

**CLARA GONZALEZ, FOR HERSELF AND AS JUDICIAL
ADMINISTRATRIX OF THE ESTATE OF HER DECEASED HUSBAND,
AGATON SANCHEZ, PLAINTIFF AND APPELLANT, VS. GIL CALIMBAS
AND PEDRO POBLETE, PR...**

G.R. No. 27878. December 31, 1927

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-27878/>

STREET, J.:

This action was instituted in the court of the justice of the peace of the municipality of Balanga, Bataan, by Clara Gonzalez, in her own right and as administratrix of the estate of her deceased husband, Agaton Sanchez, for the purpose of recovering from Gil Calimbas and Pedro Poblete, the latter as provincial deputy sheriff of Bataan, the lot bearing the number 1034 in the cadastral survey of Balanga, situated in the municipality of Balanga, with the residential building located thereon, and to recover rent and damages for the period during which the plaintiff claims to have been unlawfully deprived of possession. The cause having reached the Court of First Instance by appeal, his Honor, the trial judge, absolved the defendants from the complaint, with costs against the plaintiff; and from this judgment the plaintiff appealed.

It appears that on October 20, 1924, a judgment was rendered in the Court of First Instance of Bataan in a civil case, wherein the defendant Gil Calimbas, as administrator of the estate of Anselma V. Angeles, recovered a sum of money from Agaton Sanchez and wife, Clara Gonzalez. A few months thereafter execution issued from said judgment and was levied by the defendant deputy sheriff upon the house and lot in Balanga, Bataan, which is the subject of this action and which was at the time occupied by the plaintiff Clara Gonzalez, widow of the then deceased Agaton Sanchez. The sheriff's sale occurred on March 27, 1926, and the property levied upon was purchased by Gil Calimbas, administrator, as the highest and best bidder, for the sum of P4,346.88. On August 11, thereafter, the defendant, as deputy sheriff, at the instance of Calimbas, ejected Anselma V. Angeles from the premises and delivered the property to Calimbas who remained in possession at the time this action was tried.

It will be noted that the property was sold at sheriff's sale on March 27, 1926, and that the plaintiff was ejected on August 11, 1926, or less than five months from the date of the sale. The case for the plaintiff supposes that she had the right to retain possession for the entire year allowed by law for the redemption of the property and that she was unlawfully dispossessed. On the other hand, the defendants suppose that the purchaser had the right to immediate possession upon the completion of the sale and consequently that it was the duty of the sheriff to turn the execution debtor out at once.

The question here presented was mentioned in *Aldecoa & Co. vs. Navarro* (23 Phil., 203, 206), but was there left unanswered as unnecessary to the decision. In *Velasco vs. Rosenberg's, Inc.* (32 Phil., 72), it was held that a judgment debtor in possession of real property sold under execution cannot be required to pay rent to the purchaser for such property during the period of redemption; and to the same effect is the earlier decision of *De la Rosa vs. Revita Santos* (10 Phil., 148). In *Riosa vs. Verzosa and Bulan* (26 Phil., 86), it was held that when real

estate is sold under execution and the owner is in possession thereof, he is entitled to remain in possession and to collect the rents and profits during the period allowed for redemption. But in the same decision it was pointed out that by virtue of section 469 of the Code of Civil Procedure, a different rule prevails where the land is in possession of a tenant at the time of the sale.

In the light of these and other decisions of this court, it is evident that our statute intends that the debtor shall have the use and occupation of the property during the period allowed for redemption except in the special case where the property is in the hands of a lessee at the time of the sale.

It is true that the first paragraph of section 463 of the Code of Civil Procedure declares in substance that the purchaser acquires all the right of the judgment debtor in the property, subject to the right of redemption. But that paragraph must be construed as conferring only the inchoate right and not the absolute property with all its incidents. This is in conformity with the interpretation placed by the Supreme Court of California upon section 700 of the Code of Civil Procedure of that State, from which the first paragraph of section 463 of our Code of Civil Procedure is taken. In the California Code said paragraph reads as follows:

"Upon a sale of real property, the purchaser is substituted to, and acquires all the right, title, interest, and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the property is subject to redemption, as provided in thi3 chapter."

Under this provision the Supreme Court of California has declared that the judgment debtor is entitled to retain possession during the entire period allowed by law for redemption and that the purchaser cannot during that period have a receiver appointed to harvest the crops and impound the proceeds (*Mau, Sadler & Co. vs. Kearney*, 143 Cal, 506).

