

THOS. N. POWELL, PLAINTIFF AND APPELLEE, VS. THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLANT.

G.R. No. 31339. November 27, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present appeal Was taken by the Philippine National Bank from a judgment of the Court of First Instance of Iloilo ordering it to pay the sum of P7,926.18 to the plaintiff, Thomas N. Powell, together with the legal interest thereon from October 9, 1928 until fully paid, with the costs of the trial.

In support of its appeal, the bank assigns the following alleged errors as committed by the lower court in its decision, to wit:

"The lower court erred:

"1. In not holding that the fact that the fertilizer purchased by Severino Aldeguer of Felipe Gomez was used on the sugar cane planted on the land in question, has created a lien upon said sugar cane to secure the payment of the promissory notes issued for the fertilizers.

"2. In holding that there is no legal provision in force in these Islands applicable to said lien.

"3. In not holding that the provisions of articles 356 and 1922 of the Civil Code are applicable to the instant case.

"4. In not absolving the Philippine National Bank from the complaint with costs against the plaintiff."

The following facts, agreed upon by the parties, are pertinent and necessary to the solution of the questions raised in this appeal:

On December 17, 1920, in order to secure the payment of the sum of P17,000 with 12 per cent interest per annum, Severino P. Aldeguer executed a mortgage deed in favor of the Philippine National Bank on lots Nos. 1318 and 470 of the cadastral survey of Pontevedra, Occidental Negros, appearing upon the original certificates of title Nos. 10977 and 10978, issued by the registrar of deeds of said Province of Occidental Negros (Exhibit E).

On July 5, 1923, after a liquidation of accounts between Severino P. Aldeguer and the Philippine National Bank, from which it appeared that the former owed the latter the sum of P33,348.75, the former mortgage deed (Exhibit E) was amended making the mortgaged property liable for the new amount with 8 per cent interest per annum, and retaining the other conditions of the contract (Exhibit F).

On July 6, 1923, in order to secure the payment to the Philippine National Bank of the additional sum of P12,000 with interest, Severino P. Aldeguer executed a second mortgage in favor of said bank on the said lots, Nos. 1318 and 470 of the Pontevedra cadastre, and a first mortgage on the sugar-cane harvest of 1923-1924 on said land, as well as on twenty-two head of labor cattle (Exhibit G).

On February 23, 1925, in pursuance of a writ of execution issued by the Court of First Instance of Manila, dated October 31, 1924, in civil case No. 25663 of said court, wherein the Asia Banking Corporation was the plaintiff, and Severino P. Aldeguer and others were the defendants, the sheriff of the Province of Occidental Negros levied execution on the aforementioned lots, Nos. 1318 and 470, mortgaged to the Philippine National Bank (Exhibit B).

Following the procedure prescribed by law, the provincial sheriff of Occidental Negros on March 30, 1925 sold at public auction, all Severino P. Aldeguer's rights, title and interest in said lots Nos, 1318 and 470 to the Asia Banking Corporation, as the highest bidder for the sum of P4,000. The writ of execution was for the sum of P4,625 with interest at 9 per centum per annum from September 20, 1920, plus the costs, which amounted to P58.52 (Exhibits C and D). The sheriff issued a deed of sale of said lands, which were described in certificates of title Nos. 10977 and 10978, in favor of the Asia Banking Corporation and sent it to the register of deeds of Occidental Negros by registered mail on May 29, 1925, having been recorded upon receipt thereof in Bacolod.

On March 28, 1925, Severino P. Aldeguer bought 40 tons of fertilizer from Felipe Gomez for use in the cultivation of the two parcels of land mortgaged by him to the Philippine National Bank, executing a promissory note for P5,200 payable on February 28, 1926.

On February 15, 1926, Severino P. Aldeguer again bought 3 tons of fertilizer from Felipe Gomez for use upon the said land, executing a promissory note for P390, payable on January 15, 1927.

These promissory notes were endorsed by Felipe Gomez to the Philippine National Bank.

For some reason or other Severino P. Aldeguer failed to exercise his right of repurchase, and on April 23, 1928 the provincial sheriff of Occidental Negros executed the final deed of sale of Severino P. Aldeguer's land mortgaged to the Philippine National Bank, in favor of the Asia Banking Corporation (Exhibit 1).

