

CONSULTA NO. 441 DE LOS ABOGADOS DE SMITH, BELL & CO., LTD., BLOCK, JOHNSTON & GREENBAUM, APPELLANTS, VS. THE REGISTER OF DEEDS OF LEYTE, APPELLEE.*G.R. No. 24736. January 29, 1926*

Ponente: JOHNS, J.

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For a purported consideration of P78,000, Teofilo Mejia and Casilda Martinez de Mejia signed a deed of sale to and in favor of Cristina Martinez for four parcels of land in Ormoc, Leyte, and certain personal property. April 26, 1921, the deed was presented for registration under Act No. 2837 to the registrar of deeds of the Province of Leyte, and owing to certain defects in it, registration was refused. June 7, 1921, Teofilo Mejia made an amendatory affidavit, and on July 28, 1921, Casilda Martinez de Mejia ratified under oath the deed of sale and the amendatory affidavit of her husband. On August 12, 1921, the property was then registered as inscription No. 57 in the register of lands not registered under Act No. 496. Thereafter Smith, Bell & Co. commenced an action, known as civil case No. 4030, in the Court of First Instance of Cebu against Teofilo Mejia and Casilda Martinez de Mejia, defendants, and grantors in the deed, to recover the sum of P14,000, in which a writ of attachment was issued, and on April 18, 1923, it was levied upon the four parcels of land described in the deed to Cristina Martinez. A record of this certificate of attachment appears under paragraph 16 of inscription No. 57 of the deed to Cristina Martinez. In the ordinary course of business, judgment was rendered against the defendants, and an order of sale of the four parcels of land, and execution was issued, and on February 15, 1924, the fourth parcel of land described in the deed was levied upon by the sheriff to satisfy the judgment, and that fact was also noted under paragraph 16 of inscription No. 57 of the deed. After the levy was made and the property advertised for Sale, Cristina Martinez, the vendee in the deed, entered a *terceria* with the sheriff, claiming that the property advertised for sale was her sole property. The sheriff required Smith, Bell & Co. to give him an indemnity bond in the sum of P150,000 as a condition precedent to the making of the sale. The bond was furnished, and the property sold, and in due course, the sheriff executed and presented a certificate of sale to the registrar for inscription, which was duly inscribed in the registry under inscription No. 57 as follows:

"The fourth parcel described in this inscription, together with all the improvements thereon, was sold at public auction by the sheriff of Leyte, by order of the Court of First Instance of Cebu (civil case No. 4030), for the amount of P20,000 in favor of Smith, Bell & Co., Ltd., as the best bidder, this property being subject to repurchase by the judgment debtor in the said case within the period of one year from May 21st of this year. All the aforementioned is contained in the certificate of sale dated May 21, 1924, issued by the sheriff of Leyte and presented to this registry at 7.30 a. m. of May 29, 1924.—Tacloban, June 5, 1924."

Observing that this annotation was not signed by the registrar, and that the certificate of sale was not endorsed on its margin, the attorneys for the plaintiff in the writ called upon the registrar of deeds, who then added in parenthesis, following the inscription, the words "no vale." In May, 1925, the sheriff delivered to the plaintiff his original certificate of sale endorsed as follows:

"The foregoing sheriff's certificate of sale having been presented at 7.30 a. m. on May 29, 1924, its inscription is denied for the reason that the property, with all the improvements described in the said certificate, is registered in the name of a person other than any of the judgment debtors, Teofilo Mejia and Casilda Martinez de Mejia (see the fourth parcel in the inscription No. 57, pp. 57 to 59, of book 1, of inscriptions under Act No. 2837). Tacloban, Leyte, May 7, 1925."

A letter setting out the foregoing facts was then addressed to the Chief of the General Land Registration Office, who in turn submitted it to the Judge of the Fourth Branch of the Court of First Instance of Manila, who held, first, that after the filing of the affidavits, there was no error in registering the original deed, and, second, that the registrar had the legal right to refuse to inscribe the sheriff's certificate of sale for property sold at public auction which was not registered in the name of the judgment debtor, but in the name of a third party, and, third, refused to order registration of the deed to plaintiff in the writ, which was executed by the sheriff under sections 429 and 466 of Act No. 190. From this ruling, the plaintiff appeals, assigning the following errors:

"The court erred:

"1. In finding that defects in an original conveyance presented for registration under Act No. 2837, (amending Act No. 2711, sec. 194), can be cured by affidavit alone.

"2. In holding that a registrar of deeds may refuse to register a sheriff's deed of sale, on the ground that the property sold stands inscribed in the registry book for unregistered real estate in the name of some person other than the judgment debtor.

"3. In failing to order the registrar of deeds of Leyte (1) to annul inscription No. 57 in his register under Act No. 2837; or (if the inscription be held valid) (2) to require the said registrar to record the sheriff's certificate of sale."

JOHNS, J.:

Upon the facts, we are clearly of the opinion that there is no merit in the first assignment of error. As the Attorney-General points out, there was no material defect in the conveyance itself, because the instrument was regular on its face, valid in substance, and had all of the requirements provided for in section 127 of Act No. 496, as amended. Nothing was conveyed by the affidavits which were simply furnished for the purpose of conforming to the requirements of the entries to be made in the registry book.