In this connection the American decisions call attention to the difference between the effects of the delivery of the certificate of sale which is given to the purchaser at the time the sale is made and the deed which is delivered to him at the expiration of the period of redemption. The certificate issued to the purchaser under section 463 of the Code of Civil Procedure is intended to be a mere memorial of the fact that purchase was made by the person named as buyer in the certificate. This document is not intended to operate as an absolute transfer of the property, but merely to identify the property, to show the price paid, and the date when the right of redemption expires. The effective conveyance of the land is accomplished by the deed which is issued only after the period of redemption has expired. The transfer is not perfect until the execution and delivery of the sheriff's deed, though it must be understood that when the deed is executed it operates, by relation, from the time when the lien of the judgment was acquired (*Foorman vs. Wallace*, 75 Cal., 552, 556). As is said in *Pike vs. Halpin* (188 Mich., 447, 450), the rights secured by an execution purchaser at the sale are inchoate before the deed, and it is necessary for the purchaser to procure his deed to complete his title. The mere purchase and certificate of sale alone do not confer any right to the possession or beneficial use of the premises.

In addition to the foregoing considerations it may be noted that section 468 of our Code of Civil Procedure implicitly, but clearly, recognizes the right of the judgment debtor to remain in possession during the year allowed for redemption.

Diaz vs. Azcune (31 Phil., 213), is relied upon by the appellee as authority for the proposition that it is the peremptory duty of the sheriff to eject the judgment debtor and place the purchaser, in possession immediately after the land is sold under execution. But that was a case where the period of redemption had passed, and the court was not dealing with the situation that exists before the sale becomes final. On the other hand, the case of *Pabico vs. Ong Pauco* (43 Phil., 572), relied upon by the appellant, is also indecisive of the point now before us, for the situation there considered by the court was one where a person who was stranger to the judgment and who

had long been in undisputed possession of the property was unlawfully ejected by the sheriff. The opinion in that case, however, directs attention to the fact that the official Spanish translation of section 463 of the Code of Civil Procedure is incorrect in indicating that the purchaser shall be placed in possession of property sold under execution.

From what has been said it follows that the appealed decision is erroneous. The plaintiff in this case having been improperly turned out of possession before the expiration of the period of redemption, is entitled to recover damages from the sheriff and the execution creditor, as trespassers. If the cause had reached its conclusion prior to the expiration of the period of redemption, the plaintiff would also have been entitled to be restored to possession, but that period has now passed, and damages only can be awarded. The damages to be allowed will be determined by the value of the use and occupation of the property for the period during which the right of redemption continued. Unfortunately no transcript of the testimony submitted in the court below has been brought to this court, with the result that we are unable to assess the damages here; and it will be necessary to remand the cause for further proceedings in order that the trial court may ascertain the amount of said damages and give judgment to the plaintiff for the same.

The judgment is reversed, and the cause remanded for further proceedings in conformity with this opinion, without costs in this instance. So ordered.

Johnson, Malcolm, and Villamor, JJ., concur.

Villa-Real, J., concurs in the result.

AVANCEÑA, C.J., dissenting:

Section 463 of the Code of Civil Procedure, correctly translated from the English edition, says: "Verificada la venta de los bienes raices, el comprador sustituirá y adquirirá todo derecho, interés, título y acción que el deudor por sentencia tuviere sobre los mismos." Had the law said no more than this, it would be clear that the purchaser acquires the possession of the property, which is one of the judgment debtor's chief rights and, besides, because this is the natural and legal effect of a sale after the price has been paid. (Articles 1461 and 1466 of the Civil Code.) But the law goes on to say: "Salvo el derecho de retracto, como se provee mas adelante" According to the majority opinion, this means that, by reason and during the period of this right of redemption granted to the judgment debtor, the purchaser does not acquire the possession of the property, I am at a loss to understand the basis for this doctrine. If, by the sale, in the absence of this right of redemption, the purchaser acquires the possession, then the mere presence of such right should not suspend this effect. Its purpose, if exercised, is to resolve, and not to suspend, the rights created by the purchase. And because it is so, it takes for granted that the sale has taken effect, said sale being the thing to be resolved; otherwise this right of redemption would be nugatory. If the effect of this right of redemption granted to the judgment debtor is as the majority opinion holds it to be, then the purchaser does not acquire the rights, interest, title and action of the judgment debtor by the sale, as the law provides; and it may be said that in spite of the sale, he acquires nothing,— thus making the redemption produce a suspensive, instead of a resolutive, effect.

