

PANTALEON E. DEL ROSARIO, PLAINTIFF AND APPELLANT, VS. RESTITUTO VILLEGAS, DEFENDANT AND APPELLEE.

G. R. No. 25726. November 22, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal was taken by the plaintiff Pantaleon E. del Rosario from a judgment of the Court of First Instance of Oriental Negros, the dispositive part of which is as follows:

"All the proceedings of the sheriff, Sobrepeña, as well as the subsequent acts and documents arising from the execution, are declared null and void. The defendant is absolved from the complaint, with costs against the plaintiff, and, in accordance with the cross-complaint, the latter is further ordered to recognize the defendant's rights in the lands in question.

"It is so ordered."

In support of his appeal the appellant assigns the following errors alleged to have been committed by the lower court: (1) The lower court erred in permitting the defendant to present additional evidence on December 17, 1925, over the objection of the plaintiff, and without the latter having produced additional evidence in support of the allegations of his complaint; (2) the lower court erred in finding that the judgment creditor and purchaser, Broadwell Hagans, has not paid the amount bid at the auction sale; (3) the lower court erred in holding that the provincial sheriff of Oriental Negros arrogated to himself judicial authority in carrying out the writ of execution issued in civil case No. 432; (4) the lower court erred in not holding that the defendant Restituto Villegas could impugn the validity of the sale by the sheriff on the ground that said official had attempted to collect a greater amount than that provided for in the judgment in civil case No. 432; (5) the lower court erred in not holding that the plaintiff was a purchaser in good faith of a registered property, and, as such, could not be deprived thereof or of his title thereto; (6) the lower court erred in not holding that the defendant could bring the necessary actions against the sheriff for any illegal acts performed by him in connection with the writ of execution in question, but not for the annulment of plaintiff's registered title; (7) the lower court erred in finding that the plaintiff intervened in civil case No. 432, controlling the proceedings of the auction sale of the land in litigation; (8) the lower court erred in not holding that the plaintiff had a right to a judgment for the products of the lands in question, which he has failed to receive by reason of the opposition of the defendant; (9) the lower court erred in absolving the defendant from the complaint and in ordering the plaintiff to recognize the defendant's rights in the lands in question, notwithstanding the fact that he had lost them.

The pertinent facts necessary for the determination of the questions raised in this appeal are the following: Judgment in favor of the plaintiff and against the defendants having been entered in civil case No. 432 of the Court of First Instance of Oriental Negros, in which Broadwell Hagans, as administrator of the estates of the deceased Juan Melgar and Vicenta Escio, was plaintiff, and Restituto Villegas and Nena Mercader defendants, an appeal was taken by the latter which is G. R. No. 17315[1] of this court, final judgment having been rendered therein, affirming the judgment appealed from, the dispositive of which is as follows:

"Wherefore, the court finds:

"That Juan Melgar was in possession, as owner, of the two parcels of land in litigation, situated in Tuaran, or Calamba, in the municipality of Guihulnigan, Oriental Negros, until his death on June 19, 1915; that the defendant was in possession, in bad faith, of the two parcels of land referred to, with the acquiescence of the administrator of the estate of the deceased Juan Melgar in April, 1916, when the plaintiff administrator Hagans, put someone in charge of the same parcels of land; that the document Exhibit 7 and its ratification are null and void and of no effect, and, therefore, the defendant Restituto Villegas has acquired no title to said parcels of land. The defendants must return to the plaintiff, in his capacity as administrator of the estate of the deceased Juan Melgar, the possession of the two parcels of land in question, and the fruits of the improvements thereon received by the defendants from the year 1915 until the execution of the judgment, which fruits consist of 250 cavans of corn, at P2.50 a cavan for the harvest of the years 1915, 1916, 1917, 1918, and at P7 a cavan, for the harvest of the year 1919; and with respect to the harvest of this and later years, at the yearly prices of said corn in Guihulnigan, until the execution of the judgment. The defendants must likewise deliver to the plaintiff the number of coconuts they may have received, on the basis of 500 nuts a year, from the year 1915 until the execution of the judgment, or the value of the same in Guihulnigan on the day of the execution of said judgment, with costs."

