

EULOGIO BETITA, PLAINTIFF AND APPELLEE, VS. SIMEON GANZON, ALEJO DE LA FLOR, AND CLEMENTE PEDREÑA, DEFENDANTS AND APPELLANTS.

G. R. No 24137. March 29, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

This action is brought to recover the possession of four carabaos with damages in the sum of P200. Briefly stated, the facts are as follows: On May 15, 1924, the defendant Alejo de la Flor recovered a judgment against Tiburcia Buhayan for the sum of P140 with costs. Under this judgment the defendant Ganzon, as sheriff, levied execution on the carabaos in question which were found in the possession of one Simon Jacinto but registered in the name of Tiburcia Buhayan. The plaintiff herein, Eulogio Betita, presented a third party claim (*terceria*) alleging that the carabaos had been mortgaged to him and as evidence thereof presented a document dated May 6, 1924, but the sheriff proceeded with the sale of the animals at public auction where they were purchased by the defendant Clemente Pedreña for the sum of P200, and this action was thereupon brought.

The document upon which the plaintiff bases his cause of action is in the Visayan dialect and in translation reads as follows:

"I, Tiburcia Buhayan, of age, widow and resident of the sitio of Jimamanay, municipality of Balasan, Province of Iloilo, Philippine Islands, do hereby execute this document extrajudicially and state that I am indebted to Mr. Eulogio Betita, resident of the municipality of Estancia, Province of Iloilo, Philippine Islands, in the sum of p470, Philippine currency, and was so indebted since the year 1922, and as a security to my creditor I hereby offer four head of carabaos belonging to me exclusively (three females and one male), the certificates of registration of said animals being Nos. 2832851, 4670520, 4670521 and 4670522, which I have delivered to said Mr. Eulogio Betita.

"I hereby promise, to pay said debt in the coming month of February, 1925/in case I will not be able to pay, Mr. Eulogio Betita may dispose of the carabaos given as security for said debt.

"This document is a new one or a renewal of our former document because the first carabaos mortgaged died and were substituted for by the newly branded ones. "In testimony whereof and not knowing how to sign my name, I caused my name to be written and marked same with my right thumb.

"Estancia, May 6, 1924.

(Marked). "TIBURCIA BUHAYAN

"Signed in the presence of:

"MIGUEL MERCURIO.

"TIRZO ZEPEDA"

The court below held that inasmuch as this document was prior in date to the judgment under which the execution was levied, it was a preferred credit and judgment was rendered in favor of the plaintiff for the possession of the

carabaos, without damages and without costs. From this judgment the defendants appeal.

The judgment must be reversed unless the document above quoted can be considered either a chattel mortgage or else a pledge. That it is not a sufficient chattel mortgage is evident; it does not meet the requirements of section 5 of the Chattel Mortgage Law (Act No. 1508), has not been recorded and, considered as a chattel mortgage, is consequently of no effect as against third parties (*Williams vs. McMicking*, 17 Phil., 408; *Giberson vs. A. N. Jureidini Bros.*, 44 Phil., 216; *Benedicto de Tarrosa vs. F. M. Yap Tico & Co. and Provincial Sheriff of Occidental Negros*, 46 Phil., 753).

Neither did the document constitute a sufficient pledge of the property valid against third parties. Article 1865 of the Civil Code provides that "no pledge shall be effective as against third parties unless evidence of its date appears in a public instrument." The document in question is not public, but it is suggested that its filing with the sheriff in connection with the *terceria* gave it the effect of a public instrument and served to fix the date of the pledge, and that it therefore fulfills the requirements of article 1865. Assuming, without conceding, that the filing of the document with the sheriff had that effect, it seems nevertheless obvious that the pledge only became effective as against the plaintiff in execution from the date of the filing and did not rise superior to the execution attachment previously levied {see Civil Code, article 1227}. Manresa, in commenting on article 1865, says:

"ART. 1865. A pledge will not be valid against a third party if the certainty of the date is not expressed in a public instrument.

"This article, the precept of which did not exist in our old law, answers the necessity for not disturbing the relationship or the status of the ownership of things with hidden or simulated contracts of pledge, in the same way and for the identical reasons that were taken into account by the mortgage law in order to suppress the implied and legal mortgages which produce so much instability in real property.