On April 25, 1928, the Asia Banking Corporation sold said lots Nos. 1318 and 470 to Urquijo Hermanos for P45,000, after undertaking to liberate them from all liens (Exhibit J).

On April 25, 1928, the Philippine National Bank furnished the Asia Banking Corporation the following statement of Severino P. Aldeguer's account up to April 25, 1928 :

To remaining balance of P/Note signed by
Mr. Severino P. Aldeguer on July 6, 1923
for P32,373.64 P29,500.00

To interest unpaid up to August 31, 1924 756.18

To interest due on P29,500 from September 1,
1924 to April 25, 1928, at 8% per annum
(3 yrs. 7 months and 25 days) 8,636.24

9,392.42

Less: Payment made on April 4, 1928 2,074.06

7,318.36

Total 36,818.35

On April 26, 1928, the Asia Banking Corporation, through its attorneys tendered the Philippine National Bank a check for P29,307 in payment of Severino P. Aldeguer's debt to the latter, secured by the mortgage of the lands above- mentioned.

On April 27, 1928, the Philippine National Bank returned the check to the Asia Banking Corporation with the following statement of Severino P. Aldeguer's account with it:

To remaining balance of P/Note signed by
Mr. Severino P. Aldeguer on July 5, 1923
for P32,373.64 P29,500.00

To interest unpaid up to August 31, 1924 P756.18

To interest on P29,500 from September 1,
1924 to February 28, 1926 at 8% per annum (1 yr. and 6 months) 3,540.00

To interest on P29,500 from March 1, 1926 to
April 27, 1928, at 9% per annum (2 yrs.
1 month and 27 days) 5,737.75

10,033.93

Less: Payment made on April 4, 1926 2,074.06

7,959.87

Total 37,459.87

Upon receipt of said statement, and on the same day, April 27, 1928, the attorneys of the Asia Banking Corporation addressed a letter to the Philippine National Bank requesting the reconsideration thereof.

The Philippine National Bank declined to make the reconsideration but expressed its willingness to accept an additional sum of P7,511.36 in full payment.

In order to comply with its obligation to Urquijo Hermanos, the Asia Banking Corporation was forced to pay the Philippine National Bank the amount of P7,511.36 under protest, made in a letter dated April 28, 1928.

On receipt of said amount, the Philippine National Bank, on May 3, 1928, executed in favor of the Asia Banking Corporation a release of the mortgages on the lands in question (Exhibit H).

The real and exact state of accounts of Severino P. Aldeguer with the Philippine National Bank from September 4, 1924 to April 25, 1928, is as follows:

1. Unpaid balance, as of April 11, 1924, of his
B/Note, of July 5, 1925, for P32,373.64 P29,500.00

Unpaid interest due thereon at 8% to April
25, 1928 9,392.42 P38,892.42

2. His promissory note, dated March 28, 1925,
signed in favor of Felipe Gomez, payable
on February 28, 1926, negotiated with us
on September 8, 1925 5,200.00

Unpaid interest due thereon at 10% from, 4
February 28, 1926 to April 25, 1928 1,122.33 6,322.33

3. His promissory note, dated February 15,
1926, signed in favor of Felipe Gomez,
payable on January 15, 1927, negotiated
with us on June 30, 1926 300.00

Unpaid interest due thereon at 10% from
February 15, 1927 to April 25, 1928 49.93 439.93

Total 45,654.68

LESS PAYMENTS MADE:

September 4, 1924 from his 1923/24
C/Loan 239.37

August 5, 1925 from his 1924/25 C/Loan 756.18

August 5, 1925 from his 1924/25 C/Loan 1,010.68

September 5, 1925 from his 1924/25
C/Loan 27.18

October 24, 1925 from his 1924/25 C/Loan 129.96

November 25, 1925 from his 1924/25
C/Loan 1,209.07

April 22, 1927 from Ynchausti & Co.
surplus of his 1926/27 C/Loan a/c
with said Company 4 2,166.75

May 24, 1927 do 1,193.50

June 24, 1927 do 1,193.49

April 4, 1928 from Ynchausti & Co 2,074.06 10,000.24

Balance, April 25, 1928 35,654.44

With respect to the first assignment of error, the pertinent part of article 1922 of the Civil Code states:

"ART. 1922. With respect to determinate personal property of the debtor, the following are preferred:

* * * * *

"6. Credits for seed and expenses of cultivation and harvesting, advanced to the debtor, with respect to the fruits of the crops which they were used to produce;

* * * * *

"If the personal property, with respect to which the preference is allowed, has been removed, the creditor may claim it from the person who has the same, within the term of thirty days counted from the time it was so removed."