The cause having been remanded to the court of origin, a writ of execution was issued on July 24, 1922 in accordance with the said judgment. Inasmuch as in the judgment, the execution of which is under consideration, neither the price of the corn harvested during the years 1921; 1922 and 1923, nor the value of the coconuts on the date when the land was returned, was fixed, the sheriff, without previous order from the court, and guided only by a letter from Messrs. Block, Johnston and Greenbaum, attorneys for the administrator Broadwell Hagans, dated July 14, 1922, and by information received from various businessmen of the locality, estimated the quantity of corn harvested during the years 1915 to 1922, and valued that for the year 1920 at P5 a cavan, that for the year 1921 at P4, and that for the year 1922 at P4.50. By the same procedure, and without judicial authority, he estimated the products of the land at 250 cavans of corn a year, or a total of 1,675 cavans and the number of coconuts at 3,750, at P0.02 a coconut, thus violating the judgment which had fixed the annual products of the land at 50 cavans a year, or a total of 350 cavans, and demanded payment for said products from the defendants. Not being agreeable to said estimate and valuation, the defendant Restituto Villegas refused to make the payment demanded of him. In view of this refusal the sheriff proceeded to announce the sale of the two parcels of land in question, belonging to said defendant, the assessed value of which is P27,000 more or less. No notice was given of the seizure by virtue of the writ of execution; neither was any notation made in the registry of property. The said two parcels of land, having been placed at public auction on September 26, 1922, were adjudicated to Broadwell Hagans, as administrator of the intestate estates of Juan Melgar and Vicenta Escio, for the amount of the judgment, without the purchaser having deposited or offered the payment of the expenses of the execution.

The year of redemption having expired, the purchaser Broadwell Hagans asked the sheriff to execute the deed of conveyance in his favor, which said official refused to do on the ground that the purchaser had not paid the purchase price of the sale and the expenses of execution. In view of this refusal the attorneys for the administrator, Broadwell Hagans, filed a motion in the Court of First Instance of Oriental Negros to compel the sheriff to execute said deed. The defendant Restituto Villegas was neither notified of the filing of said motion, nor served with a copy thereof. By mere accident Mr. Federico Mercader learned of the filing of said motion, and filed an opposition to the execution of said deed of conveyance. Notwithstanding this opposition, the court granted the motion, with the exception of Federico Mercader on behalf of the defendant Restituto Villegas. In obedience to said order, the provincial sheriff of Oriental Negros on October 31, 1923, executed the proper deed of conveyance in favor of Broadwell Hagans.

On April 1, 1924, Broadwell Hagans, as administrator of the estates of the deceased Juan Melgar and Vicenta

Escio, and in accordance with the scheme of partition of the estate between Pantaleon E. del Rosario and the heirs of Vicenta Escio, approved by the court, executed a deed of conveyance of the property acquired by him at public auction in favor of Pantaleon E. del Rosario in consideration of the sum of P4,000, which said plaintiff Pantaleon E. del Rosario had paid said administrator, Broadwell Hagans, for administration expenses. Said deed was approved by the court and presented to the register of deeds of Oriental Negros for notation and registration in accordance with Act No. 2837.

Having acquired said property by virtue of said deed, Pantaleon E. del Rosario took the necessary steps to enter upon the possession thereof, but the herein defendant opposed, alleging that the sale was illegal and void. In view of this opposition Pantaleon E. del Rosario filed the complaint which initiated this action, praying at the same time for the issuance of a writ of preliminary injunction. The court, however, instead of issuing said writ, appointed Mr. Fernandez as receiver who took charge of the property in litigation. The defendant having filed a bond later took possession of said property.

The defendant having filed an answer, and after proper proceedings and the submission of evidence by both parties, the Court of First Instance of Oriental Negros, on December 23, 1924, rendered judgment in favor of the defendant and against the plaintiff, absolving the defendant from the complaint.

On February 1, 1925, the plaintiff filed a motion for a new trial on the ground that the findings made by the court in its decision were manifestly and openly contrary to the weight of the evidence and the law.

On August 22, 1925, the court, ruling upon said motion, entered an order granting the same and setting the date for the new trial on September 15, 1925.

On September 17, 1925, the case was again called for trial in the municipality of Guihulnigan where the defendant offered additional evidence which the court admitted, over the objection of the plaintiff, who excepted to the ruling and presented no evidence.

With respect to the first assignment of error the appellant contends that the petition for a new trial being based merely upon the fact that the findings of fact made by the court were openly and manifestly contrary to the weight of the evidence and that said decision was contrary to law, the defendant-appellee had no right to present, neither had the court power to admit, additional evidence.

Section 147 of the Code of Civil Procedure provides as follows:

"SEC. 147. Effect of granting a motion for a new trial.— If a new trial shall be granted in accordance with the provisions of the two last preceding sections, the original judgment shall be vacated, and the action shall stand for trial de novo; but the recorded evidence taken upon the former trial, so far as the same is admissible and competent to establish the issues shall be used upon the new trial without retaking the same."

