

MARIA DE OCAMPO, PLAINTIFF AND APPELLANT, VS. THE INSULAR TREASURER OF THE PHILIPPINE ISLANDS, BUENAVENTURA DIZON AND CELERINO ARELLANO, DEFENDANTS AND APPELLEES.*G.R. No. 26551. March 18, 1927*

Ponente: OSTRAND, J.

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This action is brought to recover damages in the sum of P13,280 from the Land Registration Assurance Fund for alleged negligence on the part of the register of deeds of the City of Manila in failing to enter upon the corresponding certificate of title a notice of the levy of execution on certain real property registered under the Land Registration Act.

It appears from the record that on December 6, 1919, a judgment was rendered in civil case No. 16657 of the Court of First Instance of Manila in favor of the plaintiff herein, Maria de Ocampo, and against the defendant Celerino Arellano for the sum of P4,500, with interest at 12 per cent per annum from December 15, 1918; that on February 7, 1920, Arellano sold the property to the defendant Buenaventura Dizon for the sum of P15,000; and that on April 30, 1920, a writ of execution of the aforesaid judgment was issued and levied upon the property. In conformity with the provisions of section 71 of the Land Registration Act, the sheriff of the City of Manila filed a notice of the levy with the register of deeds, which notice was entered in the primary entry book of the register's office, but was afterwards, on May 20, 1920, returned to the sheriff with the information that the property was registered in the name of Buenaventura Dizon, having been conveyed to the latter by the defendant in execution, Celerino Arellano, and that, therefore, no memorandum of the notice had been entered upon the outstanding certificate of title. It may be noted that the notice contained no "reference to the number of the certificate of title of the land to be effected, and the volume and page in the registry book where the certificate is registered," and that to that extent, the notice did not meet the requirements of said section 71.

The sale of the property to Buenaventura Dizon was found to be fraudulent and declared null and void in civil case No. 26208 of the Court of First Instance of Manila on January 26, 1925, but in the meantime, on December 14, 1921, more than a year and a half after the attempted levy of execution on the property, it was sold by Buenaventura Dizon to one Remedios de Locsin for the sum of P20,000. It is conceded by all parties that Remedios de Locsin was a purchaser in good faith and that her title is indefeasible.

The complaint in the present case was filed on December 11, 1925. The trial court held that under the circumstances of the case, the register of deeds of the City of Manila had not been guilty of negligence in failing to enter the notice of attachment upon the certificate of title of Buenaventura Dizon and that, therefore, there could be no recovery from the Assurance Fund; that there could be no judgment against Celerino Arellano inasmuch as a judgment had already been rendered against him in civil case No. 16657; and that neither could any judgment be rendered against Buenaventura Dizon in view of the fact that the sale to him had already been set aside. All of the defendants were, therefore, absolved from the complaint and the case dismissed without costs,

from which judgment the plaintiff appealed.

In our opinion the appealed judgment must be confirmed. The plaintiff bases her claim for damages on section 101 of Act No. 496, which reads as follows:

"Any person who without negligence on his part sustains loss or damage through any omission, mistake, or misfeasance of the clerk, or register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, and any person who is wrongfully deprived of any land or any interest therein, without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as owner of such land, or by any mistake, omission, or misdescription in any certificate or owner's duplicate, or in any entry or memorandum in the register or other official book, or by any cancellation, and who by the provisions of this Act is barred or in any way precluded from bringing an action for the recovery of such land or interest therein, or claim upon the same, may bring in any court of competent jurisdiction an action against the Treasurer of the Philippine Archipelago for the recovery of damages to be paid out of the assurance fund."

It will be observed that there can be no recovery of damages from the Assurance Fund if the claimant, through negligence, has failed to take due precautions to avoid the loss for which damages are sought. In this case the plaintiff is unquestionably guilty of negligence. The execution of the judgment against Arellano was not levied until five months after the rendition of the judgment; no objection was made to the failure of the register of deeds to call in the outstanding certificate of title and to enter thereon a memorandum of the notice of the attachment; no steps were taken by the plaintiff to secure action by the register of deeds after he had informed the sheriff that the land had been conveyed to a third party and that it was registered in the name of said party; and no action was brought to set aside the sale to Buenaventura Dizon until several years later. The sale to Remedios de Locsin was not made until over a year and a half after the plaintiff had been informed of the sale to Dizon and there was, consequently, ample time for the plaintiff to bring her action for the setting aside of the sale to Dizon before the transfer to Remedios de Locsin was effected and to file a notice of lis pendens in order to protect herself against further transfers. By exercising ordinary diligence, the plaintiff could readily have prevented the loss of which she now complains.

We can find no fault with the action of the register of deeds. He did not, in terras, refuse to make the necessary entries of the notice of attachment, but when he found that, as far as his records showed, the defendant in execution had no further interest in the land in question, he merely called attention to the fact presumably with a view to save the plaintiff in execution the expense and trouble of levying execution on property belonging to a person not a party to the action and to avoid beclouding the latter's title by the entry of an adverse memorandum upon his certificate of title. Indeed, inasmuch as the number of the certificate of title upon which the attachment was to be noted was not stated in the notice, the register of deeds might possibly have laid himself open to an action for damages had he proceeded to enter the attachment upon a certificate of title without first advising the sheriff or the plaintiff in execution and without more explicit instructions. In our opinion he showed sound judgment in regard to the matter.

We agree with the court below that in view of the fact that judgment had been rendered against Celerino Arellano in another action for the amount of his debt to the plaintiff, another judgment covering practically the same subject-matter was unnecessary and improper.

The judgment appealed from is affirmed with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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