

RAMON LOPEZ, PETITIONER AND APPELLEE, VS. THE DIRECTOR OF LANDS, RESPONDENT AND APPELLANT.

G.R. No. 22136. December 17, 1924

Ponente: JOHNSON, J.

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JOHNSON, J.:

The principal question presented by this appeal is— Whether the sale of land in the City of Manila, under the procedure adopted for the recovery of delinquent taxes, has the effect of cutting off all prior liens upon the property sold.

The whole story of this action may be told in a few words. The City of Manila, by a decision of the court a quo, in the collection of a land tax of P30.35, by the method permitted by the Administrative Code, deprived the Director of the Bureau of Lands, a bureau of the Insular Government, of a prior lien, in the sum of P1,190, in the form of a mortgage duly registered, which mortgage lien existed before the tax lien in question.

The facts stated more in detail, out of which such an anomalous condition resulted, are as follows: On January 12, 1924, Ramon Lopez filed a petition in the Court of First Instance of the City of Manila, containing, among others, the following allegations:

(a) That on November 7, 1922, one of two parcels of land belonging to Rufo de Jesus, situated in the district of Pandacan, City of Manila, included within certificate of title No. 2458, was sold by the city assessor and collector at public auction for the sum of P30.35 for the payment of taxes due thereon, corresponding to the years 1920, 1921, and 1922, to the petitioner Ramon Lopez, as the highest bidder. There is nothing in the record showing whether the method prescribed for selling property for delinquent taxes was followed or not. We may presume, however, that the procedure was followed.

(b) That the owner, Rufo de Jesus, having failed to redeem said one parcel of land within one year from the date of the sale, the sale, it is contended, became absolute and the city assessor and collector on the 8th day of November, 1923, executed in favor of Ramon Lopez, as purchaser of said one lot, a deed conveying to him the title thereto, free from all liens of any kind whatsoever.

(c) That Ramon Lopez presented said deed to the registrar of deeds of the City of Manila, requesting that the certificate of title No. 2458, then in the name of Rufo de Jesus, be cancelled insofar as it covered the said second parcel, and that a new title be issued therefor in his name, free from all liens and incumbrances of any kind whatsoever, in accordance with section 2500 of the Administrative Code.

(d) That the registrar of deeds denied said request, first, because the petitioner did not present the duplicate certificate of said title No. 2458; second, because on said title there appeared a notation of a mortgage executed by said Rufo de Jesus in favor of the Government of the Philippine Islands, represented by the Director of Lands, to secure a debt of P1,190, which still remained unpaid; and, third, because in the absence of an order of the Court of First Instance to that effect, he could not issue a new certificate of title for said lot, free from the encumbrance of

said mortgage.

(e) That a demand had been made upon Rufo de Jesus for the delivery of said certificate of title and that he had made no response to said request; that the petitioner did not know whether such certificate of title was in the possession of Rufo de Jesus or of the Director of Lands, as the representative of the Government of the Philippine Islands, the owner and holder of said mortgage; and that the Director of Lands or the said Rufo de Jesus be required to deliver to the registrar of deeds said certificate of title No. 2458 for cancellation.

(f) It is contended by the petitioner that in accordance with the provisions of section 2500 of the Administrative Code, he was entitled to a new certificate of title covering said parcel of land sold for taxes, and that said new certificate should be issued free from all incumbrances whatsoever; that the Government of the Philippine Islands or its representative, the Director of Lands, could not claim any lien over said parcel of land so sold for taxes under the provisions of section 2497 of the Administrative Code. Upon the foregoing facts, the petitioner prayed: First, that an order be issued directing the registrar of deeds of the City of Manila to cancel said certificate of title No. 2458, insofar as it affected the second parcel; second, that a new certificate of title be issued in the name of Ramon Lopez, free from all liens and encumbrances of any kind whatsoever; and third, that either the Director of Lands or Rufo de Jesus, as the case may be, be required to deliver the duplicate certificate of title No. 2458 to the registrar of deeds for cancellation.

This action was commenced in the Court of First Instance of the City of Manila on the 12th day of January, 1924. The only proof of service of the commencement of said action is, that a copy of the petition was left at the residence of Rufo de Jesus in Pandacan, in the hands of a person residing at his residence, which person refused to sign a receipt for said petition. The record contains no proof that the Government of the Philippine Islands or the Director of Lands was served with a copy of the petition or had any notice of its presentation. Notwithstanding that fact, however, a hearing was held on said petition on the 17th day of January, 1924, at 8 o'clock a. m. The record does show, however, that at said hearing there appeared the attorney for the petitioner, and Mr. Javier Gonzalez, attorney for the Director of Lands. No other persons appeared. The Director of Lands, according to a memorandum by the court a quo, conceded that a new certificate of title should be issued in favor of the petitioner, but that there should be noted thereon the lien held by the Government of the Philippine Islands for the sum of P1,190, invoking, in aid of his petition, article 17 of the Mortgage Law and sections 39 and 51 of Act No. 496.

