

JORGE YAMBAO AND FRANCISCA GARCIA, PLAINTIFFS AND APPELLEES, VS. PO HUAT SUY ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 29179, October 22, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This is an appeal taken by the defendants Po Huat Suy, Venanck) Viray, Felipe Castro, Joaquin Yuseco and Celestino Macapinlac, the latter as deputy sheriff of Pampanga, from the judgment of the justice of the peace court of the capital of Pampanga, acting as Court of First Instance by delegation, holding the sale made by said deputy sheriff of Pampanga to Joaquin Yuseco, of two parcels of land described in the complaint, to be null and void, with costs against the defendants.

In support of their appeal the appellants assign five alleged errors as committed by the trial court in its judgment, to wit:

- "1. The lower court erred in holding that the preponderance of the evidence is in favor of the plaintiffs.
- "2. The lower court erred in holding that the conveyance of the land in question made to the plaintiffs was not fraudulent.
- "3. The lower court erred in holding that the sale of the lands which are the subject of the complaint, made by the deputy sheriff of Pampanga at a public auction, in favor of Po Huat Suy, was null and void.
- "4. The lower court erred in holding that the lands in question belong to Felipe Castro; one of the defendants, against whom a writ of execution was issued in civil case No. 26691 of the Court of First Instance of Manila.
- "5. The lower court erred in sentencing the defendants to the payment of the, costs of the action."

The pertinent facts necessary for the solution of the question raised in the appeal are the following:

On August 6, 1924, the herein defendant and appellant Po Huat Suy, through his attorney Joaquin Yuseco, filed a complaint in the Court of First Instance of Manila in case No. 26691, against his herein codefendants and coappellants Venancio Viray and Felipe Castro in order to compel them to pay him the sum of P800.65 which they owed him, A petition for a preliminary attachment against the property of said defendants was filed together with the complaint, which was granted by the court, and a writ of preliminary attachment issued, the same being levied August 22, 1924, on the property of Felipe Castro, for the reason that no property belonging to the principal debtor Venancio Viray was found that was subject to attachment, the property here in dispute being included in the property attached.

On December 9, 1924, the Court of First Instance of Pampanga, after the proper proceedings, rendered judgment in favor of the plaintiff Po Huat Suy and against the defendants Venancio Viray and Felipe Castro, ordering the latter to pay the former the sum of P800.65 with legal interest from August 7, 1924, and the costs.

On October 12, 1925, Felipe Castro, with his grandchildren Apolonia Castro (assisted by her husband), Antonio Garcia, and Lourdes Castro, with his coheirs Julia, Julian, Feliciano, Marciana and Conrado Castro, sold to the spouses Jorge Yambao and Francisca Garcia, the herein plaintiffs and appellees, the parcels of land now in question for the sum of P3,000.

Said judgment having become final, a writ of execution was issued, which was complied with by the deputy sheriff. Celestino Macapinlac, one of the defendants and appellants herein, requiring said defendants Venancio Viray and Felipe Castro on March 25, 1926, to pay the amount of said judgment; and inasmuch as they did not do so, he levied execution on the right, title, interest and participation that Felipe Castro had or might have in the property in question, and that had been made the subject of a preliminary attachment, and after due publication, sold said lands at public auction on April 30, 1926, the judgment creditor having been the highest bidder, and to whom was adjudicated said property, the proper certificate of sale was issued, which was registered in the book for the registration of documents concerning unregistered lands, kept by the registrar of deeds of Pampanga.

From the foregoing it will be seen that when the herein plaintiffs Jorge Yambao and Francisca Garcia purchased of Felipe Castro and his coheirs the parcels of land in question, the latter were already under a preliminary attachment, which, in the absence of proof to the contrary is presumed to have been presented to the registrar of deeds of Pampanga, who noted it in the proper register (sections 334, No. 14, and 429 of the Code of Civil Procedure), which constitutes a presumed notification to said purchasers of the acquisition by the judgment creditor of a legal lien-on the right, title, interest and participation of Felipe Castro, as judgment debtor, in said lands. As the judgment creditor has a preferred right by virtue of the attachment levied in his favor on the right, title, interest and participation of Felipe Castro in the lands in dispute, and therefore, to the proceeds of said sale for the amount of the judgment rendered in his favor, the sale made by the deputy sheriff of Pampanga of the right, title, interest, and participation of said Felipe Castro is legal and valid; and the purchase made by said Po Huat Suy through his attorney Joaquin Yuseco for the sum of P750 is also legal and valid.

It appearing from the deed of sale Exhibit A, that the plaintiffs-appellees Jorge Yambao and Francisca Garcia purchased the right, title, interest and participation not only of Felipe Castro in the lands here in question but also of the grandchildren and coheirs of said Felipe Castro in the same lands, and since said grandchildren and coheirs were not parties to the litigation in which said execution was issued, the rights of the latter acquired by the plaintiffs-appellees were not affected, either by the attachment or by the sale.

In conclusion, we are of the opinion and so hold that the purchaser of a property subject to an attachment legally and validly levied thereon, may ask for the execution and sale at public auction of said land for the satisfaction of a judgment rendered in his favor, and the sale made by virtue of the proper writ of execution is legal and valid, and the purchaser at said auction acquires the right of the judgment debtor subject to the latter's right of redemption within the period provided by law.

In virtue whereof, the judgment appealed from is reversed, and the sale is held valid with respect to Felipe Castro's right, title, interest and participation in the lands which are the subject of this litigation, the defendants being absolved from the complaint, which is hereby dismissed with the costs against the plaintiffs-appellees. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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