

HI CAIJI, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., DEFENDANT AND APPELLEE.

G.R. No. 27122. August 31, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

This appeal presents a question of law only. It is: Does the dismissal of an action upon which an attachment has been issued dissolve the attachment and relieve the property attached from the lien thus created? The facts upon which that question arose may be stated as follows:

(a) That on the 2d day of July, 1924, the plaintiff Hi Caiji presented a complaint in the Court of First Instance of the City of Manila against Martiniano Eugenio and his wife Angela Carrillo for the recovery of the sum of P9,579.75;

(b) At the commencement of said action the plaintiff prayed for and obtained an attachment upon the property of the defendants;

(c) At the time of said attachment there existed a first mortgage upon the property attached, in favor of "La Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario de Filipinas" for the sum of P22,000;

(d) That after the beginning of said action and obtaining said attachment and on the 8th day of July, 1924, the said Martiniano Eugenio and his wife executed and delivered a second mortgage for the sum of P19,500 to The Philippine Sugar Estates Development Company, Ltd., which mortgage was duly registered on the 9th day of July, 1924;

(e) That on the 9th day of September, 1924, the said Martiniano Eugenio died; that an administrator was appointed to settle his estate; that commissioners were appointed to hear claims against his estate; and in accordance with the provisions of section 700 of the Code of Civil Procedure the action commenced by the plaintiff was dismissed and the claim represented by said action No. 26517 was presented to said commissioners and the sum of P8,529.75 of said claim was allowed and approved by the court;

(f) That later, on the 7th day of December, 1925, the said The Philippine Sugar Estates Development Company, Ltd., commenced an action in the Court of First Instance of the City of Manila (cause No. 29080), for the foreclosure of its mortgage, executed and delivered upon the 8th day of July, 1924, and recorded on the 9th day of July, 1924, and that the defendant herein obtained a judgment upon said mortgage and the property was sold at public auction for the sum of P2,000.

The plaintiff now claims that, by virtue of his attachment obtained upon his original action, he is entitled to be paid the amount of his claim, P8,529.75, out of the surplus obtained in the sale of said property, over and above the amount due upon the first mortgage in favor of "La Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario de Filipinas." The theory of the plaintiff is, that his attachment having been obtained prior to

the second mortgage in favor of The Philippine Sugar Estates Development Company, Ltd., that he is thereby entitled to a preference in the payment of his claim.

The defendant presented a demurrer to the complaint which contains the facts enumerated above, and argued that the facts stated in the complaint were not sufficient to constitute a cause of action; that the dismissal of the original complaint had the effect of dissolving the attachment and relieving the property of the lien, if any, created thereby.

Upon the issue presented by the complaint and the demurrer the Honorable George R. Harvey, judge, rendered a judgment sustaining the contention of the defendant in his demurrer, and absolved it from all liability under the complaint upon the ground that the dismissal of said cause No. 26517 extinguished any preference which the plaintiff may have gained over the second mortgage in favor of the defendant, The Philippine Sugar Estates Development Company, and gave the plaintiff five days within which to amend or dismiss his complaint. No finding was made as to the costs.

From that judgment the plaintiff appealed and now contends (a) that the facts alleged in the complaint were sufficient to constitute a cause of action, and (b) that the lower court committed an error in holding that the dismissal of the action had the effect of dissolving the attachment issued thereon.

The appellee contends that the facts alleged in the complaint clearly show that they were not sufficient to constitute a cause of action nor to grant the remedy prayed for, and bases its argument upon the rule of law that the dismissal of an action, without reservation, has the effect of dismissing any attachment issued thereunder. The appellee further relies upon the provisions of section 700 of the Code of Civil Procedure, as follows: "All actions commenced against the deceased person, for the recovery of money, debt, or damages, and pending at the time the committee are appointed, shall be discontinued, and the property, if any, therein attached, shall be discharged from the attachment and the claim embraced in such action may be presented to the committee, who shall allow the party prevailing the costs of such action to the time of its discontinuance."

From the foregoing facts and the law applicable thereto, we are forced to the conclusion that the judgment of the lower court should be and is hereby affirmed, with costs. It clearly appearing that the complaint cannot be amended so as to state a cause of action, assuming that the facts stated in the complaint are all the facts, we see no reason nor justification for granting to the appellant an opportunity to amend his complaint. So ordered.

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

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