

SEBASTIANA MARTINEZ ET AL., PLAINTIFFS AND APPELLEES, VS. CLEMENCIA GRANO ET AL., DEFENDANTS AND APPELLEES; ESTANISLAO REYES, RECEIVER AND APPELLANT.*G. R. No. 25437. August 14, 1926*

Ponente: STREET, J.

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This appeal is prosecuted by Estanislao Reyes from an order of Judge Isidro Paredes dated October 9, 1925, dissolving the receivership over the property in litigation and directing that said property, theretofore in the hands of the appellant as receiver, should be delivered to the parties in interest. The facts appearing of record are voluminous, but the record has already been before the court upon three prior appeals. In this decision therefore only such facts will be discussed as are appurtenant to the point, or points, at issue.

It appears that the appellant was appointed receiver and entered into possession of the property in controversy in January, 1921. During the period that immediately followed the property in his hands did not produce enough income to meet the expenses and pay the sums due the holder of first mortgage, El Hogar Filipino. For this reason the receiver recommended to the court that the property be sold; and on January 25, 1922, Judge Paredes made an order authorizing the receiver to sell the land at an upset price of P38,000, subject to the approval of the court, the proceeds of the sale to be deposited in the clerk's office to abide the result of the litigation. On May 27, 1922, Judge Borbon renewed this authority upon about the same conditions but with the upset price fixed at P35,000. On August 19, 1922, the same authority was again expressed by Judge Borbon.

The receiver meanwhile had reported his inability to find a purchaser, and he himself came forward with an offer to take the property at P35,138.49, it being understood that he would assume all obligations encumbering the property, the amount of which was to be deducted from the amount of his bid. On August 25, 1922, an order was passed by Judge Borbon authorizing the clerk of the court to execute a deed transferring the property to Reyes for the sum mentioned, excluding (for reasons not necessary to be specified) a particular piece of land containing a thousand coconut trees, it being understood, so the order runs, "that the purchaser, Estanislao Reyes, makes himself responsible for and assumes the obligation and the duty to pay all debts and obligations encumbering the property sold." The Martinez heirs opposed the sale and attempted, though ineffectually, to bring the order referred to to this court upon appeal. Clemencia Graiio was also an opponent of the sale because of the inclusion therein of three parcels of property which belonged to her, and she successfully prosecuted an appeal to this court. When the cause reached us upon the appeal of Clemencia Graiio, a decision was here promulgated on February 28, 1923,¹ containing among other features the following paragraph:

"It results that the said three parcels must be excluded from the sale made to Estanislao Reyes; and the order of July 15, 1922, with reference to said parcels must be modified to this extent; and a necessary consequence will be that the purchaser, Estanislao Reyes, should be allowed a reduction in the price offered by him, in an amount proportionate to the value of the lands thus to be excluded. With said parcels excluded, and proportionate abatement made as indicated, the sale should be approved."

It will be noted that upon the appeal mentioned this court had under consideration merely the question of the propriety of including Graño's three parcels in the sale, there being no appeal by the Martinez heirs against the sale as a whole. In ordering the exclusion of Graño's land we stated that, with this exclusion and a proportional abatement of the purchase price to Reyes, "the sale should be approved." This order treats the sale to Reyes as in every respect valid and indicates that the sale should be approved.

Accordingly, when the record was returned to the lower court, Reyes submitted a motion to the court on April 4, 1923, asking that he be declared owner of the property. In response to this request Judge Paredes, instead of declaring the sale approved, entered an order on July 20, 1923, among other things declaring that the sale was a nullity. In disposing of this point his Honor made the following observation:

"As regards the other parcels of land ordered sold in the orders appealed from, I also had to deny the motion for the reason that the sale of the same was not made in conformity with, but in direct violation of, the condition imposed by the court. The condition was that the bidder was bound to turn over to the clerk of the court the amount of the sale at the disposal of the court, before the issuance of the deed in his favor; but an examination of the deed of sale executed by said officer shows that the amount of the sale has not been turned over to the clerk of the court. For that reason the sale of said parcels of land is null, void and without legal effect. This deed, according to the order of the court, should not have been executed until after the amount of the sale had been turned over to the clerk of the court."

