

TORIBIO LAXAMANA, APPLICANT AND APPELLEE, VS. LAUREANA CARLOS ET AL., OPPONENTS AND APPELLANTS.*G. R. No. 35797. December 13, 1932*

Ponente: VILLA-REAL, J.

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This refers to seven appeals taken by opponents Bernardo Samson with respect to lot No. 1; the municipality of San Luis, Province of Pampanga, with respect to lot No. 35; Laureana Carlos with respect to lots Nos. 54, 63, and 16, the last being a part of lot No. 55; Juliana Franco with respect to lot No. 53; Teodulo Franco with respect to lots Nos. 17 and 23; Severina Franco with respect to lot No. 50; and Felipe Carlos with respect to lot No. 58, from the judgment of the Court of First Instance of Pampanga, rendered in case No. 713, G. L. R. O. Rec. No. 27683, denying and dismissing their respective oppositions, and adjudicating and decreeing the registration of the lots without the oppositions described in the application, in favor of the applicant Toribio Laxamana and his wife Leoncla Conui, with the exception of the portion of lot No. 36 occupied by opponent Cunanan, and lot No. 60, With regard to which the opposition was sustained. vIn support of his appeal, appellant Bernardo Samson assigns the following alleged errors as committed by the trial court in its judgment, to wit:

- The lower court erred in not concluding that the only interest acquired by applicant in lot No. 1 in question by virtue of his purchase thereof at auction was only the interest therein still possessed by the judgment debtor Engracio Catacutan, which was only the right to repurchase, inasmuch as before and prior to the sale at auction Engracio Catacutan already sold such lot to Josef a Palma reserving to himself only such right to repurchase.
- The lower court erred in not concluding that the levy and sale at auction of the property in question to applicant does not take precedence over an unrecorded deed of conveyance of the same property made by the judgment debtor Engracio Catacutan prior and before the levy and sale at auction.
- The lower court erred in not concluding to be valid and binding the deed of pacto de retro sale, Exhibit 1-Samson, and in declaring it to be a mere instrument of credit with security.
- The lower court erred in not concluding that anything decided in the case entitled Engracio Catacutan vs. Toribio Lacsamana and Francisco Pamintuan, civil case No. 3386 of the lower court, with reference to the land in question cannot in anyway affect or prejudice oppositor Bernardo Samson and Josefa Palma who were not made parties therein.
- The lower court erred in denying the motion of oppositor Bernardo Samson for new trial, it appearing that when rebuttal evidence was presented by applicant relative to lot No. 1 in question, the oppositor Bernardo Samson and his attorney were not present therein and given an opportunity to cross-examine the witness and timely object to the evidence presented on rebuttal.
- The lower court erred in rendering an adverse deci- sion against oppositor Bernardo Samson."

The municipality of San Luis, Pampanga, in turn, assigns the following alleged errors as committed by the trial court in its judgment, to wit:

- The lower court erred in holding that it is not lot No. 35, but the old road, that runs alongside the Rio Grande in Pampanga.
- The lower court erred in decreeing the adjudication and registration of lot No. 35 in favor of the applicarit-appellee.
- The lower court erred in overruling the opposition of the municipality of San Luis.
- Finally the lower court erred in denying the motion for a new trial filed by the opponent-appellant municipality of San Luis."

On the other hand, the appellants Laureana Carlos, Juliana Franco, Teodulo V. Franco, Severina Franco, and Felipe Carlos jointly assign nine alleged errors as committed by the trial court in its judgment.

Toribio Laxamana, the appellee, questions this court's jurisdiction to review the evidence upon the appeal taken by the opponents and appellants last mentioned through Attorney Teodulo V. Franco, in view of the fact that, they announced their intention to appeal and then filed a bill of exceptions without waiting for the trial court to pass upon the motion for a new trial filed by them on April 17, 1931, upon the ground that the evidence does not justify the judgment, which is contrary to law, the Court of First Instance of Pampanga having approved the said bill of exceptions on April 30, 1931.

