

MARCELO ENRIQUEZ, PLAINTIFF AND APPELLANT, VS. PHILIPPINE NATIONAL BANK ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 33584. December 15, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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Marcelo Enriquez has appealed to this court from the judgment of the Court of First Instance of Oriental Negros, the dispositive part of which reads as follows:

"Wherefore, the court holds that the sales made at public auction by the provincial sheriff to the National Bank of Cebu on the 25th of April and the 6th of July, 1927, respectively, are null and void, as well as that made to the defendant Laureano Abella on the 7th of May, 1928, reserving, however, the right of retention in favor of defendants, National Bank and Laureano Abella, for having paid the delinquent land taxes upon the two parcels of land in question. With costs against the defendants equally."

In support of his appeal the appellant assigns the following alleged errors as committed by the court below, to wit:

"1. The trial court erred in not awarding actual damages to the appellant notwithstanding the undisproved, preponderant evidence in support thereof; and in declaring that the Government was entitled to the products of the lands in question.

"2. The trial court erred in not awarding to the appellant the five hundred pesos as sheriff's penalty under section 455, Code of Civil Procedure.

"3. The trial court erred in not reconsidering its decision and in not granting a new trial as prayed for."

The instant case originated with a complaint filed by Marcelo Enriquez against the Philippine National Bank, Atilano Villegas, as provincial sheriff of Oriental Negros, and Laureano Abella, containing the following prayer:

"Wherefore, this Honorable Court is respectfully prayed (a) to render judgment in favor of plaintiff and against the defendant, declaring null and void and without effect and revoking the sale of the above-mentioned lands; (b) to require defendants to make an accounting of all the fruits and products of said lands since date of occupying and possession by the defendants up to the present time; (c) to order defendant Philippine National Bank to allow the plaintiff to repurchase said two parcels of land in case the above-mentioned sale is not ordered revoked; (d) to order defendants to pay solidarily the plaintiff damages in the amount of P20,320; (e) to declare null and void the sale of January 10,1928, of the two parcels above-mentioned to Laureano Abella as well as any other agreement made by the Philippine National Bank regarding sale, mortgage, cession, lease and usufruct of said lands to any other person; (f) to order defendants to pay costs of this action; and (g) to grant the plaintiff such other remedy and relief as the court deems just and equitable."

In answer to the complaint, the defendants denied each and every allegation thereof, setting up several special defenses and a cross-complaint for damages sustained by the bank in its reputation consequent upon the institution of the action, which is alleged to have been malicious.

The relevant facts necessary to solve the questions raised in the instant appeal are as follows:

On and prior to the 15th of June, 1926, Marcelo Enriquez was indebted to the Philippine National Bank of Cebu in the amount of P4,512.21, one of his sureties being the defendant-appellee, Laureano Abelh. By virtue of a complaint filed by said bank against Marcelo Enriquez, Laureano Abella and Andres Abellana to collect the amount of P3,554.66, the Court of First Instance of Cebu rendered judgment requiring said defendants, Marcelo Enriquez, Laureano Abella, and Andres Abellana, to pay the plaintiff the sum of P4,512.21 jointly and severally, with interest at nine per cent per annum. With the consent of the bank, said decision was revoked by Judge Guillermo F. Pablo. On March 26, 1927, by an agreement of counsel for both parties, Judge Jose de la Rama reinstated the judgment, with the condition that a writ of execution would be issued first against the defendant Marcelo Enriquez, and in case of his insolvency, against the defendants Andres Abellana and Laureano Abella. In accordance with said judgment a writ of execution was issued on March 29, 1927, attaching the two parcels of land belonging to the judgment debtor, Marcelo Enriquez, which were sold afterwards to the bank itself, being the highest bidder. Later on, Marcelo Enriquez's right of redemption was likewise sold, being adjudicated to the defendant Laureano Abella. For non-payment of the land tax, the two lots were forfeited by the Government. At the request of the defendant judgment debtor, the bank redeemed said lands from the Government on September 27, 1927, paying the delinquent land taxes which amounted to P2,004.48. Said public auction sale has been declared null and void by the court below in the judgment appealed from.

The first question to decide on appeal, raised in the first assignment of error, is whether the plaintiff-appellant is entitled to damages for the possession by the Philippine National Bank of the lands in question from the time they were redeemed from the Government.

The judicial sale of the two parcels of land under execution, having been held null and void, they reverted to the same juridical condition in which they were before said sale. When the Philippine National Bank redeemed them from the Government, it was acting as judgment creditor. Under section 377 of the Administrative Code, the bank acquired a lien on them by virtue of said redemption, and the Government was divested of the ownership thereof which reverted in the original owner, Marcelo Enriquez. The Philippine National Bank, then, cannot be said to have held the property by virtue of the redemption in behalf of the Government, but as a creditor with a lien thereon. Since the Philippine National Bank took possession of the two parcels of land with the consent of the debtor, Marcelo Enriquez, it held the land as an antichretic creditor with the right to collect the credit with interest from the fruits, returning to the antichretic debtor the balance, if any, after deducting the expenses. The fact that Marcelo Enriquez consented and asked the bank to take charge of managing said property does not entitle the latter to appropriate to itself the fruits thereof unless the former has expressly waived his right thereto.

The second assignment of error is not well taken, for it has not been sufficiently proved that the defendant provincial sheriff of Oriental Negros acted in bad faith in publishing the notice of the auction sale of the lands in question in a Cebu newspaper which he believed had a circulation in Oriental Negros, and in reducing the sale price, in view of the redemption made by the bank of the said lands which had been forfeited to the Government for delinquency in the payment of the land tax, because the law grants a lien to the third party who redeems real estate which has been forfeited.

In view of the foregoing considerations, we are of opinion and so hold that the creditor who redeems from the Government real estate belonging to his debtor, forfeited for delinquency in the payment of the land tax, and takes

possession thereof, is bound to render an account of the net proceeds received from said property after deducting all the expenses incurred and the amount advanced for redemption, with interest.

By virtue whereof, and with the sole modification that the defendant-appellee, the Philippine National Bank, is required to render an account of the net proceeds from the lands redeemed by it during its possession thereof, after deducting all the expenses incurred and the amount paid for redemption, with interest, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

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