Upon the issue thus presented, the court a quo on the 18th day of January, 1924, issued an order directing the Director of Lands to deliver to the registrar of deeds of the City of Manila within five days the duplicate certificate of title No. 2458, and ordered the said registrar of deeds to cancel the same and to issue a new certificate of title to said parcel of land in favor of Ramon Lopez, without noting thereon the existence of said mortgage in favor of the Director of Lands, and to issue a new certificate to the other parcel of land to Rufo de Jesus and to note on said new certificate the existence of said mortgage. There is nothing of record showing the separate value of said two lots, and for the purposes of this discussion it is not necessary.

On the second day of February, 1924, the Attorney-General appeared on behalf of the Director of Lands and prayed for a reconsideration of the decision of the 18th day of January, 1924. Said motion was based upon the ground that the petitioner, Ramon Lopez, was not entitled to have a new certificate of title issued to him, free from all liens whatsoever upon said second parcel of land mortgaged by Rufo de Jesus to the Director of Lands, for the reason that he had acquired said property at public sale and that he could by no means have a better title than the owner of the land at the time of said sale. The Attorney-General, in support of his motion, relied upon the decision of this court in the case of Government of the Philippine Islands vs. Adriano (41 Phil., 112) and sections 77 and 80 of Act No. 82. The Attorney-General prayed that the order of January 18th be modified to the effect

that the new title to be issued to Ramon Lopez for said parcel No. 2 should bear a notation of the existence of said mortgage in favor of the Government of the Philippine Islands or the Director of Lands.

After a consideration of the motion of the Attorney-General and the opposition thereto, the Honorable C. A. Imperial, on the 6th day of February, 1924, denied the same. The Attorney-General, after duly excepting to the judgment and order denying the motion for rehearing, appealed and made several assignments of error.

The Attorney-General, in his first assignment of error, contends that "the lower court erred in not holding that the tax proceeding under which Ramon Lopez claims an indefeasible title is a proceeding in personam and not in rem." An examination of practically all of the authorities has been made upon the question whether or not the proceeding for the collection of taxes upon real estate is an action in personam or an action in rem. The result of that examination is, that the authorities are about equally divided. Some hold that the proceeding is an action in personam while others hold that it is an action in rem. In this jurisdiction, by virtue of the procedure adopted in relation with the remedy given, we have held in the case of *Government of the Philippine Islands vs. Adriano*, supra, that the proceedings here are in personam and not in rem. (*Valencia vs. Jimenez and Fuster*, 11 Phil., 492.) An action in rem may be defined as an action or proceeding instituted against a thing and not against a particular person. (*In re Storey's Will*, 20 111. App., 183, 190.) Chief Justice Marshall, in discussing an action in rem, said: "I have always understood that where a process is to be served on the thing itself, by the service of a process and making proclamation, the court is authorized to decide upon it (the thing) without notice to any individual defendant, to which all the world are parties. The claimant is a party, whether he speaks or is silent, whether he asserts his claim or abandons it." Decisions in such cases are binding and conclusive, not only on the parties litigating, but on all others. Every one who can possibly be affected by the decision has a right to appear and assert his own rights by becoming an actual party to the proceeding. (*Cunningham vs. Shankliri*, 60 Cal., 118, 125.)

A proceeding in rem, in a strict sense, is one taken strictly against property, and has for its object the disposition of the property, without reference to the title of individual claimants. But in a larger and more general sense the phrase "proceedings in rem" is applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein. (*Arndt vs. Griggs*, 134 U. S., 316.)

A proceeding brought to determine the status of a particular thing itself and which is confined to the subject-matter in specie, is in rem, the judgment being intended to determine the state or condition, and, pro facto, to render the thing what the judgment declares it to be. Process may be served on the thing itself and by such service and making proclamation, the court is authorized to decide upon it without notice to persons, all the world being parties. (*Cross vs. Armstrong*, 44 Ohio St., 613; *Woodruff vs. Taylor*, 20 Vt., 63, 73.)

A "judgment in rem" is an adjudication pronounced upon the state of some particular subject-matter by a court having competent authority for that purpose; while a "judgment in personam" is, in form as well as in substance, between persons claiming a particular right, and that it is so inter parties, appears by the record itself. A "judgment in rem" differs from a "judgment in personam" in this, that the latter is, in form as well as substance, between the parties claiming the right, and that it is so inter parties, appears by the record, and it is binding only upon the parties appearing to be such by the record, and those claiming by them. But a "judgment in rem" is founded upon a proceeding instituted not against the person as such but against or upon a particular thing or subject-matter, whose state or condition is to be determined, and a judgment is a solemn declaration upon the status of the thing and it ipso facto renders it what it declares it to be. (*Woodruff vs. Taylor*, supra.)

