

CHUA PUA HERMANOS, PETITIONER AND APPELLANT, VS. REGISTER OF DEEDS OF BATANGAS, RESPONDENT AND APPELLEE.*G.R. No. 27449. September 10, 1927*

Ponente: STREET, J.

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This is an appeal from a ruling of the Judge of the fourth branch of the Court of First Instance of Manila, in the exercise of the supervisory power conferred in section 200 of the Administrative Code, sustaining the register of deeds of Batangas in refusing to record a sheriff's certificate showing that certain property located in Lipa, Batangas, had been sold to the appellant at a sheriff's sale under execution.

It appears that on April 3, 1922, the appellant, Chua Pua Hermanos, instituted a civil action in the Court of First Instance of Batangas for the purpose of recovering a sum of money from the defendant therein, one Jose H. Katigbak. Shortly thereafter the plaintiff in said action caused a writ of attachment against the defendant to be placed in the hands of Carlos Hustre, as provincial sheriff. This attachment was levied, as was supposed, upon a house and lot located in the poblacion of Lipa, Batangas, and more particularly described in the sheriff's return to the writ, the same being the house in which Katigbak was then living. On June 11, 1926, a judgment was rendered in said civil case in favor of the then plaintiff and present appellant, Chua Pua Hermanos, to recover of the defendant Katigbak the sum of P13,912.37, with interest as prayed in the complaint. Upon said judgment execution was issued on August 13, 1926, and levied upon the same property that had been already attached. On September 4, 1926, the property thus levied upon was sold at public auction by the sheriff to the appellant, as the only bidder at such sale, for the sum of P15,000. Pursuant to this sale the sheriff issued his certificate of sale in due form to Chua Pua Hermanos, who on September 11, 1926, presented said certificate to the register of deeds of the province for registration.

The objection which the register of deeds has raised to the placing of this certificate of sale on record has its basis in the following facts: After the attachment had been levied, as was supposed, in the action instituted by Chua Pua Hermanos, another creditor of Katigbak, namely, Samuel Murray, Admr., also commenced a civil action against Katigbak in the Court of First Instance of Manila to recover a large sum of money (Murray, administrator of James Mitchel, deceased, vs. Jose H. Katigbak) ; and in due time judgment was entered in favor of Murray to recover the amount, sued for. Execution for the enforcement of . this judgment was issued forthwith, and on July 15, 1926, the same was levied on all the right, title, and interest which the judgment debtor Katigbak had or might have in the same property which had already been attached by Chua Pua Hermanos. Thereafter said property was sold at public auction, on August 21, 1926, by the sheriff of Batangas to the plaintiff therein, Samuel Murray, in his capacity as administrator aforesaid. Following upon this, the sheriff, on September 1, 1926, issued his certificate of sale to Murray, which certificate was duly presented to the register of deeds and by him recorded.

It is thus apparent that, although Murray, Admr., began his action against Katigbak in the Court of First Instance of Manila after the action had been begun by Chua Pua Hermanos in the Court of Fipst Instance of Batangas, nevertheless Murray succeeded obtaining final judgment before final judgment had been entered in favor of Chua

Pua Hermanos. Furthermore, proceedings for the execution of the first judgment were brought to their consummation by Murray, and the sheriff's certificate of sale to him was presented to the register of deeds, before the similar steps had been accomplished by Chua Pua Hermanos.

But reliance is placed, by Chua Pua Hermanos, upon the lien of his attachment; and if that lien in fact existed, there can be no doubt that, under the law, such lien would be superior to the right acquired by Murray, who is a simple execution creditor under judgment rendered subsequent to the date of the attachment (*Kuenzle & Streiff vs. Villanueva*, 41 Phil., 611). But the efficacy of the lien is challenged upon the ground that the attachment was not lawfully effected. This criticism is in our opinion well founded; for the return of the sheriff, telling how the attachment was effected in this case, shows that no copy of the order of attachment was filed with the register of deeds. Under section 429 of the Code of Civil Procedure the leaving of such copy with the register of deeds, with a description of the property and certification of notice to the judgment debtor, is essential to the effectuation of an attachment. Where this step is not taken the attachment is necessarily ineffectual. It is therefore apparent that, so far as appears in this record, the attachment lien in favor of Chua Pua Hermanos is imaginary. The case before us must therefore be considered as one where two judgment creditors are competing in their efforts to reach a single piece of property by simple writs of execution.

In providing a scheme for the noting or recording of attachments and execution sales the law intends that there shall be a public repository, of information where persons interested in the state of titles to real property can discover whether attachments have been levied or execution sales effected. These provisions apply to all property, whether registered under some existing system of registration or not, though of course the steps to be taken by the register differ somewhat according as to whether the property is registered under one system or another or not registered at all. In the case before us the property in question has not heretofore, so far as appears, been admitted to registration under either of the two systems for the registration of real property prevailing in these Islands. It therefore has the status merely of unregistered property.

In *Sanchez vs. Rosauro* (40 Phil., 231), we held that the register of deeds must record a sheriff's certificate of sale; and in *Williams vs. Suñer* (49 Phil., 534), it was held, with reference to unregistered property, that until separate books shall be provided especially for noting and recording of instruments executed by the public officials, the registration of such instruments must be effected by noting and recording them in the books ordinarily used for the registration of instruments relating to unregistered property. In the last named case it was pointed out that the conditions prescribed in section 194 of the Administrative Code, as amended by Act No. 2837, are not applicable to the deed of a sheriff conveying land sold by the sheriff under execution. Moreover, it has been held by this court that the fact that the property sold under execution is found to be already registered in the name of some other person than the execution debtor is no obstacle to the registration of the sheriff's deed (*Consults No. 441, Smith, Bell & Co. vs. Register of Deeds of Leyte*, 48 Phil., 656). These decisions are decisive of the present case, and the certificate of sale presented to the register by Chua Pua Hermanos should have been recorded.

The only feature found in the present case consists in the fact that, when the certificate of sale to the appellant was presented to the registrar, there was already on record the similar certificate of sale presented by the rival creditor. But this circumstance is of no moment. The register of deeds seems to have supposed that inasmuch as the two instruments were apparently inconsistent, the appellant's certificate could not be recorded, since there already appeared in the register a valid previous entry which might be affected by the registration of the instrument last offered for registration. But as already pointed out, the restrictions, of which this is one, expressed in the amendatory Act No. 2837, are not applicable to instruments of this character.

Furthermore, the register of deeds in this case was in error in supposing that he exercises a quasi-judicial power in determining the rights of persons under sheriff's deeds. His duty with respect to the notation or recording of these

instruments, so far at least as relates to unregistered property, is ministerial only. The noting of these instruments of record adds nothing to their intrinsic effect, such step being devised only as a means of notification of the claimant's right to the public, in accordance with the American system of registration. If, for instance, it should transpire that there was some fatal defect in the execution of Murray's judgment which would have rendered the sale to Murray invalid without the registration of the certificate of sale, such defect has not been cured by the recording of the certificate.

Again, there can be no doubt of the right of a junior judgment creditor to levy upon property that has already been levied upon, subject of course to the efficacy of the prior execution; and the duty of passing upon the competitive rights of two judgment creditors pertains to the courts when such rights are drawn in question in proper proceedings.

For the reasons stated the order appealed from must be reversed, and the respondent register of deeds is directed to receive and record the appellant's certificate of sale, upon tender by the appellant of the proper fee incident to the service to be rendered. So ordered, without costs.

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

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