Sections 145 and 146 of the same Code contain the following provisions:

"SEC. 145. New trial—Within thirty days after notice of a decision rendered by a Court of First Instance, the judge thereof may at the petition of the party aggrieved, and after due notice to the adverse party, set aside the judgment and grant a new trial, provided the petition is based on any of the following causes materially affecting the legitimate rights of the petitioner:

"1. Accident or surprise which ordinary prudence could not have guarded against and by reason of which the party applying has probably been impaired in his rights.

"2. Newly discovered evidence, material to the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

"3. Because the judge has become satisfied that excessive damages have been awarded, or that the evidence was insufficient to justify the decision, or that it is against the law.

"SEC. 146. Method of procedure in applications for new trial.—The application shall be made by motion in writing, stating the ground therefor, of which the adverse party shall have such reasonable notice as the judge may direct. When the application is made for a cause mentioned in the first or second subdivisions of the last section, it must be made upon affidavits, and counter affidavits from the adverse party may likewise be received."

It will be seen from section 147 above quoted that once a new trial is granted, the original judgment is set aside and the case is exactly in the position it occupied before there had been a trial, and the parties stand as if there had never been any trial. If a new trial is granted in general terms, it reopens all the issues in the cause and amendments to the pleadings may be permitted (20 R. C. L., 313). The court, however, can limit the issues to be discussed at the new trial and the parties to intervene in it, as well as the evidence to be presented. When the motion for new trial is on the ground that the evidence does not sufficiently justify the decision of the court, or that the latter is contrary to law, said court may limit itself to reviewing the evidence already presented in order to determine whether or not it has committed an error in making its findings of fact and of law, or to permitting the presentation of additional evidence.

In view of the liberal provisions of said section 147 of the Code of Civil Procedure, the lower court did not err in permitting the defendant to present additional evidence at the new trial granted upon the ground that the evidence did not sufficiently justify the decision of the court and that the same was contrary to law. ' With reference to the second assignment of error, the judgment creditor can bid the amount of the judgment in his favor at the auction sale, and if his bid is accepted, it is not necessary in order to make the sale effective that the amount offered be deposited so long as the judgment-creditor-purchaser pays for the expenses of the sale, or is disposed to do so; but said sale will not be effective if he refuses to pay the amount sufficient to cover the expenses (23 C. J., 649). The creditor-purchaser Broadwell Hagans not having paid nor offered to pay the expenses of the auction, the sale was not effective and the trial court did not err in holding that he has not paid the amount of the sale, although he had made a bid for the amount of the judgment in his favor.

With respect to the third assignment of error, the pertinent portion of the dispositive part of the judgment, the execution of which is under consideration is as follows: " The defendants must return to the plaintiff, in his capacity as administrator of the estate of the deceased Juan Melgar, the possession of the two parcels of land in question, and the fruits of the improvements thereon received by the defendants from the year 1915 until the execution of the judgment, which fruits consist of 250 cavans of corn, at P2.50 a cavan for the harvest of the years 1915, 1916, 1917, 1918, and at P7 a cavan, for the harvest of the year 1919; and with respect to the harvest of this and later years, at the yearly prices of said corn in Guihulñgan, until the execution of the judgment The defendants must likewise deliver to the plaintiff the number of coconuts they may have received, on the basis of 500 nuts a year, from the year 1915 until the execution of the judgment, or the value of the same in Guihulñgan on the day of the execution of said judgment, with costs."

It is a well-settled rule in procedural law that the judgment should state the precise amount for which it is rendered, and not leave it to be ascertained by calculation; but if such data are given that the amount may be ascertained with certainty, the judgment will be upheld. A judgment for a sum to be thereafter ascertained by a ministerial officer is erroneous, except where the reference is merely to calculate and state an amount already definitely fixed by the data given in the judgment. * * * Matter dehors the record cannot be considered. * * * (33 C. J., 1202.) It is essential that the amount to be recovered is specified in the judgment in order that a writ of execution may be issued * * * (23 C. J., 717).

In the judgment which is the subject of execution the price per cavan of the corn harvested in 1920 and subsequent years was not fixed, but it simply says that said price shall be the yearly price of corn in Guihulnigan until the judgment is executed. Neither was the price of the coconuts which the defendant should pay in case he could not deliver the nuts grown from the year 1915, at the rate of 500 nuts a year, fixed in said judgment, but it merely states that their value will be determined by the price they may bring in Guihulnigan on the day of the execution of the judgment.