In a "judgment in personam" when property is sold thereunder at public auction, the rights of the owner only are sold, while in a "judgment in rem" the res itself is sold. An examination of the remedies for the collection of

unpaid municipal taxes shows that different states have adopted different methods. The methods may be summarized as: First, an action to recover personal judgment; second, an action to enforce a lien on land; third, a summary sale of the property on which the taxes are a lien; and, fourth, by distraint. In the Philippine Islands the Legislature has adopted practically the third method, by a summary sale of the property on which the taxes have become a lien by advertising and a sale at public auction. Under that system the City of Manila may sell either personal property or the land upon which the tax exists. The City of Manila may use its discretion either by proceeding against the personal property of the taxpayer or against the land upon which the tax has been levied. The fact that the City of Manila has the option of proceeding against the real or personal property, evidently is the fact which induced this court in the two decisions cited above (*Government of the Philippine Islands vs. Adriano*, supra; *Valencia vs. Jimenez*, and *Fuster*, supra), to decide that in this jurisdiction the action to collect delinquent taxes upon real property is an action in personam and not in rem.

In jurisdictions where the action to recover delinquent taxes upon land is an action in personam, the tax title issued thereunder is purely a derivative title and such a deed conveys only such title as was vested in the delinquent taxpayer. (*Government of the Philippine Islands vs. Adriano*, supra; *McDonald vs. Hannah*, 51 Fed. Rep., 73.) The purchaser at a tax sale gets no better title under his deed than was held by the person assessed. It is not disputed that the state may decide what shall be liens upon property and what shall be the priority thereof. Yet, nevertheless, a foreclosure of such liens cannot operate to destroy other liens without a proceeding, which we are taught to denominate, under the organic law, as "due process of law."

By "due process of law," as Mr. Daniel Webster said in his argument before the Supreme Court of the United States in the famous *Dartmouth College Case*, is "by the law of the land * * * a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society." (4 *Wheaton*, U. S., 518, 581.) "Due process of law" contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property. "Due process of law" is not every act, legislative in form, that is, law. Arbitrary power, enforcing its edicts to the injury of the persons and property of the citizens, is not law.

While it is true that section 2500 of Act No. 2711 provides that, in case the taxpayer shall not redeem the realty sold for the payment of delinquent taxes within one year from the date of the sale, the city assessor and collector shall execute a deed, in form and effect sufficient to convey to the purchaser so much of the real estate, against which the taxes have been assessed, as has been sold, free from all liens of any kind whatsoever, the Legislature certainly did not intend that persons who hold a lien against such land should be deprived thereof without a notice and an opportunity to be heard before their lien could be nullified. No rule is better established, under the due-process-of-law provision of the organic law of the land, than the one which requires notice and an opportunity to be heard before any citizen of the state can be deprived of his rights. That is the rule, whether the action is in personam or in rem, with the exception that in an action in rem substituted service may be had. (*Pennoyer vs. Neff*, 95 U. S., 714; *Kilbourn vs. Thompson*, 103 U. S., 168.)

As was stated above, the legislature of the state has a perfect right to determine what shall constitute liens upon property and the priority thereof. The mere fact, however, that A has, under the law, a prior lien upon the property of B, does not justify him in taking arbitrary possession of said property without notice and an opportunity to be heard by subsequent lienholders, if there are any. To permit such proceedings would allow a violation of one of the fundamental rights of the citizens of the state.

In the present case the appellant had no notice whatever of the proceedings by which his lien was nullified, and of course no opportunity to defend his rights until after the issuance of the deed by the city assessor and collector to

the appellee, by which the latter obtained a deed "free from all liens of any kind whatsoever" by virtue of which the appellant was deprived of his rights. We cannot give our assent to a procedure by which citizens of the Philippine Islands may be deprived of their rights without a notice and an opportunity to defend them.

In view of the foregoing conclusions, we deem it unnecessary to discuss the other assignments of error of the appellant.

Our conclusions are: First, that under the procedure adopted in the present case the Government of the Philippine Islands, as represented by the Director of Lands, has not been deprived of its mortgage lien upon the property in question; second, that the judgment of the court a quo, depriving it of its lien without notice and an opportunity to be heard, is null and void.

Therefore, it is hereby ordered and decreed that the judgment appealed from should be, and is hereby pronounced null and void, and it is further ordered and decreed that the record be returned to the court whence it came, with direction that a new certificate of title be issued for the one parcel of land in question to the plaintiff, Ramon Lopez, with an annotation thereon of the mortgage lien held by the appellant.

Malcolm, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

DISSENTING OPINION

STREET, J.:

The simple question, treated with so much circumspection in the opinion of the court, is whether taxes accruing upon mortgaged property constitute a lien superior to the mortgage lien.

