

ISABEL FLORES, PLAINTIFF AND APPELLANT, VS. TRINIDAD LIM, DEFENDANT AND APPELLEE.*G.R. No. 26844. September 27, 1927*

Ponente: JOHNS, J.

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January 20, 1923, plaintiff's land was sold at sheriff's sale to the defendant for P1,603.78. It is in the barrio of Pinaninding, municipality of Laguimanoc—formerly Atimonan—Province of Tayabas, and is about seventy-three hectares, on which were 164 coconut bearing trees and 1,000 non-bearing, and about 300 buri trees. The usual certificate of sale was issued to the defendant under the provisions of section 463 of the Code of Civil Procedure. Prior to the one year period of redemption, plaintiff made a formal demand upon the defendant, under the provisions of section 469 of the same Code, for an accounting of the fruits and profits derived by her from the land, so that the plaintiff might have credit for the amount received on the money required for redemption from the sale.

The instant case is brought by the plaintiff to redeem, and it is alleged that at the time of the sale, the defendant took the actual, physical possession of the property, and has refused and still refuses to render an account of the fruits and profits, to plaintiff's damage in the sum of P1,000, and she prays judgment that the defendant be ordered to render an itemized account, the amount of which should be deducted from the price of the redemption; that plaintiff have the right to redeem; and that defendant pay her P1,000 as damages and costs.

For answer the defendant makes a general and specific denial, and as a special defense alleges that her rights of ownership over the land arise rather from a purchase made from the Government which had confiscated the land for a delinquency in the payment of the land tax than from her acquisition of it at public auction. That the plaintiff has not repurchased the land within one year, and the offer to redeem was made out of time. Defendant consented to the redemption upon the condition only that the plaintiff should pay the purchase price of the land, P6,371.19, the value of the improvements, P217.07, the amount of the land tax, and alleges that plaintiff offered to pay only the sum of P2,500, and promising to pay that little by little, which offer the defendant rejected. That the action was brought for the purpose of delaying the matter, and to gain time in which to obtain the money to redeem. That the defendant has been improving the land up to the present date, and she prays that she be absolved from the complaint, and in the event redemption is allowed, that plaintiff be required to pay her the value of the improvements made on the land in question. As a reply plaintiff made a general and specific denial of all of the new matters alleged in the answer, and as a special defense, alleged that the defendant had no legal right to make such improvements, and that they were made without her knowledge, and that she is not liable for such improvements.

The evidence was taken upon such issues, and the trial court rendered judgment giving plaintiff the right to redeem the land upon the payment to the defendant within fifteen days from notice the following amounts: (a) The price of the land at the auction sale with legal interest thereon up to this date; (b) the amount of the land tax paid

by the defendant with legal interest up to this date; and (c) the sum of P15,000, the value of the improvements made by the defendant on the land, and in case redemption is not made within that period, the right is lost, and relieved the defendant from rendering an account.

On appeal the plaintiff assigns the following errors:

"ERROR NO. 1

"The trial court erred in sentencing plaintiff to reimburse defendant in the sum of P15,000 for improvements alleged to have been introduced by said defendant in the land in suit, altho said improvements were placed thereon by defendant with manifest bad faith.

"ERROR NO. 2

"The trial court erred in not ordering defendant to account to plaintiff for fruits and benefits received by said defendant from the land, and credit plaintiff against the amount due for its redemption the value of said fruits and benefits.

"ERROR NO. 3

"The trial court erred in denying plaintiff's motion for new trial on the ground of fraud and newly discovered evidence, that excessive indemnity was granted, and that the decision was not justified by the evidence and that the same was against the law."

JOHNS, J.:

The lower court having found that the plaintiff has a legal right to redeem, and the defendant not having appealed from that portion of the decision, the only question before this court is the amount which the plaintiff should pay to redeem. The property was sold to the defendant at sheriff's sale under the provisions of Chapter XIX of the Code of Civil Procedure, section 461 of which provides:

"When the purchaser of any personal property, capable of manual delivery, pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of sale. Such sale conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied."

Section 463, among other things, 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."

