the offer to redeem is made: (1) a certified copy of the judgment of which he claims to be the owner; (2) a copy of the assignment, verified by the affidavit of himself, or of a subscribing witness thereto; (3) an affidavit by himself or his agent showing the amount then actually due on said judgment. In the present case Geronimo Nunez was content to permit the redemption without requiring compliance with these provisions. The original of the assignment executed by the bank to Luis Mirasol was, however, produced before him; and for the rest he was fully aware of the existence of the judgments in favor of the bank against Maximino Mirasol and of the fact that they still remained unsatisfied upon the records of his court. This irregularity, if such it may be termed, in the manner of making the redemption does not affect the validity of that act. The primary purpose of the provision under consideration is to define with precision the conditions under which the person redeeming can enforce redemption as a matter of unquestionable right; and, if the person to whom the offer of redemption is made sees fit to accept the money without reference to the information which the documents mentioned would give, the failure on the part of the person redeeming to produce them is of no moment. It is hardly necessary to say that the act of the officer in accepting the tender would not have made the redemption effectual, if the person redeeming had in fact had no interest which entitled him to redeem, and the sufficiency of his title or right to redeem may of course be questioned. This circumstance affords all the protection needed to prevent the purchaser at the execution sale from being deprived of the property by an unwarranted redemption.

We are aware of the fact that authority can be found in the decisions of some American courts, notably the Supreme Court of California, to the effect that under such a provision as that now in question, the production of the documents mentioned is a condition precedent to the right to effect redemption; and a distinction is there drawn between the case of the judgment debtor and his successors in interest and that of the "redemptioner," or creditor having a lien by judgment subsequent to that under which the property was sold, it being held that the former need not produce the specified documents while the latter must. (*Haskell vs. Manlove*, 14 Cal., 54; *Philipps vs. Hagart*, 113 Cal., 552 [54 Am. Dec. 369].) The reasons which have led this Court to adopt a view on

this point more favorable to the redemptioner were stated with much force by Justice Fisher in *Enage vs. Viuda e Hijos de F. Escaño*, 38 Phil., 657; and we have no hesitancy in adhering to the doctrine there announced.

A still more fundamental point than those above touched upon has also been suggested, which is this: Can an ordinary creditor whose judgment is subsequent to that under which the property was sold exercise the right of redemption in any case?

The difficulty arises upon the interpretation of subsection 2 of section 464 of said Code and has its origin in the use of the word "lien" in the original English text of that provision. The expression "a creditor having a lien by attachment, judgment, or mortgage" apparently imputes to attachments and judgments an attribute which they do not possess in this jurisdiction; for it is well established with us that an ordinary judgment for a sum of money does not create a lien upon the property of the debtor in the sense of a real obligation binding on the property. (*Peterson vs. Newberry*, 6 Phil. Rep., 260.) It is, however, equally well settled that the judgment creditor has a preferential right by virtue of paragraph (B) of subsection 3 of article 1924 of the Civil Code (*Peterson vs. Newberry*, supra; *Molina Salvador vs. Somes*, 31 Phil. Rep., 76); and upon examining the official Spanish version of section 464 of the Code of Civil Procedure, it will be noted that the translator, being evidently perplexed by the use of the word "lien" in the English text, adopted the expression "derecho preferente" as its nearest Spanish equivalent. In so doing, we think he displayed proper discernment, and though he may not have produced a literal version, he expressed the spirit of the original with approximate fidelity.

It is well to add, furthermore, that even to the mind of the American lawyer, the word "lien" as used in this context, does not necessarily imply the existence of a specific real obligation fixed upon the property of the judgment debtor. In proof of this it is sufficient to quote the opening words on the topic "Lien of Judgments" in the treatise on "Judgments" contained in the *Cyclopedia of Law and Procedure*, where it is said: "The lien of a judgment does not constitute or create an estate, interest, or right of property in the lands which may be bound for its satisfaction; it only gives a right to levy on such lands to the exclusion of adverse interests subsequent to the judgment." (23 Cyc., 1350.)

The view that the "preferential right" of the civil law may be here taken as the approximate equivalent of "lien," as used in the English version, is corroborated by the decision of this Court in *Tec Bi & Co. vs. Chartered Bank of India, Australia and China* (16 Off. Gaz., 911), where it was held that the word "lien," as used in section 59 of the Insolvency Law, includes the preferences created by articles 1922 and 1924 of the Civil Code.

The foregoing suggestions furnish the clue to the proper interpretation of the provision now under consideration; and the result is that any ordinary creditor, or assignee of such, having a judgment subsequent to that under which the property was sold may exercise the right of redemption. This interpretation, instead of being strained or artificial, as might superficially appear, is really forced upon us to save the provision from total obliteration. No rule of interpretation is better accredited than that which is expressed in the Latin maxim *Ut res magis valeat quam pereat*.

The circumstance has not escaped our attention that upon this question, as upon the other point of the necessity for the production of the appropriate documents in proof of the right of redemption, we are announcing a rule different from that adopted by the Supreme Court of California in interpreting a very similar provision contained in the Code of Civil Procedure of that State. It is there held that no judgment creditor can redeem until he has in fact acquired a lien on the property of the debtor by virtue of his judgment; (*Bagley vs. Ward and Mebius*, 27 Cal., 369; *Perkins vs. Center*, 35 Cal., 713.) But it will be noted that under the law of California a judgment may be made a lien on the debtor's property; and provision is made as to the time and manner in which the lien becomes, or is made, effective. The interpretation may naturally be quite different in a jurisdiction where, as here,

the" judgment, instead of creating a lien, merely gives a preferential right, which attaches when the judgment attains finality. In this connection it should not be forgotten that, though our Code of Civil Procedure is derived from American sources and the English version is controlling, the official Spanish translation may be used as a legitimate aid to interpretation; and where it is found that the original idea as expressed in English is wholly unadapted to our system of jurisprudence, the Spanish translation may be taken as indicating the meaning which should be attached to the expression in this jurisdiction. It is to be assumed that our lawmakers, whether Americans or Filipinos by nationality, have legislated with knowledge of conditions here existing; and even those laws which have been bodily taken from American sources not infrequently acquire a characteristic coloring from the change of environment.

Our conclusion upon the whole case is that the redemption of the properties in question by Luis Mirasol was lawfully accomplished. The judgment of the trial court dismissing the complaint must therefore be affirmed. It is so ordered, with costs against the appellant.

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

[1] *Mirasol vs. Javellana and Provincial Sheriff of Iloilo*, R. G. No. 11932; not published.

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