The question raised by the appellee, dealing as it does with a matter of procedure, must first be resolved.

In *Conspecto vs. Fruto* (31 Phil., 144), citing with approval in the case of *Heirs of Advincula vs. Imperial* (G. R. Nos. 34087 and 34088, promulgated on February 24, 1932),^[1] this court laid down the following doctrine:

"A motion for a new trial was made in the lower court by the appellants. That motion was never decided. Apparently it was abandoned by the appellants for the reason that before it was decided they presented their bill of exceptions. They evidently concluded to rely upon the facts stated in the pleadings and not denied and the decision of the lower court and the law applicable thereto. The presentation of a bill of exceptions pending the decision of a motion for a new trial is an abandonment of said motion. The defendants denied each and every fact alleged in the complaint. In the absence, therefore, of a motion for a new trial, we are limited to the facts stated in the decision. They are as follows:"

* * * * *

See likewise *Dimaliwat vs. Dimaliwat* (55 Phil., 673).

In the case at bar, counsel for opponents-appellants Laureana Carlos, Juliana Franco, Teodulo V. Franco, Severina Franco, and Felipe Carlos, received a copy of the trial court's decision in this: case on March 31, 1931, and on the 17th of April took exception thereto filing a motion for a new hearing on the ground that the evidence is not sufficient to justify the judgment, which is contrary to law, notifying counsel for Toribio Laxamana, the applicant-appellee, that the hearing of that motion would be set for April 23, 1931. Inasmuch as the trial court did not set that motion for hearing upon the appointed date, April 23, 1931, counsel for the opponents-appellants, fearing that the thirty-day period provided by law might elapse for perfecting the appeal through bill of exceptions in registration proceedings under the Torrens system, did not wait for the ruling upon the motion for a new trial, but filed a notice of appeal together with a bill of exceptions on April 27, 1931, notifying the adverse party of the hearing for its approval. On April 30, 1931, the court approved and admitted the bill of exceptions.

While the nature of the action is different, the facts in the case of *Conspecto vs. Fruto*, supra, are identical to those in the present case. Although the cases cited are ordinary civil actions and the case at bar is one of registration, the rule with reference to the order of filing the motion for a new hearing, exception, appeal, and bill of exceptions is

the same. (Sec. 14, Act No. 496, as amended by section 4, Act No. 1108; Director of Lands vs. Court of First Instance of Tarlac, 51 Phil., 805.)

According to the rulings cited above, this court has no jurisdiction to review in this instance the questions of fact raised by the appellants Laureana Carlos, Juliana Franco, Severina Franco, and Felipe Carlos, in their brief; it must accept the trial court's findings upon the various lots affected by the opposition, and determine merely if the conclusions of law' derived from the findings of fact are in keeping with the statute.

We have examined those findings of fact and see no reason for interfering with them; the legal conclusions are in keeping with them and we therefore affirm the judgment appealed from with respect to lots Nos. 54, 63, 16, 55, 53, 50, and 58.

With respect to lots Nos. 17 and 23, to which Teodulo V. Franco's appeal refers, and which he claims are included in parcel F, described in his Torrens title No. 159 (Exhibit I-T Franco), the trial court adjudicated them to the applicant Toribio Laxamana subject to Teodulo V. Franco's right to prove his contention. The chief surveyor of the General Land Registration Office, in pursuance of an order from the Court of First Instance of Pampanga dated December 16, 1930, submitted the following report:

"Complying with the order of this court dated December 16, 1930, the undersigned has the honor to report: that this office cannot, with the plans alone in view, determine with exactness if lots 17 and 23 of plan Psu-45996-Amd.-2, filed in proceeding G. L. R. O. Rec. No. 27683, are included in (the plan prepared by Surveyor Ceferino Cacnio on April 11, 1907, attached to proceeding G. L. R. O. Re». No. 5909, because the latter is defective and was prepared before Act No. 1875, as amended, went into effect.

