

BRAULIO BALAGTAS ET AL., PLAINTIFFS AND APPELLEES, VS. CIRIACA ARGUELLES, DEFENDANT. FERNANDO QUISUMBING, APPELLANT.

G. R. No. 35726. October 17, 1932

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from an order of the Court of First Instance of Laguna dated April 21, 1931, denying a motion for reconsideration of Fernando Quisumbing under date of April 10, 1931.

On March 19, 1931, Braulio Balagtas et al., plaintiffs in civil cause No. 5396 of the Court of First Instance of Laguna and appellees herein, filed a motion in the above-mentioned case, praying that the sheriff be ordered to execute a deed of redemption .of the properties sold at an execution sale to Fernando Quisumbing for the amount of P10, which redemption was granted by the court below on March 27, 1931. It may be noted that the properties in question were said to be worth P35,000.

On April 10, 1931, Fernando Quisumbing filed a motion for reconsideration of the above-mentioned order which was denied by the court on April 21, 1931. From this order Fernando Quisumbing appealed to this court.

The three assignments of error presented by Quisumbing are without merit, but in regard to sales on execution, section 457 of the Code of Civil Procedure is as follows ;

"SEC. 457. Sale on Execution.-All sales of property under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution, nor his deputy, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or, when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels of articles which can be sold to advantage separately, and the officer must follow such directions." (Italics ours.) In the so-called "aviso" referred to by the deputy sheriff, Quirino P. Tesoro, it appears as follows:

"AVISO

"En virtud del mandamiento de ejecucion librado en los expedientes de registro Nos. 190, 439, 440, 442, 443, 444, 445, 446, 447, 448, 449, 450, 479, 523, 524, 525, 620, 622, 623, 697 y 698 del Juzgado de Primera Instancia de Laguna, por virtud del cual se ordena el cobro mediante apremio de la suma de quinientos ochenta y cuatro pesos con veinticuatro centimos (P584.24), mopeda filipina, como costas del juicio en dichos expedientes contra Paulino Natividad, Agaton Saul, Martin San Juan, Magdalena Celespara, Virgilio Saul,

Florentino Gonzales, Benigno Maque, Silvestre Lapaz, Emilio Lapaz, Victorio Erasga, Gregorio Balagtas, Arcadia Cison, Rufino Domingo, Valeriano Natividad, Celerino Deang, Juan Apasionado, Fausto Medina, Celerino Taiiag, Francisco Esguerra y Juana Garcia, y a favor de Ciriaca Arguelles, por la presente se hace constar, y se anuncia, que el infrascrito Sheriff Provincial Delegado ha embargado y procedera a vender en publica subasta y al mejor postor, en la Oficina del infrascrito Sheriff, en el Edificio Provincial, Santa Cruz, Laguna, el día 19 de enero de 1931, a las ocho de la mañana, la siguiente propiedad:

"Todos y cualesquiera derechos que dichos ejecutados tienen o pudieran tener en el asunto civil No. 5396, del Juzgado de Primera Instancia de Laguna, titulado Braulio Balagtas y otros contra Ciriaca Arguelles, y en la sentencia recaída en dicho asunto."

"Este aviso se ha fijado en tres sitios públicos del Municipio de Santa Cruz, Provincia de Laguna, desde esta fecha, y se ha remitido copia del mismo por correo certificado a dichos ejecutados y al abogado de los mismos en esta misma fecha. También se ha entregado al Escribano del Juzgado de Primera Instancia de Laguna un ejemplar de este aviso, para ser unido al expediente del asunto civil No. 5396 arriba mencionado.

"Santa Cruz, Laguna, a 6 de enero de 1931. "

(Fdo.) QUIRINO P. TESORO

"Sheriff Provincial Delegado

"Por cuanto, en el día señalado para la subasta, fué el único y mejor postor de los bienes subastados Fernando Quisumbing, a quien se adjudico los mismos en la suma de diez pesos (P10), moneda filipina, que pagó en el acto.

"Por lo tanto, yo, Quirino P. Tesoro, en mi calidad de Sheriff Provincial Delegado de Laguna, en virtud de lo expuesto por la presente cedo, vendo y traspaso en absoluto y a perpetuidad a Fernando Quisumbing, 'todos y cualesquiera derechos que dichos ejecutados tienen o pudieran tener en el asunto civil No. 5396, del Juzgado de Primera Instancia de Laguna, titulado Braulio Balagtas y otros contra Ciriaca Arguelles, y en la sentencia recaída en dicho asunto.'

"En testimonio de lo cual, firmo la presente en Santa Cruz, Laguna, hoy a 19 de enero de 1931. "

(Fdo.) QUIRINO P. TESORO

"Sheriff Provincial Delegado"

It is evident that the deputy sheriff has not quite understood the execution of the case in question. Briefly stated, it is clear that the registered numbers of the land held by the claimants mentioned in the above "aviso" is real property. As to any personal property, there seems to be nothing directly mentioned in the "aviso". But be that as it may, it is clear that whether there was any personal property in the statement of "todos y cualesquiera, etc." in the "aviso", the so-called sale of execution attempted by the sheriff is entirely null and void.

In section 457 supra, it appears that "When the sale is of personal property capable of manual delivery, it must be within view of those who attend: the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately." But the sheriff did not follow that rule; all he did in that respect was to state that "Todos y cualesquiera derechos que dichos ejecutados tienen o pudieran tener en el asunto civil No. 5396, del Juzgado de Primera Instancia de Laguna, titulado Braulio Balagtas y otros contra Ciriaca Arguelles, y en la sentencia recaída en dicho asunto." His statement on that point is also null and void. But the sheriff made still another and serious mistake. Section 454 of the Code of Civil Procedure reads as follows:

"SEC. 454. Advertisement of Property to be sold on Execution.-Before the sale of property on execution, notice thereof must be given, as follows:

"1. * * * * *

"2. In case of other personal property, by posting a similar notice in three public places, in the municipality or city where the sale is to take place, for not less than five nor more than ten days;

"3. In cases of real property, by posting a similar notice particularly describing the property, for twenty days in three public places of the municipality or city where the property is situated, and also where the property is to be sold, * * *."

It is well known that if a sheriff sells without the notices prescribed by section 454 of the Code of Civil Procedure, or the time or place other than that designated in the notice, such a sale gives no title to the property. (Campomanes vs. Bartolome and Germann & Co., 38 Phil., 808; Borja vs. Addison, 44 Phil., 895.)

In the present case the notices were posted January 6, 1931, and the alleged sale was made the 19th of the same month, with the result that neither the personal property nor the real property was properly posted, and it follows that the alleged execution sale in question was also null and void.

No valid sale was made, and the plaintiffs need not present or offer any redemption of the property in question. The case is dismissed with the costs against the appellant. So ordered.

Malcolm, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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