

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. ASUNCION MITCHEL, VDA. DE SY QUIA, AND MANILA RAILROAD CO., DEFENDANTS AND APPELLEES.

G.R. No. 29010, October 02, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Two fundamental questions raised in the demurrers to the complaint are at issue in this appeal, to wit: The sufficiency of the allegations of the complaint, and the inclusion of the Manila Railroad Company as defendant.

Considering the defendants, Asuncion Mitchel Vda. de Sy Quia, as administratrix of the estate of Pedro Sy Quia, and the Manila Railroad Company, to be jointly and severally liable, the City of Manila demanded of them the payment of the land tax upon property belonging to the estate located at No. 973-985 Calle Azcarraga, known as lot 1, block No. 14, District of Tondo, for the year 1927, which, together with the penalties amounted to P3,053.47.

It appears from the complaint that in February 1927, the Manila Railroad Company acquired said real property by expropriation proceeding. In the face of this fact, the defendant administratrix does not believe herself bound to pay the tax demanded by the plaintiff, because she alleges that at the time the ownership of the property of said estate passed to the Manila Railroad Company, said tax was as yet neither due nor payable, but was to become payable some five months later, that is on June 30th, as provided by section 2493 of the Administrative Code.

The Manila Railroad Company in turn argues that the obligation that would at all events fall upon it would be the one arising from a real action against the property itself and not the personal obligation to pay the tax as demanded in the complaint, because it would be bound, in due time, only by the preferential lien on the realty pursuant to the provisions of section 2497 of the same Code. For this reason it maintains that the complaint does not allege facts sufficient to constitute this personal action brought against it.

It further alleges that it should be excluded from the complaint because as its only obligation was to secure the payment of the tax with the lien in case the taxpayer failed to do so, and as the complaint does not allege that the latter is insolvent and cannot pay it, its inclusion as defendant is improper and premature.

Being of opinion that the tax in question was not yet payable at the date when the realty passed from the ownership of the defendant estate to that of the Manila Railroad Company, and as said estate no longer owned the realty when the tax became demandable, the trial court held that said estate was not bound to pay the tax; neither was the new owner, the Manila Railroad Company, called upon to pay it, being exempted therefrom by Act No. 1510. Upon these grounds the lower court found merit in the demurrers and dismissed the complaint.

However, the City of Manila has the right to bring this action against both Pedro Sy Quia's estate and the Manila Railroad Company.

The former was properly made party defendant, because although the law grants an option to pay the land tax in

two installments, this does not prevent the tax from existing from the first day of the year; and thus it is, that from said first day of the year; the realty is subject to the lien, the preferential incumbrance, in favor of the State, as conclusively provided in section 2497 of the Administrative Code.

Notwithstanding the fact that the law (2493 of the same Code) gives the taxpayer the benefit of the installments, the State is not thereby deprived of its right to receive the tax from the first day of year, should the taxpayer pay it. What the State relinquishes in granting such periods, is solely the right to enforce the payment while the periods still run.

For this reason whenever, as in the present case, the realty subject to the tax changes ownership after the year has begun but before the periods allowed by law for its payment have elapsed, the personal responsibility for the tax remains in him who was the owner at the beginning of the year; and while it is true that before such periods lapse no penalty is imposed for failure to pay the tax, it is not so when the periods lapse, for then not only the tax but also the penalty is demandable, not from the owner of the property at the expiration of the term, but from the owner of the property at the beginning of the year, inasmuch as it was from that time incumbent upon the owner to answer for the tax.

In that case the lien, the preferential incumbrance, in favor of the State remains on the property in spite of the transfer. It is thus provided in section 2497 of the Administrative Code cited above. And this is the ground of the action here brought against the Manila Railroad Company. Said company is here made defendant as the owner and possessor of the property thus subject to the lien in favor of the Treasury in order to submit and deliver said property to the enforcement of the lien, should the defendant estate fail to satisfy the tax due and the penalties. For this reason its inclusion as defendant is not improper or premature. However, the Manila Railroad Company does not answer for the personal obligation to pay such tax and penalties, not because the law in general exempts it, since we are here concerned with taxes corresponding to a year in which the property was still subject to taxation, but because it does not appear that said company assumed the obligation to pay it.

This fact, however, does not appear from the allegations of the complaint, in accordance with which, for the reasons stated, an action lies against both defendants.

The appealed order is reversed, the demurrers overruled and it is hereby ordered that the record be remanded to the court of origin in order that the defendants may answer the complaint within the legal period, and let the case proceed to its termination. Without costs. So ordered.

Avanceña, C. J., Johnson, Street, and Ostrand, JJ., concur.

DISSENTING

MALCOLM, J., WITH WHOM CONCURS VILLA-REAL, J.:

In contrast to section 364 of the Revised Administrative Code which is of general application, section 2493 of the Manila Charter provides as to the annual tax and penalties that "All taxes shall be due and payable on or before the thirtieth day of June of each year, and if any taxpayer shall fail to pay the taxes assessed against him on or before the thirtieth day of June of the year for which such taxes are due, he shall be delinquent in such payment * * *." Section 2497 of the City Charter further provides that "Taxes and penalties assessed against realty shall constitute a lien thereon, which shall be superior to all other liens, mortgages, or incumbrances of any kind whatsoever; shall be enforceable against the property whether in the possession of the delinquent or any subsequent owner, and can only be removed by the payment of the tax and penalty. A lien upon real estate for

taxes levied for each year shall attach on the first day of January of such year." Accordingly, applying the law directly to the admitted facts, the lien attached to the property of Asuncion Mitchel Vda. de Sy Quia on January 1, 1927. However, the land passed out of her possession by transfer to the Manila Railroad Company in February, 1927. Consequently, Mrs. Sy Quia was not a "delinquent," within the meaning of the law, because on June 30, 1927, when the taxes became due and payable she was not a taxpayer. As to the "subsequent owner," within the meaning of the law, the Manila Railroad Company was not a taxpayer on June 30, 1927, because its charter, Act No. 1510, exempted it from all municipal taxes.

There are points which cannot be reasoned away, and so I think that the order of Judge Opisso sustaining the demurrer should be sustained.

Order reversed, demurrers overruled and case remanded with instructions.

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