There is not a single legal provision to support this construction. On the contrary, it is prohibited by section 469 (Code of Civil Procedure), which provides that the purchaser is entitled to receive the rents of the property sold, or the value of the use and occupation thereof, from the tenant in possession. This implies that it is the purchaser who is in possession and enjoyment of the property. It is true that, according to this same section, such rents shall be considered a credit upon the redemption money to be paid; but this takes place only when the redemption is actually effected, because in that case the law decrees that its effects should retroact to the date of the sale, which

stands resolved, and is considered not to have been made; which is also the reason why it is reciprocally provided (sec. 465, Code of Civil Procedure) that the judgment debtor or redemptioner must pay not only the price paid, but also the interest. But, while said section 469 provides that in case of redemption these rents shall be considered a credit upon the redemption price, it does not say that, if such redemption should not be effected within the statutory period, and the purchaser's ownership is thereby consolidated, the latter must also pay to the judgment debtor the rents received from the tenant before the expiration of the period of redemption. If the inclusion of the one is the exclusion of the other, it follows, from this silence of the law that if the redemption is not effected, and the purchaser's title is consolidated, the latter is entitled to the rents received from the tenant during the period of redemption, and he is not bound to pay them to the judgment debtor. It must be so, furthermore, because otherwise the provision entitling the purchaser to receive the rent from the tenant would be entirely unreasonable and useless since, at all events whether the redemption is effected or not, he has to pay it to the judgment debtor, thus imposing upon him the duty of managing the property purchased during the period of redemption without any benefit to himself. Moreover, while the law provides (sec. 465, Code of Civil Procedure) that, should the right of redemption be exercised, the judgment debtor or redemptioner must reimburse the purchaser, not only for the price paid, but also for its interest; the law does not say that he must pay this interest, even if the property is not redeemed. From this silence of the law it also follows that he is not bound to pay. If the vendor need not pay such interest, the law would be unjust to deny the purchaser's interest, and at the same time deprive him, during the period of redemption, of the profits of the property which he purchased. This injustice is all the greater when we consider that, on the other hand, at the same time that the judgment debtor is receiving the fruits of the property sold to the purchaser during this period, he is also receiving the benefits from the price paid for it which would relieve him from the obligation of paying his creditor the interest on the amount of the judgment. Said section 469 admits of no reasonable interpretation other than that the purchaser is entitled to the rents received from the tenant during the period of redemption, should the latter not be effected. And if it is so when the property is leased, he should have the same right when it is not, for there is no reason whatsoever for discriminating between the two cases. And this right of the purchaser to receive the fruits of the property purchased by him, implies his right to its possession and excludes that of the judgment debtor.

Said section 469, in granting the judgment debtor a right of action to require the purchaser to render accounts during the term of redemption, speaks of rents, and profits. If the law only referred to the case when the property was leased, the word rents would have sufficed. Add to this, that the law (sec. 465) also presumes that during the period of redemption the purchaser may have paid the land tax on the property. All this can mean but one thing—that it was the legislator's intention that the purchaser should be in the possession of the property during this period.

By virtue of the levy, which is the first step in the execution preceding the sale of the real property, the latter passes into the possession of the sheriff, because the word "levy" means a seizure and implies the taking possession of by the person carrying out the execution (*Iturralde vs. Velazquez and Babasa*, 41 Phil., 886). The law does not say that after the sale, and before the expiration of the period of redemption, the sheriff is to continue in possession of the property levied upon. It seems logical that this possession passes to the purchaser, since the law decrees that by the sale he has acquired all the rights of the judgment debtor. But, according to the majority opinion, the effect of the sale is to restore the possession, which had passed to the sheriff by the levy, to the judgment debtor—thus setting up an anomalous procedure, and giving to the sale an effect contrary to its nature and its purpose.

As the basis for its decision, the majority cites section 468 (Code of Civil Procedure), which grants to the purchaser, during the period of redemption, a right to apply for an injunction against the person legally in possession of the property, with a view to avoiding the deterioration thereof. This section really presumes that the

purchaser is not in possession of the property. But, it does not presume that the one in possession is precisely the judgment debtor. Construing this section in relation with the others on the same subject, I believe that it refers to the case covered by section 469, wherein the property is in the possession of a tenant, or a third party to whom the latter has transferred his right as such, during the period of redemption. In this sense, this section does not militate against the purchaser's possession and lends no support to the majority decision.

Several decisions of this court, more or less related to the present case, are cited in the majority opinion. The differences between this and some of those, are pointed out.

The only one of them that can be held applicable is the case of *Riosa vs. Verzosa and Bulan* (26 Phil., 86). But, subsequently, in the case of *Diaz vs. Azcune* (31 Phil., 213), this court laid down a different rule, namely, that after the sale, the sheriff is bound to place the purchaser in possession of the property sold, and upon the expiration of the period for redemption, if the latter is not effected, to execute the proper deed of transfer in his favor. Later on this court rendered another decision in the aforecited case of *Iturralde vs. Velazquez and Babasa* wherein it confirmed the doctrine laid down in the case of *Diaz vs. Azcune*. In that case, Velazquez purchased certain property at an execution sale. It was alleged that the sale to Velazquez was made maliciously and in bad faith. The court found this allegation proved and stated, as one of the grounds for its decision, the following:

"The fact that the purchaser, Lucio Velazquez did not attempt to take possession of the land which he had bought, until after the lapse of the statutory period of redemption, is also another suspicious circumstance tending to show that he had purposely and fraudulently kept the plaintiff in ignorance of the matter so as not to give him an opportunity to redeem his land."