"Wherefore, and in order to settle the conflict indicated by the petitioner, we respectfully recommend that the Honorable Court order the Bureau of Lands to conduct an investigation on the land, at the expense of the applicants and opponents, for the purpose of determining what relation exists between the plan Psu-45996-Amd.-2, and the old unapproved plan, submitting a sketch of the result of such investigation.

"Manila, April 9, 1931."

In view of the foregoing report filed by the chief surveyor of the General Land Registration Office, it is ordered that the record be remanded to the Court of First Instance of Pampanga with respect to lots Nos. 17 and 23, and that proceedings be had in accordance with the suggestion contained in said report; and if lots Nos. 17 and 23 are found to be included in Teodulo V. Franco's Torrens title No. 159, the latter's opposition shall be sustained with respect to those lots.

With regard to Bernardo Samson's appeal upon lot No. 1, the following facts were proved without question at the trial:

Engracio Catacutan, the original owner of lot No. 1, sold it with the right of repurchase within two years, to Josefa Palma for P2,500, as evidenced by a public unrecorded instrument dated May 6, 1921 (Exhibit 1-Samson). In accordance with the instrument, the vendor remained in possession of the lot as a lessee during the redemptionary period, paying the vendee a yearly rental of P500.

By an unrecorded instrument dated December 29, 1921, Engracio Catacutan sold the same land to Bernardo Samson on condition that the vendor would procure its registration under the Torrens system and the vendee would pay Josefa Palma what Engracio Catacutan owed her.

On October 27, 1922, at the public auction held in pursuance of a writ of execution issued by the Court of First Instance of Pampanga in civil cases Nos. 2017, 2042, and 2183, entitled Toribio Laxamana vs. Engracio Catacutan et al. (Exhibit B), that lot was sold to Toribio Laxamana for P4,154.42. As the defendants in these three cases failed to exercise their right of redemption within the statutory period of one year, the provincial

sheriff of Pampanga executed the deed of absolute sale to Toribio Laxamana on October 30, 1923, and it was recorded that same day in the registry of deeds of the province (Exhibit B). Toribio Laxamana took possession of the lot in December, 1923, and from that time has exclusively collected the products thereof to the present time. At the time of the auction sale, the heirs of Melecio Catacutan (among whom is Engracio Catacutan) were in possession.

When the period for redemption specified in the instrument Exhibit 1-Samson had elapsed without the vendor Engracio Catacutan having made use of his right of repurchase, and the ownership having been consolidated in the vendee Josefa Palma, she sold lot No. 1 on January 25, 1924 to Bernardo Samson, opponent and appellant herein, for P3,120 as evidenced by the unrecorded public instrument, Exhibit 2-Samson.

The first question to decide with reference to lot No. 1 is whether the contract between Engracio Catacutan and Josefa Palma is a sale with the right of repurchase or a mortgage.

The trial court held that it was a mortgage, because, firstly, neither Josefa Palma nor Bernardo Samson took possession of the land in litigation; secondly, neither of them intervened when Engracio Catacutan filed suit against Toribio Laxamana to set aside the auction sale; and third- ly, Bernardo Samson purchased the land of Engracio Catacutan, binding himself to pay Josefa Palma what Engracio Catacutan owed her.

By its form, terms, and conditions, the instrument Exhibit 1-Samson, evidencing the contract between Engracio Catacutan and Josefa Palma, is a sale with the right of repurchase. If Engracio Catacutan remained in possession of the land, it was by virtue of a contract of lease contained in the same instrument, between vendor and vendee, whereby the former was to remain in possession of the land sold during the period for repurchase, paying a yearly rental of P500. The lower court was therefore in error in concluding that the vendee did not take possession of the property sold, inasmuch as the possession of a lessee is that of the lessor. (*Bautista vs. Sioson*, 39 Phil., 615; *Lichauco vs. Berenguer*, 39 Phil., 643.)

