

LORENZA SUÑGA, PETITIONER, VS. FRANCISCO TIÑGIN AND THE COURT OF FIRST INSTANCE OF PAMPANGA, RESPONDENTS.*G.R. No. 28117. September 27, 1927*

Ponente: STREET, J.

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This is an original petition presented in this court whereby Lorenza Suñga, in the character of administratrix of her deceased husband, Cipriano Caliñgad (though the caption of the petition erroneously omits this circumstance), seeks to procure a writ of mandamus to compel the Court of First Instance of the Province of Pampanga to oust the respondent Francisco Tiñgin from a parcel of land claimed by the plaintiff, in supposed conformity with a judgment rendered by the respondent court in civil case No. 2072, entitled "Catalina Manalansan et al. vs. Juan Paule et al." Upon the presentation of the complaint the defendant Tiñgin alone answered, but as he is the sole person in interest, the cause has been submitted on the pleadings. In the view we take of the case formal irregularities in the presentation of the case may be ignored, and our statement of facts will be confined to those features of the case which are essential to an understanding of the real point at issue.

It appears that in civil case No. 2072 of the Court of First Instance of Pampanga, the plaintiffs, Catalina Manalansan and others, recovered a judgment for P500, with costs, against the defendant Cipriano Caliñgad. An execution having issued upon said judgment, the same was levied by the sheriff on various parcels of real property as the property of the defendant; and on September 25, 1924, said properties were purchased at the sheriff's sale by the plaintiffs in the execution, namely, Catalina Manalansan, Francisco Serrano, and Hermogenes Serrano. Within the time allowed by law Caliñgad effected a lawful redemption of the property and is desirous of being restored to possession. It appears, however, that one of the parcels which had been levied upon as the property of Cipriano Caliñgad, having an area of somewhat less than 3 hectares, constitutes a portion of a much larger tract to which, at the time of the sheriff's sale, Catalina Manalansan and her associates had a Torrens title. In other words, by mistake, the sheriff had levied upon a piece of property belonging to the plaintiffs to satisfy the judgment in their favor.

Meanwhile, also, the plaintiffs in the execution have sold to the respondent Tiñgin and wife the entire parcel of which the piece above-mentioned is a part, and Tiñgin has thus acquired both ownership and possession of the piece of land thus levied upon.

Caliñgad is now dead and his widow, who has qualified as his administratrix, supposes that, by effecting redemption from the execution sale, as above stated, she is entitled to be returned to the possession of all of the property that was levied upon and sold. Nobody of course makes any question as to the right of the petitioner to be restored to so much of the property sold under execution as was not included in the Torrens title of Manalansan and associates; but Tiñgin has firmly opposed the efforts to oust him from the parcel to which he has a Torrens title. The history of the proceedings incident to the controversy is as follows: It appears that after Caliñgad had paid to the sheriff the amount necessary to effect redemption and had obtained a certificate of redemption from the sheriff, he filed a petition in civil action No. 2072, asking the court to order the sheriff to place him in

possession of the redeemed property. Tiñgin presented himself in opposition to this petition, claiming that redemption had not been effected in time. The court, however, resolved the question in favor of Caliñgad, and upon appeal to the Supreme Court, this resolution was affirmed.[1] Caliñgad thus obtained a judicial declaration to the effect that he was entitled to redeem. Upon the return of the record to the lower court, said court, in order to give effect to the decision, now confirmed by the Supreme Court, at first ordered that the sheriff should place Caliñgad in possession of all of the property which had been sold, even including the parcel formerly belonging to Manalansan and associates, which had been mistakenly levied upon as property of Caliñgad, but to which he really had no title. Before this order was carried into effect, Caliñgad died, and when his widow, as administratrix, renewed the application, the court receded from its former position and refused to make the order desired by the administratrix. It appears further that, in addition to making opposition to the petition above-mentioned, Tiñgin, upon February 9, 1927, instituted an independent civil action in the Court of First Instance of Pampanga, wherein he set out his title to the particular parcel which is the subject of contention, and asked for an injunction to prevent the present petitioner, as administratrix of Caliñgad, from disturbing him in possession of said parcel, and for other relief. The reason why the respondent court has desisted from its first order favorable to Caliñgad in the matter of redemption is therefore apparent; and it is that new facts have been brought before the court by Tiñgin which were not considered in the prior contention over the right of redemption.

Upon the foregoing facts it is manifest that the contention of the petitioner here cannot be maintained, The execution which Manalansan and her associates caused to be levied upon the particular lot which is the subject of controversy could only reach the interest of Caliñgad in that parcel; and inasmuch as it appears that the plaintiffs in the execution were at that time the holders of a Torrens title to the same property, the execution really reached nothing and the subsequent sale of the same parcel under the execution conveyed nothing to the purchasers which could be the subject of redemption.

But it is supposed that, under the doctrine of *Jalbuena vs. Lizarraga* (33 Phil., 77), Manalansan and associates, and their vendee Tiñgin, are estopped to assert their title. It was held in the case cited that where the owner knowingly permits his property to be sold at a judicial sale as the property of the judgment debtor, without asserting his title or right or making it known to the bidders, he cannot afterwards set up his claim. But it will be noted that the estoppel in that case is effective as against the owner and in favor of third persons who have purchased at the sale. In the case before us the plaintiffs in the execution were themselves the purchasers, and of course it is impossible to invoke an estoppel both against and in favor of the same person. Besides, the judgment debtor is not a party to the estoppel recognized in that case. Cipriano Caliñgad at no time has had title to this parcel and he cannot acquire by the act of redemption an interest of which he was never deprived.

But the petitioner supposes that the adjudication in favor of Caliñgad in the contention over the right of redemption is conclusive of his right to recover all the property that was sold. But this also is a mistake. The adjudication in the matter mentioned was to the effect that Caliñgad had the right to redeem and that redemption had been effected in time. No attempt was there made to adjudicate to Caliñgad more than had been taken from him by the levy of the execution; and the very point under consideration in the subsequent proceedings has been the determination of the extent of Caliñgad's right.

It results that the respondent court acted within its power in refusing to give effect to petitioner's right of redemption in the extent and manner sought by the petitioner. The writ of mandamus is therefore inappropriate, and the petition will be dismissed, with costs. So ordered.

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

[1] R.G. No. 25763, Manalansan vs. Paule, promulgated November 5, 1926, not reported

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