

FRANCISCO MISUT GARCIA, PLAINTIFF AND APPELLEE, VS. WEST COAST SAN FRANCISCO LIFE INSURANCE COMPANY, DEFENDANT AND APPELLANT.*G. R. No. 15301. November 29, 1920*

Ponente: MALCOLM, J.

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This is an action to compel the defendant insurance company to accept certain sums of money which the plaintiff had deposited in court in the name and for the benefit of the company and to have a policy of insurance upon his life declared to be still in force and effect. The defendant's answer alleged that all title, right, interest, and participation which the plaintiff had in such policy had been transferred to other parties by virtue of an execution sale held by the sheriff on August 29, 1916, and that the policy was no longer in force by reason of the failure of the plaintiff to pay premiums and interest due. After trial, judgment was rendered in favor of the plaintiff, and the defendant appealed.

A statement of the material facts can be made to which undoubtedly both parties would agree. In January, 1911, a twenty-year endowment policy for the sum of P10,000 upon the life of Francisco Misut, the plaintiff herein, was issued by the West Coast Life Insurance Company of San Francisco, California, the defendant herein. The premiums were to be paid quarterly at the rate of P131.50. The beneficiaries were named as the sisters of the insured, later changed to his executors, administrators, and assigns. On and after the expiration of three years, the policy had a cash surrender value. Premiums were paid by the insured until January, 1917, when the company refused to accept them.

In January, 1914, one Deogracias Lavin instituted a suit against the plaintiff Misut in the justice of the peace court of the city of Manila, and some time in 1916 obtained a judgment in his favor. Upon said judgment execution was issued. Among the properties of Misut attached and levied upon in pursuance of this judgment was "all his right, title, interest, or participation in the policy No. 6552," subsequently sold at public auction by the sheriff and acquired by the judgment creditor Lavin. The latter sold his rights under the policy to John Rader for the sum of P400. Rader in turn appears to have received a loan from the company on the policy of Misut in the amount of P1,910.

As we view the case, its resolution is not at all difficult. The only fact that needs be recalled is, that the right of Misut in the insurance policy, whatever it was, was sold under execution and thereafter transferred by the purchaser to another party without any opposition to such action having been entered by anyone. This execution sale has not been alleged to be invalid for any reason whatsoever. If this be admitted, as we think it must be, the logical conclusion is self-evident, and this is, that by the sale of the insurance policy to Lavin the plaintiff Misut was divested of all his interest in the policy issued to him, and all his interest passed to Lavin. It is a principle which is well-established, that personal property, whether capable of manual delivery or not, may be sold under execution, with the result that the purchaser becomes the absolute owner of the same at the time of the sale and

delivery. (Code of Civil Procedure, sees. 461, 462; *Aldecoa & Co. vs. Navarro* [1912], 23 Phil., 203.) If this conclusion is correct, then again a further deduction must logically follow, and this is, that if all the rights of the plaintiff under the policy have passed to Lavin, only the latter or the party to whom he in turn transferred his rights could make a valid payment of the premiums due, could compel the company to accept the payments offered, and could institute an action based upon the policy. Certainly, the company would not be liable to several persons upon a single insurance policy for a sum greater than the amount for which it bound itself to the insured.

The foregoing would be sufficient to dispose of the case were it not that both parties seem to have gone upon the theory that the principal question at issue is whether the policy could, on August 29, 1916, be validly levied upon and sold at public auction to enforce a judgment in favor of a creditor of the insured. The only fact which need be called to mind in this connection, before we turn to the law, is that the policy of Misut had a cash surrender value on the date when it was sold under execution, and the beneficiary was his estate. As is well-known, under section 450 of our Code of Civil Procedure, "All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized, and held under attachment in the action, shall be liable to execution." The succeeding section 452, in naming the property which shall be exempt from attachment and execution, fails to mention insurance policies. If, then, an insurance policy with a cash surrender value can be considered as either personal property or as an interest in personal property, it is subject to attachment and execution. We think this inquiry must be answered in the affirmative because the general rule is, that apart from statutory provision to the contrary, a policy of life insurance or its proceeds is not exempt from seizure, although in most jurisdictions, including California, from which the sections of the Philippine Code concerning execution have been taken, statutes have been enacted containing exemptions of life insurance policies. It may be stated, generally, that any tangible, definable interest in property having a value, and not exempt by law, is subject to the owner's debts.

(See 11 R. C. L., 528, and 16 L. R. A. [N. S.], 316, notes, where the distinction existing between the right of creditors to compel the exercise for their benefit of an option on the part of an insured to surrender his policy and to receive a cash payment, and their right to subject to their claims his contingent interest in a policy having a cash-surrender value, is pointed out.)

In connection with the provision of the Philippine Code of Civil Procedure which concerns property liable to execution, and exemptions from execution, it may be remarked parenthetically, that as shown on more than one occasion, our law is defective and could appropriately be revised by the legislature.

Our ruling is, that the effect of the sale under execution of all the rights which the plaintiff Misut had in the policy issued to him, was to divest him of all his rights in the policy and that, if the question may be considered as before us, the interest in the policy of the insured was liable to execution to pay his debts.

Although unnecessary for the purposes of this decision, we would not have it thought that the plaintiff has no remedy. If, for instance, there has been a breach of one of the conditions of the policy, that relating to the granting of loans, he can institute an action for damages based upon the breach against the company. Again, if, as one might infer from plaintiff's argument, he was misled by the agents of the insurance company, an action in damages would again be his remedy. In this connection, there can be noticed Exhibit A, a letter from the general manager of the local office of the insurance company to Misut, in which it is said, "Said execution was signed by one Delavin; we have notified the sheriff that we do not believe that they can collect any amount on this policy, unless you give your permission and consent in writing." There is testimony to the same effect. There is also an intimation that the John E. Rader who purchased the interest of Lavin is an agent of the insurance company.

Judgment is reversed, and the complaint is dismissed, without prejudice to the right of the plaintiff to institute a

new action against the defendant, and without special finding as to costs in either instance. So ordered.

Mapa, C. J., Johnson, Araullo, Avanceña and Villamor, JJ., concur.

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