As to the second assignment of error, it will be noted that, although the deed of sale was duly registered on August 12, 1921, that on April 18, 1923, the land therein described was attached as the property of the grantors in the deed. That later judgment was obtained in the attachment proceedings, execution was issued, and that the fourth parcel of land described in the deed was advertised for sale when the grantees notified the sheriff that it was their sole and exclusive property. The sheriff then demanded the indemnity bond from the plaintiff in the writ, which was furnished, and the fourth parcel of land was then sold by the sheriff to Smith, Bell & Co. as purchaser for the sum of P20,000. Later, a certificate of sale was issued and the sale confirmed, and the sheriff's deed was executed.

Section 429 of the Code of Civil Procedure provides:

"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."

It was under the second paragraph of this section that the property was attached as the property of the grantors in the deed, and the attachment indexed by the registrar as therein provided. That portion of the section deals with real property or an interest therein belonging to the defendants in the attachment suit, which may be held by any other person, or which stands on the record in the name of any other person, and section 450 of the Code of Civil Procedure provides:

"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. Shares and interests in any corporation or company, and debts, credits and all other property, both real and personal, or any interest in either real or personal property, and all other property, not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment."

And section 463 provides:

"Upon a sale of real property, the purchaser shall be substituted to, and acquire all the right, interest, title, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing:

- "1. A particular description of the real property sold;
- "2. The price paid for each distinct lot or parcel;
- "3. The whole price by him paid;
- "4. The date when the right of redemption expires.

"When the judgment under which the sale has been made is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption must be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed by the officer in the office of the registrar of land titles of the province."

Under section 465, if the judgment debtor redeems, he is entitled to a certificate of redemption, which must be filed with the registrar of deeds, but if the property is not redeemed, the sheriff's deed of the property sold must also be registered, for, under the provisions of section 1 of Act No. 2837, if not registered, it would only be valid as between the parties, and hence in the instant case, it would not be of any value to the purchaser at the sheriff's sale.

Section 466 of the Code of Civil Procedure provides:

"If no redemption be made within twelve months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a deed from the officer, but in all cases the judgment debtor shall have the entire period of twelve months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale

is terminated and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or approved before an officer authorized to take acknowledgment of conveyances of real property. Such certificate must be filed and recorded in the office of the registrar of land titles of the province in which the property is situated, and the registrar must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this section and the preceding one may be made to the purchaser or redemptioner, or for him to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency."

Of course, if at the time the attachment was levied the grantors in the deed, the defendants in the attachment proceedings, did not have any right, title or interest in the property, Smith, Bell & Co. did not acquire any title to the land by the sheriff's deed. But, if it be a fact that at the time the attachment was levied, the grantors in the deed did have an interest in the property at the time the attachment was levied, it follows that Smith, Bell & Co. acquired that interest by and through the sheriff's deed. That is to say, that if at the time the attachment was levied Cristina Martinez was in good faith the real owner of the property, Smith, Bell & Co. did not acquire any title, and Cristina Martinez would be and remain the owner of the property, the same as if it had never been sold at the sheriff's sale. But Smith, Bell & Co., having attached the property as the property of the grantors in the deed at the time the attachment was made, and, following the claim of Cristina Martinez, having executed a good and sufficient bond to indemnify the sheriff in the making of the sale, and having purchased the property at the sale, and having received the sheriff's deed, is entitled to have the result of such proceedings made a matter of official record, so as to preserve and protect any legal rights it may have acquired in the land as a result of such proceedings, and under the provisions of section 1 of Act No. 2837, those rights, if any, cannot be protected without the registration of the sheriff's deed. Such registration would not legally mean that Smith, Bell & Co. was the owner of the property described in the sheriff's deed, or any interest therein. It would simply mean that by the sheriff's deed, Smith, Bell & Co. had acquired any right, title or interest which the grantors had in the fourth parcel of land described in the deed at the time the attachment was levied. It might be a cloud on the title of Cristina Martinez, and it might be necessary for her to bring a suit to remove the cloud and to quiet her title. Be that as it may, she would be fully protected from all loss or damage by the indemnity bond which Smith, Bell & Co. gave the sheriff, or after the deed is registered, Smith, Bell & Co. could then maintain a suit to ascertain what rights, if any, it had acquired by the sheriff's deed in and to the fourth parcel of land.

Although in some matters, the registrar may have some quasi-judicial power, yet a suit to quiet a title or to ascertain and determine an interest in real property is a matter exclusively within the jurisdiction of the courts. The title, if any, which Smith, Bell & Co. has in the fourth parcel of land by the sheriff's deed was acquired by and through a judicial proceeding, and it has a legal right to have that title settled and determined in the courts, and under the provisions of section 1 of Act No. 2837, without a registration of its sheriff's deed, it would in legal effect be deprived of that right. In the registering of the sheriff's deed, care should be taken to recite the actual facts, the source and chain of title, so as to protect the rights of Smith, Bell & Co., and it should be done so as not to prejudice, injure or impair any rights which Cristina Martinez may have acquired in the land by her deed, thus leaving the respective rights of each party to be settled and determined upon proper pleadings in a judicial proceeding.

The judgment of the lower court is reversed, and following this opinion, the writ of mandamus shall issue as prayed for by the petitioner. Neither party to recover costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

CONCURRING:**ROMUALDEZ, J.,**

The rights which might belong to the purchaser Cristina Martinez by reason of the previous registration, having been saved by this decision, and it being understood that while Act No. 2837 authorizes the register of deeds to refuse the registration of an instrument when there is one already recorded which is incompatible therewith, yet it provides that any registration under said Act is understood without prejudice to third person having a better right, from which it follows that the subsequent registrations do not destroy nor affect the incompatible previous ones, although there must be taken into account such preference by priority of time as a previous registration may have, I concur in the result.

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