

MARCELA LLENARES, PLAINTIFF AND APPELLANT, VS. FELISA VALDEAVELLA AND ALFONSO ZORETA, DEFENDANTS AND APPELLEES.*G.R. No. 21572. October 04, 1924*

Ponente: OSTRAND, J.

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This is an action in ejectment, the plaintiff alleging that she is the owner of two parcels of land in the barrio of Wacas, municipality of Tayabas, having acquired said parcels by purchase at a sheriff's sale under a writ of execution issued by the justice of the peace of the municipality of Tayabas in a case in which she was the plaintiff and the defendant Felisa Valdeavella and her now deceased husband Zacarias Zabella were the defendants. The defendants Felisa Valdeavella and Alfonso Zoreta in their answer allege that Felisa Valdeavella never has been in possession of the parcels as owner; that she and her husband some four years prior to the filing of the answer (October 22, 1918) were in possession of the land as tenants of Irineo Valdeavella, the true owner of the land; and that the defendant Alfonso Zoreta has been in possession under an agreement made with Zacarias Zabella whereby Zoreta was to have the use and benefit of the land as security for a debt of P100. Subsequent to the filing of this answer Irineo Valdeavella was impleaded. In his answer he alleges that he is the owner of the land and has been in possession thereof for over fifteen years.

The court below rendered judgment in favor of the defendants holding that Irineo Valdeavella was the owner of the parcels of land in question and that, moreover, the sheriff's sale under which the plaintiff claims title to the land was irregular and void inasmuch as there had not been a sufficient levy on the lands, nor a sufficient notice of the sale. From this judgment the plaintiff appeals to this court.

In her first assignment of error the appellant maintains that the court erred in holding that Irineo Valdeavella was the owner of the land at the time of the attempted levy of the execution. In our opinion, this assignment of error is well taken. The testimony in support of the claim of Irineo ValdeaveUa is so contradictory and inconsistent that no reliance whatever can be placed thereon.

Under the second assignment of error the appellant argues that the sale, under execution by virtue of which she claims ownership of the land, was valid. This assignment cannot be sustained.

The levy of an execution is defined as the acts by which an officer sets apart or appropriates for the purpose of satisfying the command of the writ, a part or the whole of a judgment debtor's property. In the absence of statutory provisions no special formalities are required for a valid levy, and in regard to real property it has usually been held sufficient if the seizure of the property is made known to the occupants thereof and endorsed on the writ. But it is otherwise where, as in this jurisdiction, the matter is regulated by statute; there a substantial compliance with the statute is indispensable.

The statutory provisions to this case, are found in sections 450 and 429 of the Code of Civil Procedure. Section 450 states that property "may be attached on execution in like manner as upon writs of attachment." This

provision while permissive in form must, nevertheless, be regarded as mandatory. No other method of effecting the levy is prescribed and it is an old rule that powers through the exercise of which a person may be divested of his property are always strictly construed and that the provisions regulating the procedure in their exercise are mandatory as to the essence of the thing to be done. (Lewis' Sutherland on Statutory Construction, 2d ed., sec. 627.)

Section 429 of the Code reads as follows:

"Real property, standing upon the records in the name of the defendant or not appearing at all upon the record, shall be attached by filing with the registrar of titles of land for the province in which the land is situated, a copy of the order of attachment, together with a description of the property attached, and a notice that it is attached, and by leaving a similar copy of the order, description and notice with an occupant of the property, if there is one. "Real property or an interest therein, belonging to the defendant and held by any other person, or standing on the records in the name of any other person, shall be attached by filing with the registrar of land titles in the province in which the land is situated, a copy of the order of attachment, together with a description of the property, and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him) are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the province, a copy of the order, description and notice. The registrar must index attachments filed under the first paragraph of this section, in the names, both of the plaintiff and of the defendant, and must index attachments filed under the second paragraph of this section, in the names of the plaintiff and of the defendant and of the person by whom the property is held or in whose name it stands' on the records."

In the present case it is admitted by the plaintiff that notice of attachment for the execution was not filed with the registrar of deeds and that there was no copy thereof served on the defendants. It is therefore clear that the attempted levy was not made in accordance with the provisions of the statute, and, according to the great weight of authority, a proper levy is indispensable to a valid sale on execution. A sale unless preceded by a valid levy, is void, and the purchaser acquires no title. (Loath vs. Deweese, 162 Ky., 227; Jarboe vs. Hall, 37 Md., 345.)

There having been no sufficient levy of the execution in question, the plaintiff took no title to the property sold thereunder and the present action can therefore not be maintained.

The judgment appealed from is affirmed, without costs. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

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