In my opinion the judgment appealed from should be affirmed.

Ostrand, J., with whom concurs Johns, J., concurring and dissenting:

I agree that the plaintiff was unlawfully ousted by the sheriff or his deputy and that the appealed judgment therefore must be reversed, but I dissent from certain dicta of the writer of the opinion of the court which may lead to the inference that the decision in the case of *Diaz vs. Azcune* is good law and that a sheriff in this jurisdiction has the power, without an order of a court, to place a purchaser under an execution sale in possession of the purchased land upon the expiration of the period of redemption. That idea is erroneous and finds no support whatever in our laws.

It is, of course, evident that where the right to the possession of land is disputed, the determination of the right is a judicial and not an executive or ministerial function. Under the old English Common Law the sheriff had certain judicial powers, but these have, for the most part, been taken away from him by statute (1 Blackstone's Com., Chase's ed., 343, note) and at the present day he is, in the United States, usually regarded as a purely ministerial officer (*Atty.Gen. vs. Squires*, 14 Cal. 12). In Georgia and possibly in a few other states he is by statute authorized to evict the defendant after an execution sale, but the rule is universal that without a special statutory provision to that effect, he cannot under any circumstances by force deprive any person, whether a defendant in execution or not, of his possession of land without an order from a competent tribunal. As stated by the Kentucky Court of Appeals in the case of *Morton vs. Sanders' Heirs* (19 Am. Dec, 128) :

"A sale of land by fieri facias does not, like the execution of a habere facias, transfer the actual possession. It only gives the right to acquire the possession to which the debtor was entitled. If the debtor were at the date of the sale in the occupancy of the land, the sheriff could not turn him out and put the purchaser in. The purchaser could obtain the possession by an ejectment; neither the sheriff nor the circuit court, on motion, could rightfully deliver to him the possession. 'A fortiori,' a stranger in possession, could not be evicted by the sheriff

or by the summary order of the court, without a trial in court by jury."

In the Philippine Islands the powers and duties of the sheriff are clearly defined in section 183 of the Administrative Code which reads as follows:

"Sec. 183. Powers and duties of sheriff.—In the City of Manila and in each of the several provinces there shall be an officer to be known as the sheriff, whose powers and duties shall be these:

" (a) He shall be the legal custodian of the courthouse or of the quarters set apart for the court room and court offices, including, in the City of Manila, the buildings occupied by the Supreme Court, and the court of the justice of the peace, and he shall be charged with the care and safe- keeping of all public property therein, except the books, records, and papers appertaining to the office of the clerk.

"(b) He shall, in person or by deputy, attend the sessions of the Court of First Instance, shall enforce proper decorum in the court room, and preserve good order in its precincts. To this end he shall carry into effect the orders. of the court made in this behalf, or of the judge thereof, and shall arrest any person there disturbing the court or violating the peace.

"(c) Except as otherwise specially provided, he shall serve all writs, execute all processes, and carry into effect all orders issuing from the Court of First Instance or made by any judge thereof; and in the City of Manila the sheriff shall serve or execute civil writs, processes, and orders issued from any inferior or superior court or by a judge of any such court. Criminal process, from whatever court or by whatever judge issued, shall be served in the City of Manila by members of the police department of the city, though the same may also be served or executed with equal effect by the sheriff."

It will be observed that with the exception of the power to arrest disturbers of the peace under certain circumstances, the duties and powers of the sheriff in this jurisdiction are purely ministerial. It necessarily follows that in undertaking to dispossess an occupant of land against the latter's will without a judicial order, a sheriff exceeds his powers and, as stated by this court in the case of *Pabico vs. Ong Pauco* (43 Phil., 572), he becomes a mere trespasser. I may say in passing that in view of the fact that we are not here incumbered with the jury system, there would seem to be no reason why the court which has jurisdiction of the original case may not, upon sufficient notice to the judgment debtor in possession, issue a writ of possession authorizing the sheriff to eject such judgment debtor after the expiration of the period of redemption from the sale.

In its effort to simplify the proceedings by giving the sheriff powers not authorized by law, the court becomes guilty of judicial legislation which eventually will lead to confusion. If any legislation is required, it should be left to the discretion of the Legislature. It is, however, doubtful whether the granting of additional powers to the sheriffs would work to the advantage of the public; we may well take cognizance of the fact that injustice has frequently been done by high-handed action on the part of deputy sheriffs in ejecting, occupants of land sold under execution. By reason of the expenses involved, the majority of such cases do not come before the courts, but to a person familiar with conditions in the provinces there will be no doubt as to their existence.

The plaintiff in this case was unlawfully dispossessed of his land. He is, therefore, entitled to restoration of his possession and to damages.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.