With regard to the second ground, Josefa Palma had no reason for intervening in the complaint filed by Engracio Catacutan against Toribio Laxamana for setting aside the judicial sale, because as a vendee in a sale with the right of repurchase, her right was protected, inasmuch as Toribio Laxamana could not, in the judicial sale mentioned, have acquired anything more than Engracio Catacutan's right of repurchase. (*Lanci vs. Yangco*, 52 Phil., 563.) Neither was there any necessity for Bernardo Samson to intervene because the sale made to him by Engracio Catacutan was conditioned upon the registration of the land.

With regard to the third ground, the very fact that Engracio Catacutan bound himself to cause the registration of the land according to the Torrens system, and Bernardo Samson to pay Josefa Palma the amount he owed her, shows that what was sold to Bernardo Samson was only Catacutan's right of repurchase.

The fact that neither Josefa Palma nor Bernardo Samson filed a third party claim with the sheriff who attached the land for judicial sale did not prejudice them, for section 451 of the Code of Civil Procedure reserves to them the right to bring the proper action to enforce their rights.

Besides, it could not have been the intention of the parties to enter into a mortgage contract to secure a loan, as in that case all the formalities required by law for its validity should have been complied with, such as the registration in the registry, which has not been done.

Therefore, the contract between Engracio Catacutan and Josefa Palma, evidenced by the deed Exhibit 1-Samson, is a sale with the right of repurchase, and not simply a mortgage.

Having arrived at the conclusion that the contract Exhibit 1-Samson, between Engracio Catacutan and Josefa Palma, is a sale with the right of repurchase, the question arises as to who has a better right to lot No. 1, Josefa

Palma, or the applicant Toribio Laxamana who has purchased at an auction sale Engracio Catacutan's rights and interests in said lot, by virtue of a writ of execution.

In *Lanci vs. Yangco*, *supra*, the court laid down the following doctrine:

"1. EXECUTIONS; SALE UNDER EXECUTION; INTEREST ACQUIRED BY PURCHASER; EFFECT OF REGISTRATION OF TITLE.—The rule that the purchaser at an execution sale only acquires the identical interest in the property sold which has been possessed by the judgment debtor applies to property registered under the Torrens system as well as to unregistered property; and the circumstance that at the time of the levy of the execution, and the consequent sale of the property, the certificate shows the debtor in the execution to be the unqualified owner of the property, does not interfere with the application of this rule. It results that, where the judgment debtor by lawful contract alienates the property before it is levied upon, such conveyance will be valid as against the purchaser at the execution sale. It is true that in section 50 of Act No. 496 it is declared that the inscription of the conveyance is the act that gives validity to the transfer or creates a lien upon the land; but this is no obstacle to the giving of due effect to anterior obligations, good as between the parties, and their successors, other than bona fide purchasers for value."

See also *Cabuhat vs. Ansay and Reodica* (42 Phil., 170).

There is not and could not be any question that the deed of sale with the right of repurchase, Exhibit 1-Samson, executed by Engracio Catacutan in favor of Josefa Palma is valid between them, and conveyed to the latter the ownership of lot No. 1, subject only to a resolutory condition, that is, the vendor's right to repurchase the land within two years. As the sale took place on May 6, 1921, and as Engracio Catacutan had not repurchased the property when on October 27, 1922, his rights, interests, and participation in it were sold at a public auction, the only right, interest, and participation he had was that of repurchase, and according to the doctrine cited above, for being the successful bidder at said auction sale, Toribio Laxamana acquired only the right of repurchase of Engracio Catacutan.

It has been contended in the course of this discussion that Toribio Laxamana is a third party, and a purchaser in good faith, and that under Act No. 2837, as the deed of sale with the right of repurchase executed by Engracio Catacutan in favor of Josefa Palma was not registered, as was the certificate of sale executed by the sheriff in his favor the former cannot affect him.