Construing that section, this court in *Pabico vs. Ong Pauco* (43 Phil., 572), said:

"The sheriff's action in placing the defendant, as the purchaser at the execution sale, in possession of the land was absolutely without warrant of law, was null and void ab initio, and not merely voidable, and no special action for setting the proceedings aside are therefore required. In executing a judgment the duties of the sheriff are merely ministerial; he simply carries out the orders of the court. If the writ of execution or other order of the court does not command or direct him to deliver the possession of real property to a certain person, he has

no authority whatever to do so and in undertaking to eject the party in possession and deliver such possession to some one else, he becomes a mere trespasser. In such case, the person to whom possession is delivered is also a trespasser and the fact that he has been aided by another trespasser can constitute no defense.

" The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary.

" 'If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the" latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.' "

Among other things, section 465 of the Code of Civil Procedure provides:

"The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per cent per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after. purchase, and interest on such last-named amount at the same rate."

That is to say, the statute specifically provides that the redemptioner may redeem within twelve months after the sale by paying the purchaser the amount of his purchase, with interest thereon at one per cent per month from the date of the purchase to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid after the purchase, with interest thereon at the same rate. The statute having specified what the redemptioner should pay to redeem, it follows that she is not required to pay anything not specified in the statute.

The lower court found that immediately after the purchase, the defendant entered upon and took possession of the premises, and that at the time of the trial, she had planted 8,000 coconut trees on the land at an expense of P15,000, and that to redeem the property it was not only necessary for the plaintiff to pay the amounts specified in section 465 of the Code above quoted, but in addition thereto and in order to redeem the property, she must pay the defendant the further sum of P15,000, the cost and the value of the 8,000 coconut trees planted on the property by the defendant. That was error. It nullifies the plain and express provisions of the statute, and there is no legal principle upon which it can be sustained.

The record shows that immediately after the sale, the defendant took the actual, physical possession of the property and drove off the employees of the plaintiff.

A purchaser of real property at an ordinary execution sale is not entitled to possession of the land or the accruing rents and profits until after the period of redemption has expired and the legal title to the land has become vested in him.

The defendant had no legal right to possession of the land in question, and, hence, she was a trespasser from the time she took possession during the whole period of redemption. Being such a trespasser, and under the provisions of section 465 of the Code of Civil Procedure, the defendant cannot recover from the plaintiff any money which she expended for the planting of the coconut trees.

It is claimed that after the sale the plaintiff had said that she would not redeem, and that the defendant expended the money relying upon that statement. The evidence of that nature was verbal and is more or less hearsay, and to say the least, it is not clear or convincing. We are dealing with real property, the title to which is passed by written conveyance, judicial sale, will or descent, and it would be very dangerous to hold that the right of redemption can

be waived by parol testimony. Be that as it may, the evidence should be both clear and convincing and free from any doubt.

Suffice it to say that upon that point, there is a failure of proof. It is possible that a case could arise where the purchaser at a sheriff's sale pending the period of redemption might be forced to make certain improvements for the preservation of the property, and in equity and good conscience, he would then be entitled to receive the reasonable cost of such improvements as a condition precedent to the right of redemption. But that is not this case, and is a matter wholly outside of the record. The alleged improvements here were not made for the preservation of the property, and were apparently made for the sole purpose of preventing redemption. Defendant's contention would nullify the express provisions of the statute, and would put it beyond the power of a judgment debtor to redeem any real property sold on execution. It is the policy of the law to aid rather than to defeat the right of redemption.

Under the provisions of section 469 of the Code of Civil Procedure, the plaintiff made a demand upon the defendant for an accounting, and it was the legal duty of the defendant to comply with that demand. That section also provides that for failure to comply with the demand, the redemptioner "may bring an action to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor."

In legal effect, the lower court held that such a demand was made, and that by reason thereof, the period of redemption was extended. But found that "the defendant is not under obligation to render a detailed account of the products of the coconut and buri trees planted on the land." Technically speaking, the defendant should have been required to render an accounting, but under all the circumstances, and in view of the fact that no large amount is involved, we are not disposed to disturb that finding.