"Considering the effects of a contract of pledge, it is easily understood that, without this warranty demanded by law, the case may happen wherein a debtor in bad faith from the moment that he sees his movable property in danger of execution may attempt to withdraw the same from the action of justice and the reach of his creditors by simulating, through criminal confabulations, anterior and fraudulent alterations in his possession by means of feigned contracts of this nature; and, with the object of avoiding or preventing such abuses, almost all the foreign writers advise that, for the effectiveness of the pledge, it be demanded as a precise condition that in every case the contract be executed in a public writing, for, otherwise, the determination of its date will be rendered difficult and its proof more so, even in cases in which it is executed before witnesses, due to the difficulty to be encountered in seeking those before whom it was executed.

"Our code has not gone so far, for it does not demand in express terms that in all cases the pledge be constituted or formalized in a public writing, nor even in private document, but only that the certainty of the date be expressed in the first of the said class of instruments in order that it may be valid against a third party; and, in default of any express provision of law, in the cases where no agreement requiring the execution in a public writing exists, it should be subjected to the general rule, and especially to that established in the last paragraph of article 1280, according to which all contracts not included in the foregoing cases of the said article should be made in writing even though it be private, whenever the amount of the prestation of one or of the two contracting parties exceeds 1,500 pesetas." (Vol. 12, 2d ed., p. 421.)

If the mere filing of a private document with the sheriff after the levy of execution can create a lien of pledge superior to the attachment, the purpose of the provisions of article 1865 as explained by Manresa would clearly be defeated. Such could not have been the intention of the authors of the code. (See also *Ocejo, Perez & Co. vs. International Banking Corporation*, 37 Phil, 631, and *Tec Bi & Co. vs. Chartered Bank of India, Australia & China*, 41 Phil., 596.)

The alleged pledge is also ineffective for another/reason, namely, that the plaintiff pledgee never had actual possession of the property within the meaning of article 1863 of the Civil Code. But it is argued that at the time of the levy the Animals in question were in the possession of one Simon Jacinto that Jacinto was the plaintiff's tenant; and that the tenant's possession was the possession of his landlord.

It appears, however, from the evidence that though not legally married, Simon Jacinto and Tiburcia Buhayan were living together as husband and wife and had been so living for many years. Testifying as a witness for the plaintiff, Jacinto on cross-examination made the following statements :

"Q. But the caraballas in question had never been in possession of Eulogio Betita?—A. The three young ones did not get into his hands.

"Q. And the others?—A. Sometimes they were in the hands of Betita and at other times in the hands oi Buhayan.

"Q. Those are the caraballas which formerly were mortgaged by Buhayan to Betita, isn't that so?—A. Yes, sir.

"Q. And the four carabaos now in question had never been in possession of Betita, but were in your possession?—A. When I worked they were in my hands.

"Q. And before you worked, these caraballas were in possession of your mistress, Tiburcia Buhayan?—A. Yes, sir.

"Q. Do you mean to say that from the possession of Tiburcia Buhayan the animals passed immediately into your possession?—A. Yes, sir."

This testimony is substantially in accord with that of the defendant sheriff to the effect that he found the animals at the place where Tiburcia Buhayan was living. Article 1863 of the Civil Code reads as follows:

"In addition to the requisites mentioned in article 1857, it shall be necessary, in order to constitute the contract of pledge, that the pledge be placed in the possession of the creditor or of a third person appointed by common consent."

In his commentary on this article Manresa says:

"This requisite is most essential and is characteristic of a pledge without which the contract cannot be regarded as entered into or completed, because, precisely, in this delivery lies the security of the pledge. Therefore, in order that the contract of pledge may be complete, it is indispensable that the aforesaid delivery take place * *

It is, of course, evident that the delivery of possession referred to in article 1863 implies a change in the actual possession of the property pledged and that a mere symbolic delivery is not sufficient. In the present case the animals in question were in the possession of Tiburcia Buhayan and Simon Jacinto before the alleged pledge was entered into and apparently remained with them until the execution was levied, and there was no actual delivery of possession to the plaintiff himself. There was therefore in reality no change in possession.

It may further be noted that the alleged relation of landlord and tenant between the plaintiff and Simon Jacinto is somewhat obscure and it is, perhaps, doubtful if any tenancy, properly speaking, existed. The land cultivated by Jacinto was not the property of the plaintiff, but it appears that a part of the products was to be applied towards the payment of Tiburcia Buhayan's debt to the plaintiff. Jacinto states that he was not a tenant until after the pledge was made.

From what has been said it follows that the judgment appealed from must be reversed and it is ordered and adjudged that the plaintiff take nothing by his action. Without costs. So ordered.

Avanceña, C. J., Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.
Malcolm, J., concurs in the result.

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