According to this legal provision, the Philippine National Bank, having acquired the promissory notes executed by Severino P. Aldeguer in payment of the fertilizer used in the cultivation of the two parcels of land mortgaged to said Bank, had a preferred right to the crops harvested on said lands from February 28, 1926 and January 15, 1927, on which dates the promissory notes fell due, and also the dates in which the crops produced by the fertilizer were presumably harvested. According to the agreed statement of facts, Ynchausti & Co. delivered to the Philippine National Bank sugar milled in its central from the cane grown upon Severino P. Aldeguer's land mortgaged to said bank. Instead of applying that sugar to the payment of the promissory notes acquired by it from Felipe Gomez, applied it to the payment of its credit against Severino P. Aldeguer secured by the two parcels of land that produced said crops. In doing so, it waived its preferred right to said sugar for the payment of said promissory notes, because that preferred right subsisted in so far as the sugar continued to belong to the debtor. From the time the Philippine National Bank applied it to the payment of its credit against Severino P. Aldeguer, with the latter's consent, said sugar ceased to belong to said Severino P. Aldeguer, and became the property of the aforesaid Philippine National Bank. (12 Manresa, 635.)

With regard to the defendant-appellant's contention that Severino P. Aldeguer had a right to compel the Philippine National Bank to apply said sugar to the payment of the promissory notes for the fertilizer, such debts being the most burdensome to him, in accordance with the provisions of articles 1172 and 1174 of the Civil Code, suffice it to say that such application should have been made at the time of payment, and not afterwards, when his account with the bank had already been credited.

The second question to be decided in this appeal is whether the Asia Banking Corporation had any right to the fruits and rents of the lands purchased at public auction, up to the 25th of April, 1928, when the sheriff of Occidental Negros issued the final deed of sale of said lands in "its favor.

The pertinent part of the English text of section 463 of the Code of Civil Procedure, says:

"SEC. 463. Sale of real property and certificate thereof.— Upon a sale of real property, the purchaser shall be substituted, to, and acquire all the right, interest, title, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. * * *." In the case of *Riosa vs. Verzosa and Bulan* (26 Phil., 86), this court laid down the following doctrine:

"SALE OF REALTY UNDER EXECUTION; RIGHT OF OWNER TO RETAIN POSSESSION DURING PERIOD OF EQUITY OF REDEMPTION; EJECTMENT OF OWNER BY PURCHASER.—When real estate is sold under an execution and the owner is in possession thereof, he is entitled to remain in possession of the property sold and to collect the rents and profits of the same during the period of the equity of redemption. (Sections 464, 465, 468, and 469 of Act No. 190; *De la Rosa vs. Santos*, 10 Phil., 148.) By virtue of the provisions of section 469 (Act No. 190) where the land is in possession of a tenant at the time of the sale under execution, a different rule prevails."

In the case of *Velasco vs. Rosenberg's Incorporated* (32 Phil., 72), this court likewise laid down the following doctrine:

"EXECUTION SALE; RIGHT OF PURCHASER TO COLLECT RENT DURING PERIOD OF REDEMPTION.—The judgment debtor who is in possession of property sold under execution cannot be required to pay the purchaser rent for such property, during the period of redemption."

And in the case of *Pabico vs. Ong Pauco* (43 Phil., 572), this court also laid down the following doctrine:

"1. SHERIFFS'; EXECUTION SALES; PLACING PURCHASER IN POSSESSION.—The doctrine of caveat emptor applies. to execution sales and the sheriff has no authority to place a purchaser of land under such a sale in possession. In attempting to do so he becomes a trespasser and an action for forcible entry and detainer may be maintained against the person so placed in possession.

"2. TRANSLATION.—Correction of the Spanish translation of section 463 of the Code of Civil Procedure."