In *Williams vs. Sufier* (49 Phil., 534), the court laid down the following doctrine:

- REGISTER OF DEEDS; ACT NO. 2837; REGISTRATION OF SHERIFF'S DEED.—The provisions of Act No. 2837, amending section 194 of the Administrative Code, are applicable exclusively to instruments resulting from the agreement of the parties; they have no application to the deed of a sheriff conveying to the purchaser unregistered land that has been sold by the sheriff under execution."

The fact, then, that the certificate of sale issued by the sheriff to Toribio Laxamana was recorded in the registry of deeds, does not give him a better right to the property sold than that possessed by Josefa Palma, the vendee in the sale with the right of repurchase.

As to whether Toribio Laxamana is a third party or not, in *Boncan vs. Smith, Bell & Co., and Peterson* (9 Phil., 109), this court laid down the following doctrine:

- ATTACHMENT ; UNRECORDED DEED.—The levy of an execution against a judgment debtor upon realty standing in his name does not take precedence over an unrecorded deed to the same property made by the judgment debtor prior to the levy. Creditors in such cases are not third parties within the meaning of article 389 of the Mortgage Law. (*Fabian vs. Smith, Bell & Co.*, 8 Phil., 496.)"

Being a purchaser in good faith does not give the applicant-appellee a better right either, because having made the

purchase at a public auction in an ordinary execution, not only is he not a third party, but he acquires no more than the rights of the judgment debtor to the property sold at the time of the sale, and it was his duty to ascertain what those rights were, in order to safeguard his own interests. Upon this point, the court has repeatedly held that the doctrine of caveat emptor applies to judicial sales. (*Pabico vs. Ong Pauco*, 43 Phil., 572; 23 Corpus Juris, 746; *Lim Liin Uan vs. Laag and Laag*, 51 Phil., 930.)

With regard to lot No. 35, in which the appellant municipality of San Luis, Pampanga is the opponent the sole question to decide is whether that lot is the road of the barrio of San Juan and therefore belongs to the municipality.

The applicant sought to establish the following facts:

The real municipal road passing through the barrio of San Juan, municipality of San Luis, Province of Pampanga, runs along the east bank of the Rio Grande of Pampanga, or the southwest of lot No. 1, as shown on the sketch Exhibit C. That road dates back to pre-revolutionary times. Alongside there are young and old santol, kapok, banana and mango trees. There are also houses built by their owners fronting that road in order that the religious processions passing along it during Spanish times might better be seen. The owners of these houses always spoke of that road as a boundary, some on the south, and others on the west, and in 1906 Melecio Catacutan, describing his lot in tax declaration No. 14178 (Exhibit Z), mentioned as the western boundary, the "barrio road". In the year. 1924, the neighbors and relatives of Engracio Catacutan, obeying his orders, closed the aforementioned road by fencing it in, and constructing another road on the east of those houses. Councilor Pedro Larin and Lieutenant Simeon Mangalino of the municipality, filed a written request (Exhibit Y) with the municipal council of San Luis on March 17, 1924, asking that an investigation be made of that act and that proper action be taken against those responsible for it. The public road was thrown open once more, but Engracio Catacutan again ordered it to be closed. There are trees on all sides of lot No. 35, and not merely alongside as alleged by the opponent municipality of San Luis, and there is no such road in it, although there is one leading to the river, situated on the northeast of Crisanta Catacutan's land, described in tax No. 14193 (Exhibit 1) which. land also is on the northeast of that of Melecio Catacutan's, tax No. 14178 (Exhibit Z).

Opponent municipality of San Luis, on the other hand, sought to prove through its witnesses, the following facts:

The country road is situated on the west of Melecio Catacutan's land, and existed long before the revolution. All along both sides of it are santol, kapok, and anonas trees between ten and fifteen years old, as well as mango and camanchile trees, and once upon a time there were houses facing each other, which, were removed by the Spanish forces towards the river during the revolution, where they stand at present, facing the river and the new road which was built through private property, which is used when the old road becomes impassable owing to the mud during the wet season. The new road, has been out of use and closed for the past three or four years, but the old one is still in use. The old road runs as far as the barrios of San Nicolas and Santa Monica going southwards, crossing the Matique Creek, turning towards the river and then alongside the said river.