The judgment of the lower court, requiring the plaintiff to pay the defendant P15,000, as one of the conditions for the redemption of the property, is reversed, but the judgment as to the payment of "(a) the price of said land at the auction sale with the legal interest thereon up to this day;" and "(b) the amount of the land tax paid by the defendant with legal interest up to this date" is in all things and respects affirmed, with costs. So ordered.

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

CONCURRING AND DISSENTING OPINION

AVANCEÑA, C. J.:

I agree, in part, with the affirmation of the judgment appealed from. I also agree with the revocation in regard to ordering the plaintiff to reimburse the defendant in the sum of P15,000, the value of the improvements made on the land, because the law, I understand, does not require this reimbursement in order to effect the legal redemption. (Sec. 465, Code of Civil Procedure.)

But, I do not agree with the finding made in the majority decision that the defendant illegally possessed the land purchased by her during the year allowed the plaintiff for redemption and that she was a trespasser. It seems that this finding is based principally upon the decision rendered by this court in the case of *Pabico vs. Ong Pauco* (43 Phil., 572). In that case the sheriff, after having sold the real property at public auction in order to execute the judgment, placed the purchaser in possession thereof. But, I think, in that case the court only declared that after the sale the functions of the sheriff, being purely ministerial, ceased and he was under no obligation to place the purchaser in possession of the property sold. If the court then held that the purchaser was a trespasser and his possession was illegal, it was because the real property sold to him was, and for a period of ten years, had been in

the possession of another, who was not the judgment debtor in that case.

In the present case no one claims any right to the land except the plaintiff.

In my opinion, defendant's possession of the land in question after she bought it at public auction and during the year fixed for the right of redemption by the plaintiff judgment-debtor, was legal. According to section 463 of the Code of Civil Procedure, which is quoted in the majority decision, the effect of this sale, as regards the defendant, was to substitute the plaintiff and to acquire all her right, interest and title to the land, except the right of redemption. Possession being one of the rights which the plaintiff had to the land, this possession naturally passed to the defendant. It seems absurd to say that the defendant, by virtue of the purchase, substituted the plaintiff and acquired all her right, interest and title to the land, but not the right of possession, as would necessarily be the case if, in spite of the provision contained in said section 463, the defendant's possession of the land should be considered illegal after having purchased it and during the year granted the judgment debtor for the redemption. The same provision of section 469 of the Code of Civil Procedure which authorizes the purchaser, during the year of redemption, to receive from the tenant the rent or the compensation for the use or occupation of the land, and which imposes upon the purchaser the obligation to deduct the amount of this rent and that of the products which he has received from the redemption price which the judgment debtor has to reimburse him with to effect the redemption, shows that the law takes it for granted that the purchaser is in possession of the property purchased by him during this time. This same idea implies that this section grants the judgment debtor the right to demand that the purchaser render an account, any time during the period of redemption, of the money received by him in the way of rents and products. These provisions would »fte useless if it were not taken for granted that the purchaser had received these rents and products during this time and was, therefore, in possession of the property sold to him.

Furthermore, inasmuch as it must be taken for granted that the property sold had been seized before the sale and had passed to the possession of the sheriff, after the sale the possession is no longer in the sheriff, whose functions have ceased from that time except to execute, in due time, the proper deed of sale in favor of the purchaser. On the other hand, I do not believe that it can be maintained that this possession must be returned to the judgment debtor during the period of redemption. Consequently, the conclusion seems inevitable that the possession of the property thus sold must pass to the purchaser.

Aside from the plaintiff's right of redemption, I believe that the defendant has the right to be reimbursed, at least for the increase in value that the land acquired by reason of the expense incurred in improving it, as she was a possessor in good faith (art. 453, Civil Code) and because the plaintiff should not enrich herself at the expense of another and should pay what has enriched her.

The Civil Code requires that in order to exercise the right of redemption, the useful expenditures made on the thing sold should be reimbursed. (Arts. 1518 and 1525.) While the Civil Code is not applicable to this case, but section 465 of the Code of Civil Procedure, which provides for this redemption and which does not require reimbursement in order to exercise the same, yet I believe that under the same principles of justice that inspired the provisions of the Civil Code, the defendant has the same right, although not as a limitation of the right of redemption by the plaintiff.

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