

NARCISO PERU, PLAINTIFF AND APPELLANT, VS. NICANOR C. SARMIENTO, AND PEDRO CONGZON, DEFENDANT AND APPELLEES.*G.R. No. 19369. December 27, 1963*

Ponente: BARRERA, J.

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As a consequence of a final judgment in Civil Case No. 4422 of the Court of First Instance of Samar, entitled *Nicolasa Beato, et al. vs. Narciso Peru*, ordering therein defendants to pay damages to the plaintiffs in the amount of P1,522.20, a writ of execution was issued, and a parcel of land situated in sitio Parasao, barrio Ilo, Santa Margarita, Samar, with an area of 23 hectares, 47 ares, and 78 centares, declared in the name of Narciso Peru, was levied upon and sold at public auction conducted on May 7, 1956 by the Deputy Provincial Sheriff. The property was awarded to Nicanor C. Sarmiento, the highest bidder, for P1,755.00. In view of the defendant's failure to redeem the property within the 1-year period of redemption, the Sheriff executed on May 25, 1957, a deed of conveyance ceding, transferring, and conveying unto vendee Sarmiento all the rights, title and interest of Narciso Peru in said property.

On December 24, 1957, Narciso Peru filed the present case No. 4649 in the Court of First Instance of Samar for rescission of the deed of conveyance, on the sole ground that the same property sold in public auction is the subject of litigation in another Civil Case No. 4506 of the same court, which was commenced on March 6, 1956, between the same Peru, as plaintiff therein and other parties as defendants "for the ownership of the same property." It is contended that Sarmiento, purchaser in the public auction knowing the pendency of such case, acted in bad faith in purchasing the property without the consent of the parties therein.

Defendants Sarmiento and the Provincial Sheriff, in their joint answer, set up the defense of lack of cause of action. Subsequently, the case was submitted for judgment on the pleadings, with the added stipulation that the entire proceedings in the original case No. 4422 where the writ of execution was issued, be taken judicial notice of.

On November 3, 1958, a decision was rendered dismissing the complaint, the court holding that the pendency of Civil Case No. 4506 did not invalidate the sale at public auction with respect to plaintiff Narciso Peru. If at all, it is the defendants in the said pending case that may properly demand rescission of the deed of conveyance should the land be later adjudged as belonging to them. Plaintiff Peru brought the case on appeal to the Court of Appeals, but the same was referred to us, the issue involved therein being purely of law.

As aforesaid, the deed of conveyance sought to be annulled by herein plaintiff-appellant Narciso Peru was issued by the Provincial Sheriff to the vendee Nicanor Sarmiento as a result of the execution sale conducted for the purpose of satisfying a final judgment against Peru. The writ of execution and the sale conducted thereunder had never been questioned; the period of redemption had lapsed, and the corresponding definitive deed of conveyance in favor of the vendee has been issued. It is this final deed that is here being assailed fully seven months after its issuance, plaintiff-appellant claiming that the vendee Sarmiento acted in bad faith in purchasing

the property, knowing that at the time he offered a bid therefor, the property was the subject of a case then pending in the same court between the judgment debtor and another party. Clearly, such knowledge by the vendee of the pendency of another action over the same property does not give plaintiff-appellant any cause of action against him. As he claims ownership over the land in the said pending case, the attachment thereof and its subsequent sale at public auction, to satisfy a final money judgment against him, is proper. The pendency of the other case involving ownership of the same parcel of land, as the lower court declared, will not affect the validity of the execution sale should Peru's claim thereon be upheld. He being the owner, its attachment and levy to satisfy a final judgment against him, is justified. On the other hand, if the ownership of the property be declared in that pending case in favor of the defendants therein, it will be they and not herein plaintiff-appellant who would be the proper party that could question the validity of the conveyance to Sarmiento. Accordingly, the dismissal of the complaint is in order.

Wherefore, the decision appealed from is hereby affirmed, with costs against the appellant. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Conception, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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