It has therefore been admitted by both applicant Toribio Laxamana and opponent Municipality of San Luis, that there are two roads, to wit: that running alongside the Pampanga Rio Grande, and lot No. 35. Both the applicant and the opponent agree that at present the houses stand on the edge of the road alongside the aforementioned river facing it; but the latter alleges and maintains that those houses used to be on both sides of lot No. 35, which was the old country road, and that only during the revolution where they removed. In order to ascertain which of the two roads was the real country road of the barrio of San Juan, Municipality of San Luis, we must refer to the evidence adduced by both parties at the trial. There is contradictory evidence, and the trial court, that not only saw the witnesses testify and had an opportunity of observing their conduct while testifying, but also made an ocular inspection of the premises, gave more credit to the testimony of the applicant and of his witnesses than to those of

the opponent municipality of San Luis. Furthermore, the letter (Exhibit Y) written by Pedro Larin, municipal councilor of San Luis, asking for the investigation of the closing of the road alongside the river and the punishment of the responsible parties, shows that in his judgment as well as in that of the municipal lieutenant, Simeon Mangalino, who also signed that letter, that was the real country road of the barrio of San Juan.

Finding no error in the decision appealed from with reference to lot No. 35, it must be affirmed with costs against the opponent-appellant, the Municipality of San Luis.

In view of the foregoing, we are of opinion and so hold: (1) That the rules laid down in the Code of Civil Procedure, and construed by this court, with reference to the filing of motions and taking of exception for perfecting appeals in ordinary cases are applicable to the perfecting of appeals in registration cases; (2) that the filing of notice of intent to appeal and of the bill of exceptions, while a motion for a new hearing on the ground of insufficiency of evidence to justify the decision is pending, without first entering an exception in case the ruling be against it, is an abandonment of the motion for a new trial, and a waiver of the right to have the evidence reviewed; (3) that the purchaser at a public auction of the rights, interests, and participation of a judgment debtor in the property which the latter had validly sold with the right of repurchase, retaining possession under a contract of lease during the period of repurchase, acquires only the judgment debtor's right of repurchase, and the fact that the vendee in a sale with the right of repurchase did not object to the auction sale or file a third party claim does not safeguard said purchaser at the auction sale from the claim of the vendee in a sale with the right of repurchase even if the sheriff's deed be registered in the registry of deeds, since the provisions of section 194 of the Revised Administrative Code, as amended by Act No. 2837, do not apply to judicial sales (*Williams vs. Sufier*, 49 Phil., 534), and because it was his duty, before bidding at the auction sale, to ascertain the real rights of the judgment debtor, which are to be sold (23 *Corpus Juris*, 746; *Sarmiento vs. Villamor*, 13 Phil., 112; *Pabico vs. Ong Pauco*, 43 Phil., 572); and (4) that the fact that the judgment debtor is in possession of the land upon which he holds rights which are to "be sold at public auction, and that the purchaser did not know that a third party had acquired ownership thereof, does not protect the purchaser, because he is not considered a third party, and the rule of caveat emptor is applicable to him. (*Boncan vs. Smith, Bell & Co.*, and *Peterson*, 9 Phil., 109.)

Wherefore, the judgment appealed from is reversed with respect to lot No. 1, which is adjudicated to Bernardo Samson, in whose name its registration is decreed, with costs against the appellee; let the record be remanded with respect to lots Nos. 17 and 23 for an investigation by the Bureau of Lands at the expense of the parties interested, to determine whether they are included in Torrens title No. 159 of Teodulo V. Franco, sustaining the latter's opposition in the affirmative, and affirming the judgment appealed from, in the negative, without the proviso contained therein, without special pronouncement as to costs; and in all other respects the judgment appealed from is affirmed, with costs against the unsuccessful appellants. So ordered.

Street, Malcolm, Villamor, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

[1]56 Phil., 837.

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