

URBANO SANTOS, PLAINTIFF AND APPELLEE, VS, JOSE C. BERNABE ET AL., DEFENDANTS. PABLO TIONGSON AND THE PROVINCIAL SHERIFF OF BULACAN, APPELLANTS.

G.R. No. 31163. November 06, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal was taken by the defendants Pablo Tiongson and the Provincial Sheriff of Bulacan from the judgment of the Court of First Instance of said province, wherein said defendant Pablo Tiongson was ordered to pay the plaintiff Urbano Santos the value of 778 cavans and 38 kilos of palay, at the rate of P3 per cavan, without special pronouncement as to costs.

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

"1.The court erred in holding that it has been proved that in the cavans of palay attached by the herein defendant Pablo Tiongson from the defendant Jose C. Bernabe were included those claimed by the plaintiff in this cause.

"2. The court erred in ordering the defendant Pablo Tiongson to pay the plaintiff the value of 778 cavans and 38 kilos of palay, the refund of which is claimed by said plaintiff.

"3. The court erred in denying the defendants' motion for a new trial."

The following facts were conclusively proved at the trial:

On March 20, 1928, there were deposited in Jose C. Bernabe's warehouse by the plaintiff Urbano Santos 778 cavans and 38 kilos of palay and by Pablo Tiongson 1,026 cavans and 9 kilos of the same grain.

On said date, March 20, 1928, Pablo Tiongson filed with the Court of First Instance of Bulacan a complaint against Jose C. Bernabe, to recover from the latter the 1,026 cavans and 9 kilos of palay deposited in the defendant's warehouse. At the same time, the application of Pablo Tiongson for a writ of attachment was granted, and the attachable property of Jose C. Bernabe, including 924 cavans and 31 kilos of palay found by the sheriff in his warehouse, were attached, sold at public auction, and the proceeds thereof delivered to said defendant Pablo Tiongson, who obtained judgment in said case.

The herein plaintiff, Urbano Santos, intervened in the attachment of the palay, but upon Pablo Tiongson's filing the proper bond, the sheriff proceeded with the attachment, giving rise to the present complaint.

It does not appear that the sacks of palay of Urbano Santos and those of Pablo Tiongson, deposited in Jose C. Bernabe's warehouse, bore any marks or signs, nor were they separated one from the other.

The plaintiff-appellee Urbano Santos contends that Pablo Tiongson cannot claim the 924 cavans and 31E kilos of

palay attached by the defendant sheriff as part of those deposited by him in Jose C. Bernabe's warehouse, because, in asking for the attachment thereof, he impliedly acknowledged that the same belonged to Jose C. Bernabe and not to him.

In the complaint filed by Pablo Tiongson against Jose C. Bernabe, civil case No. 3665 of the Court of First Instance of Bulacan, it is alleged that said plaintiff deposited in the defendant's warehouse 1,026 cavans and 9 kilos of palay, the return of which, or the value thereof, at the rate of TZ per cavan was claimed therein. Upon filing said complaint, the plaintiff applied for a preliminary writ of attachment of the defendant's property, which was accordingly issued, and the defendant's property, including the 924 cavans and 31½ kilos of palay found by the sheriff in his warehouse, were attached.

It will be seen that the action brought by Pablo Tiongson against Jose C. Bernabe is that provided in section 262 of the Code of Civil Procedure for the delivery of personal property. Although it is true that the plaintiff and his attorney did not follow strictly the procedure provided in said section for claiming the delivery of said personal property, nevertheless, the procedure followed by him may be construed as equivalent thereto, considering the provisions of section 2 of the Code of Civil Procedure to the effect that "the provisions of this Code, and the proceedings under it, shall be liberally construed, in order to promote its object and assist the parties in obtaining speedy justice."

Liberally construing, therefore, the above cited provisions of section 262 of the Code of Civil Procedure, the writ of attachment applied for by Pablo Tiongson against the property of Jose C. Bernabe may be construed as a claim for the delivery of the sacks of palay deposited by the former with the latter.

The 778 cavans and 38 kilos of palay belonging to the plaintiff Urbano Santos, having been mixed with the 1,026 cavans and 9 kilos of palay belonging to the defendant Pablo Tiongson in Jose C. Bernabe's warehouse; the sheriff having found only 924 cavans and 3 1/2 kilos of palay in said warehouse at the time of the attachment thereof; and there being no means of separating from said 924 cavans and 3 1/2 kilos of palay belonging to Urbano Santos and those belonging to Pablo Tiongson, the following rule prescribed in article 381 of the Civil Code for cases of this nature, is applicable:

"ART. 381. If, by the will of their owners, two things of identical or dissimilar nature are mixed, or if the mixture occurs accidentally, if in the latter case the things cannot be separated without injury, each owner shall acquire a right in the mixture proportionate to the part belonging to him, according to the value of the things mixed or commingled."

The number of kilos in a cavan not having been determined, we will take the proportion only of the 924 cavans of palay which were attached and sold, thereby giving Urbano Santos, who deposited 778 cavans, 398.49 thereof, and Pablo Tiongson, who deposited 1,026 cavans, 525.51, or the value thereof at the rate of P3 per cavan.

Wherefore, the judgment appealed from is hereby modified, and Pablo Tiongson is hereby ordered to pay the plaintiff Urbano Santos the value of 398.49 cavans of palay at the rate of P3 a cavan, without special pronouncement as to costs. So ordered.

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

Johnson, J., reserves his vote. Johns, J., dissents.

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