It will be seen that said judgment is not subject to execution with respect to the price of the corn from the year 1920 and the coconuts from the year 1915, inasmuch as it contains no data by which to determine said prices, and to do so it would be necessary to obtain the quotations of the local market by means of witnesses.

The provincial sheriff of Oriental Negros, in being guided by the letter of the attorneys of the judgment creditor Broadwell Hagans and by the data furnished by merchants of Guihulnigan in order to determine and fix said prices for the execution of the judgment, not only enforced a part of the judgment not subject to execution but also arrogated to himself powers that belonged only to the court, his act being illegal and void; and, therefore, the sale of the two parcels of land in question, for the purpose of collecting the sums resulting from the arbitrary and illegal estimate of the prices of the corn and the coconuts, above stated, is also null and void.

The fourth assignment of error is a corollary of the third, and the findings made with respect to that assignment are applicable hereto.

With respect to the fifth assignment of error, even admitting for the sake of brevity, that the plaintiff was a purchaser in good faith, nevertheless he cannot claim to have acquired legal and valid title, notwithstanding the fact that the deed of conveyance executed in his favor by Broadwell Hagans, as administrator of the estates of the deceased Juan Melgar and Vicenta Escio, was registered and noted under the provisions of Act No. 2837. In the first place, in order to assert valid and effective title to said properties, it is absolutely necessary and indispensable that the person from whom they may have obtained the same should have a valid and effective title thereto. Broadwell Hagans, in the capacity above indicated, acquired said properties at public auction, by virtue of the execution. We have seen that said execution and the public auction held thereunder were illegal and void, and all the acts performed as a consequence thereof and all the rights acquired by virtue of the same are likewise illegal and void. If the deed of sale executed by the sheriff by which Broadwell Hagans acquired title to the properties mentioned is illegal and void, said title is void and of no effect, and neither the supposed good faith of the herein plaintiff as purchaser, nor the notation and registration of the deed of conveyance in his favor under the provisions of Act No. 2837 could have cured said defects, as the notation and registration of the documents under said Act will have effect only if said documents are valid and effective, and never against third parties with a better right. (Rivera vs. Moran, 48 Phil., 836.)

Strictly speaking, however, the plaintiff Pantaleon E. del Rosario cannot be considered as a third party, because he was one of the interested parties in the partition of the estates left by the deceased Juan Melgar and Vicenta Escio, and the conveyance in his favor was due to the fact that he had assumed the payment of the administration expenses and the inheritance tax, Broadwell Hagans, in bidding as administrator of the estates of Juan Melgar and Vicenta Escio in the auction sale, did so in behalf of the interested parties in the intestate estates, the herein plaintiff Pantaleon E. del Rosario being one of them, and the conveyance made by the former to the latter was nothing more than a conveyance to an interested party of properties acquired in his behalf and for his benefit. The person represented can never be a third party with respect to the representative.

The plaintiff, as attorney and one of the interested parties in the intestate estates of the deceased Juan Melgar and Vicenta Escio, of which Broadwell Hagans was administrator, could not be ignorant of the judgment rendered in

favor of the said intestate estates and against Restituto Villegas, nor the proceedings taken by the sheriff for the execution of said judgment, as shown by the interest that he took by instructing the Governor of Oriental Negros, in his capacity of provincial sheriff, by telegraph, regarding the manner in which said proceedings should be carried out.

If Pantaleon E. del Rosario is not a third party, and the acquisition of the properties in question was not in good faith, the fact that the deed of conveyance was registered in the office of the register of deeds, in accordance with the provisions of Act No. 2837, does not protect him against the claims of the defendant Restituto Villegas, original owner of said lands who has been deprived of his rights by virtue of illegal and void execution proceedings, and, consequently, ineffective to confer title.

The remaining assignments of error are mere consequences of those already discussed, and having been resolved adversely to the contention of the appellant, they are without merit.

For the foregoing, and finding no error in the dispositive part of the appealed judgment, the same is affirmed, in all respects reserving the right to the plaintiff-appellant, however, to petition the lower court, within the period of thirty days from the date on which this judgment shall become final, to determine the price of the corn, from the year 1915, and that of the coconuts, from the year 1920 to the date of execution, and to issue a new writ of execution to that effect. So ordered.

Avanceña C. J., Johnson, Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

[1] Promulgated April 26, 1922, not reported

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