Section 465 of the Code of Civil Procedure, provides as follows:

"SEC. 465. Time and manner of redemption.—The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per cent per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate. * * *"

According to the doctrines quoted above, the purchaser of a debtor's real property at public auction by virtue of a writ of execution of a judgment, has no right to collect the rents or receive the products thereof during the period of legal redemption when said debtor is in possession of them. Nothing could be more just or equitable; for, if by section 465 of the Code of Civil Procedure quoted above, the debtor must pay 1 per centum monthly interest on the purchase price, at the time of the redemption, the purchaser would profit twice, if in addition to said interest he were entitled to the rents and fruits of the land sold which remained in the possession of the debtor. If the debtor is unable to make the repurchase, the interest on the purchaser's capital during the period of redemption, is compensated by the difference between the true value of the land sold and the purchase price; for, it is well-known that the price obtained at judicial sales for land subject to execution is usually less than the market value.

Now then, from what time is the purchaser entitled to the fruits and rents of the real property purchased remaining in possession of the debtor in case the debtor failed to take advantage of his right to repurchase?

Section 465 of the Code of Civil Procedure, quoted above, provides that the judgment debtor may redeem the thing sold from the purchaser within twelve months following the day of the sale, by paying the selling price plus interest at the rate of one per centum per month; and section 466 of the same law provides that if within the twelve months following the sale no redemption is made, the purchaser or his successor in interest is entitled to the proper deed of conveyance, or, what amounts to the same thing, the purchaser becomes the owner of the property purchased, otherwise he would not be entitled to the proper deed of conveyance. As absolute owner of the land, the purchaser is entitled to its possession and to receive the rents and fruits thereof, and the judgment debtor is obliged to deliver said land, together with the fruits and rents collected since the ownership was consolidated by reason of failure of redemption, except that he is entitled to reimbursement for expenses of cultivation, harvesting, and preservation, according to article 356 of the Civil Code.

In the instant case, while it is true that the judgment debtor Severino P. Aldeguer was entitled to retain possession of the parcels of land acquired by the Asia Banking Corporation at public auction by virtue of execution, and to collect the fruits and rents pending the expiration of the period of redemption, inasmuch as he failed to exercise his right of redemption within the twelve months following the day of the sale, which took place on March 30, 1925, the ownership of the same became consolidated in the purchaser, the Asia Banking Corporation, and from March 30, 1926, said bank was entitled to collect the fruits and rents of said lands, until the final delivery of the latter to it on April 23, 1928, when the final deed of sale of the lands was executed in favor of said Asia Banking-Corporation.

According to the statement of Severino P. Aldeguer's account with the Philippine National Bank, submitted by the latter to the Asia Banking Corporation, all the products of said lands up to April 4, 1928 were delivered by Ynchausti & Co. to said Philippine National Bank, and credited to said Severino P. Aldeguer's account with the latter. When said Philippine National Bank, then, applied the products of the lands mortgaged to it to secure the payment of Severino P. Aldeguer's mortgage debt, from 1927 to 1928, said products already belonged to the Asia Banking Corporation.

Summarizing, then: (1) When the Philippine National Bank, as mortgage creditor of Severino P. Aldeguer and assignee of Felipe Gomez's rights to the promissory notes for the fertilizer used by Severino P. Aldeguer in the cultivation of the lands mortgaged to said bank, applied the products of said lands to the payment of its mortgage credit, it waived its preferential right over said products for the amount of the aforesaid promissory notes; (2) from March 30, 1925 when Severino P. Aldeguer's right of redemption of the two parcels of land in question was sold at public auction to the Asia Banking Corporation by virtue of execution, until March 30, 1926, when the period of redemption expired, the fruits and rents collected from said lands belonged to said Severino P. Aldeguer as judgment debtor in possession thereof; and (3) that from March 30, 1926, when the ownership of the Asia Banking Corporation was consolidated, the latter being the purchaser at public auction of Severino P. Aldeguer's right of redemption, until April 23, 1928, when the final deed of sale of the fruits and rents was issued in favor of said Asia Banking Corporation, the said fruits and rents from said lands, belonged to the last mentioned banking corporation.

Wherefore, we are of opinion and so hold: (1) That a mortgagee who, at the same time, is a holder of promissory notes for the value of fertilizer used in the cultivation of the mortgaged lands, and who collects said products and applies them to his mortgage credit, waives the preferential right granted to him by article 1922, case 6, of the Civil Code, upon said products, the amount of said promissory notes becoming an ordinary credit; (2) that the judgment debtor in possession of land by virtue of execution is entitled to collect its fruits and rents during the year fixed by the law for the redemption (*Riosa vs. Verzosa and Bulan*, 26 Phil., 86; *Velasco vs. Rosenberg's Incorporated*, 32 Phil, 72); and (3) that if the period for redemption expires without the judgment debtor having made use of his right, the ownership of the land sold becomes consolidated in the purchaser, who thereupon becomes entitled to collect its fruits and rents, paying the judgment debtor the expenses of cultivation, harvesting and preservation (article 356, Civil Code).