It will be noted that his Honor in effect here decreed a resolution of the sale for non-performance of the conditions of the sale. This order contained other features affecting Reyes right as against Graño, and Reyes' attorneys attempted to bring the cause on appeal to this court to review the order as it affected both the Martinez heirs and Graño. No notice of the intention to appeal, however, was served upon the Martinez heirs, with the result that when the bill of exceptions came to this court, a motion was made by the Martinez heirs to have the appeal dismissed. Upon this the attorneys for Reyes came into court and replied by demonstrating that the appeal then being prosecuted by Reyes involved -only the three parcels of land which had in a previous decision been declared by this court to belong to Clemencia Grano. Upon this assurance the court denied the motion of the Martinez heirs to dismiss the appeal, it thus appearing that said Martinez heirs were not interested in the matter in controversy so far as here involved. (See decision of this court promulgated March 24, 1924, in *Martinez vs. Reyes*, G. R. No. 21618.)¹ It will be seen therefore that the order of Judge Paredes of July 24, 1923, nullifying and resolving the sale of the receivership property to Reyes, was never effectually appealed from, and the conclusion irresistibly follows that the order of Judge Paredes upon the point mentioned has acquired the character of a final and irrepealable order. In our decision last above referred to the following paragraph was inserted near the close of the opinion:

"In order to contribute something to clarify a situation which has tended to become complex, we will say that the effect of the appealed decision was to declare that Estanislao Reyes had not complied with the conditions requisite to enable him to become a purchaser of the property of which he is receiver, and this has the inevitable effect of eliminating him in the character of purchaser. It will, therefore, be the duty of the lower court to deal with him hereafter exclusively in the character of receiver and to hold him responsible in that character only."

The attorneys for Reyes immediately protested against this paragraph and asked the court to strike it from the decision as a mere dictum. In reply to motion to this effect, the court declared ineffectual so much of the decision as was mere dictum.

We have no hesitation in saying that the paragraph last above quoted can be taken as dictum, and it shows on its face that it was not intended to express a dispositive feature of the case. Nevertheless it is true that the paragraph quoted expressed the truth and that truth remains precisely now as when the paragraph was written.

Notwithstanding the declaration of nullity made by Judge Paredes and the observation of this court pointing out that Reyes could no longer be treated in any other character than that of receiver, he has continuously pretended to be the owner of the property by virtue of the purchase referred to, and he has refused to submit any account of his receivership in the subsequent years. In view of this attitude on the part of the appellant, a number of motions were made by adverse parties seeking to bring him to account and to have him removed from the office of receiver, with the result that on October 9, 1925, Judge Paredes entered an order of which the following is the dispositive portion:

"Therefore, the motion is granted and the appointment of Estanislao Reyes as receiver is revoked, annulled and adjudged to be of no effect from this date, without prejudice to the rendering of an account within the period of fifteen days from the notification hereof; and he is ordered to deliver immediately to the parties herein all of the property, in its present condition, which may have come into his possession by reason of having been appointed receiver. It is understood that this is without prejudice to the execution of the aforesaid judgment of the Supreme Court as soon as the parties, or any one of them, should request it. So ordered."

There cannot be the slightest doubt of the power of the lower court to remove a receiver and terminate a receivership under section 180 of the Code of Civil Procedure; and in view of the attitude of the appellant, the impropriety of his longer remaining in office is apparent.

But it is claimed by the appellant that he has made expenditures necessary to the care and conservation of the property over and above the proceeds obtained from the coconuts produced by the land comprised in the receivership ; and it is contended that the lower court had no power to turn him out at least as long as the expenditures made by him have not been reimbursed. This contention seems to us to come with bad grace from a receiver whose attitude about the receivership property has been such as that exhibited by the appellant, and particularly in the light of his refusal to render any account of the income from the property in his possession. The contents of the voluminous record which we have examined carefully and the history of the proceedings afford much material for unfavorable comment upon the attitude of the appellant, but inasmuch as the case turns in the end upon the efficacy of Judge Paredes' order declaring the sale a nullity, any comment is unnecessary.

The court, however, is of the opinion that if upon the prompt submission and examination of the receiver's accounts, it should be found that he has actually paid out for the conservation and protection of the property which is the subject of the receivership more than he has received by way of income, or should have received in the exercise of reasonable diligence, such balance in his favor should be recognized as a lawful claim constituting a lien on the property.

The order appealed from will therefore be affirmed with the sole modification that the appellant is given forty (40) days from the date of the return of this record to the lower court within which to submit his accounts as receiver, upon the filing of which the adverse parties will be notified in order that they may controvert the same if they see fit; and the cause is remanded for further proceedings. So ordered, with costs against the appellant.

Avanceña, C. J., Ostrand, Johns, and Villa-Real, JJ., concur.

Romualdez, J., reserves his vote.

[1] Martinez vs. Grano, G. R. No. 19864, not reported

[(1)] Not reported.

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