The provision of law applicable to the case is found in section 2497 of the Administrative Code which, in part here material to be considered, reads as follows:

"SEC. 2497. Taxes and penalties assessed against realty shall constitute a lien thereon, which shall be superior to all other liens, mortgages, or incumbrances of any kind whatsoever; shall be inforceable against the property whether in the possession of the delinquent or any subsequent owner, and can only be removed by the payment of the tax and penalty."

Under this provision it is obvious that the Legislature intended to make the tax lien superior to every other lien existing upon the property at the time the tax lien accrues, and that it had the power to make this effective declaration admits of no doubt. One should not be misled by what is said in the opinion on the subject of notice to the mortgagee and the point of constitutional law supposed to be involved. Nobody ever heard of property being assessed against a mortgagee or other lien holder by name in this jurisdiction, and the idea that the tax sale which the court has here declared invalid as against the mortgagee might have been made effective by giving some sort of notice to the mortgagee—but which the law does not prescribe—is wholly untenable.

It should be borne in mind that the Assessment Law applicable in the City of Manila—and the law is the same on this point in other parts of the Islands—contemplates and requires that real property shall be assessed against the owner (Admin. Code, sees. 2483-2486) ; and the assessment is based upon every proper element of value in the property, including both land and improvements. There is no splitting up of the assessment to correspond to the different interests of the various persons who may have some sort of title or right in the property. There is no assessment of a certain amount against life tenant and a certain other amount against the owner of the remainder interest; no assessment of part of the value to the owner of the naked legal title and part to the usufructuary; no assessment of part to the holder of the fee and part to mortgagee or other lien holder. All of these interests are

included in the assessment against the owner; and all persons having derivative interests are involved in the assessment through the owner. In providing for assessment to the "owner" the law contemplates primarily the holder of the legal title, and all interests in the property are reached by the assessment through him.

That the assessment must include the whole value of the property and not the value of some limited interest therein possessed by the owner, is well illustrated by the decision of this court in the case of *Army & Navy Club vs. Trinidad* (44 Phil., 383). It there appeared that the assessor of the City of Manila had assessed the land occupied by the Army & Navy Club in this city at the full market value of the land, which, at the time of said assessment, was twenty pesos per square meter. The Army & Navy Club, however, demonstrated that its title to the land was encumbered by a contract with the city by which the city had an option to take the land back at the end of a fixed period of time upon the payment of P4.04 per square meter. In view of this right of repurchase possessed by the city it was insisted for the Army & Navy Club that it should not be required to pay the taxes on the full value of the land but 'only upon what might appear to be the value of the land to the Army & Navy Club as depreciated by the contract with the city. It was held by this court, however, that the property had properly been assessed against the Army & Navy Club at its full value and no abatement of the assessment could be made because of the fact that the City of Manila had a valuable contingent right in the property subject to the exercise of its option to repurchase. This shows clearly that the assessment involves all proper elements in the property which is the subject of assessment.

Applying that idea to the case before us, it must be seen that the assessment of the parcel which is the subject of this controversy in the name of the holder of the Torrens title, Rufo de Jesus, affected not only the interest of said Rufo de Jesus in said property but also those elements of value in the property which were represented by the mortgage that had been executed in favor of the Director of Lands by Rufo de Jesus. And the same must be true in every case where mortgaged property is assessed, as it properly should be, in the name of the holder of the legal title.

The decision in the case of *Government of the Philippine Islands vs. Adriano* (41 Phil., 112), contains nothing to the contrary of what is here stated, and affords no support to the decision of the court in this case. We there held that when land owned by one person is assessed in the name of another, a purchaser at the tax sale acquires no title. That decision is certainly sound, but it only applies to the case where land is assessed in the name of a person other than the true owner. It can have no application in a case where the property is assessed in the name of the true owner,—in this case the actual holder of the Torrens title. When property is assessed against a stranger having no interest in the property, no tax lien can possibly attach to the property at all; but when the property is assessed in the name of the owner, as the law requires, the tax lien is necessarily fixed upon all elements of value in the property, the owner being the virtual representative of all prior lien holders.

Translated into plain language, the meaning of the present decision is that the holder of a mortgage on real property cannot be prejudiced by the nonpayment of taxes. It is easy to see that when the full force of this pronouncement sinks into the public mind the rule here announced will be found to be a serious obstacle to the enforcement of taxes upon property subject to a mortgage or other incumbrance; and the embarrassment will be greater in the case of valuable properties mortgaged for large sums of money over periods of years. In such case if the owner becomes insolvent, the taxes can be wholly defeated until the mortgage is foreclosed and the property assessed to a new owner. The general effect must be highly detrimental to the public revenue.

For the reasons stated I am compelled to dissent from the conclusion reached by the court in the present case.

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