As to the question of procedure raised by the defendant-appellant, who contends that to affirm the judgment appealed from Would amount to ordering Severino P. Aldeguer, who is not a party in this case, to pay the amount of said judgment, we hold that there is no merit in such contention, because, as he is not a party to this case, the decision cannot affect him; and, furthermore, as he is not a necessary party for the final solution of the questions raised by the parties herein between themselves, he need not be impleaded.

For the foregoing considerations, and finding no error in the judgment appealed from, the same is affirmed' in its dispositive part, with costs against the appellant. So ordered.

Johnson, Street, Villamor, and Romualdez, JJ., concur.

Johns, J., concurs in the result.

DISSENTING

AVANCEÑA, C. J.:

Certain realty was sold at public auction by virtue of a writ of execution of a judgment rendered against the debtor. One year elapsed after this sale during which the debtor failed to exercise the right of redemption granted to him by section 463 of the Code of Civil Procedure. The majority holds that notwithstanding such failure to exercise the right of redemption, the purchaser is not entitled to the fruits of the property purchased by him from the time the sale is made, but only after the lapse of the one year fixed by the law for redemption.

I differ with the majority upon this point.

Section 463 of the Code of Civil Procedure, the Spanish translation of which has been corrected in the case of *Pabico vs. Ong Pauco* (43 Phil., 572), reads:

"Upon a sale of real property, the purchaser shall be substituted to, and acquire, all the right, interest, title, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing: * * *

In spite of the fact that this section expressly provides that upon the sale being made, the purchaser shall be substituted to, and acquire all the rights of the judgment debtor thereto, subject solely to the right of redemption, the majority opines that in no case does the purchaser acquire all the rights of the judgment debtor after the sale, but only after the lapse of the one-year period for redemption. If the debtor exercises the right of redemption, the sale is resolved and this resolution is retroactive to the very date of the sale, the purchaser being under obligation to return the fruits and rents of the property purchased, if he collected them, receiving in exchange the interest upon the price paid by the debtor. If the right of redemption is not exercised, the purchaser, according to the majority opinion is only entitled to collect the fruits of the property he purchased, after the lapse of the year prescribed for the redemption. It is obvious, then, that according to the doctrine laid down by the majority, the purchaser does not in any case acquire the rights of the vendor after the sale,, contrary to the provision of section 463 of the Code of Civil Procedure.

One of the arguments advanced in the majority decision is the following: If the right of redemption is exercised, it is both just and equitable that the judgment debtor should receive the fruits of the property sold, inasmuch as the law requires him, by way of compensation, to pay the purchaser the interest upon the price paid by the latter. Following the same reasoning, we might say that if the purchaser is not paid the interest upon the price which he paid, it would be just and equitable that he should receive the fruits of the property he purchased, for the same reason of compensation. When the right of redemption is not exercised, the law does not require the judgment debtor to pay the purchaser the interest upon the price he paid, and, as a matter of fact, the majority does not in the instant case require the judgment debtor to make such payment. Consequently, it would be both just and equitable that in the present case the purchaser receive the fruits of the property purchased, from the date of the purchase. Otherwise, we should have the anomaly of a purchaser who paid the price, and yet he is denied the right to receive the fruits of the property purchased, and a vendor, a judgment debtor, who receives the price immediately after the sale and makes use of the same to settle his debt, thus exempting himself from paying interest upon the same, and who, furthermore, has the right during one year after the sale and, his receipt of the price, to receive the fruits of the property thus sold. Such an anomaly is not justified by the statement that the compensation in this case in favor of the purchaser is in the difference between the price he paid and the market value, because the price usually obtained at an execution sale is less than the market value. It is not justified, because in cases where the price paid is the market value, there is no such compensation. The law must be so construed as not to be unjust in any case. On the other hand, the price obtained at public auction sales is exactly the market value, for, as the

public is given a chance to bid, it is presumed that the price obtained is the best obtainable on the date and at the place where the auction is held.

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