

JULIANA BONCAN, PLAINTIFF AND APPELLANT, VS. SMITH, BELL & CO., AND J. J. PETERSON, SHERIFF OF THE CITY OF MANILA, DEFENDANTS AND APPELLEES.

G.R. No. 3694. October 21, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that some time prior to the commencement of this action (the 16th of March, 1906) the defendants herein, Smith, Bell & Co., in a cause, No. 4301, pending in the Court of First Instance of the city of Manila, obtained a judgment against Emiliano Boncan, and that on or about the 1st day of March, 1906, the said defendants Smith, Bell & Co. had an order of execution issued against the defendant in that cause, Emiliano Boncan, and had the said execution levied upon the real property described in the complaint in this cause.

On the Kith day of March, 1906, the plaintiff herein commenced an action in the Court of First Instance of the city of Manila, praying that she be declared to be the owner of the said land in question, with right to the possession of the same, and that the said attachment levied by virtue of the judgment which the defendants, Smith, Bell & Co., had obtained against the said Emiliano Boncan be dissolved and that the defendants be charged Avith the costs of the action.

The defendants, Smith, Bell & Co., by means of their attorneys, filed a general denial in said cause. After hearing the evidence adduced during the trial of said cause, the judge of the lower court denied the petition of the plaintiff and refused to dissolve the said attachment, and dismissed the said cause with costs against the plaintiff. From this decision the plaintiff appealed to this court. An examination of the evidence brought to this court shows the following facts:

- That Francisca Yap de Boncan died on the 22d day of July, 1905, in the city of Manila, leaving certain property to her heirs.
- That the plaintiff, Juliana Boncan, was one of the heirs and entitled to a distributive share of the estate of Francisca Yap de Boncan.
- That Emiliano Boncan was one of the heirs of the said Francisca and entitled to a distributive share of the said state.
- That Emiliano Boncan, by virtue of being an heir and entitled to a distributive share of the estate of the said Francisca, owned a one-sixth part of the property described in the said complaint.
- That on the 20th day of August, 1905, the said Emiliano Boncan, by means of a public document, sold and transferred all his right, title, and interest in the said land to the plaintiff herein, Juliana Boncan, for the sum of P2,500.
- That the defendants in this cause neither alleged nor attempted to prove that the sale of the land in question by

Emiliano Boncan to the said Juliana Boncan was not a valid sale and a transfer of all the right, title, and interest which the said Emiliano Boncan had in said land.

The deed of transfer by the said Emiliano Boncan to the said Juliana Boncan appears to be regular in form and in compliance with the forms prescribed by law. (See sec. 127, Act No. 496.)

The defendants during the trial of the cause in the lower court objected to the introduction of said deed as evidence for the purpose of showing that the title which Emiliano Boncan had in said land had been transferred to Juliana Boncan, for the reason:

- That the said deed had not been registered in accordance with the provisions of the Commercial Code; and
- That the same had not been signed by both parties, in accordance with the provisions of the Spanish law.

This court has recently decided in the case of Fabian et al. vs. Smith, Bell & Co.[1] (5 Off. Gaz., 576) that an unregistered deed is admissible in evidence to show a transfer of title as against an attaching creditor, holding that the attaching creditor was not "third persons" mentioned in article 389 of the Mortgage Law, and that the levy of an execution against a judgment debtor upon real estate which stands in his name does not take precedence over an unrecorded deed to the same property made by the judgment debtor prior to the levy in question. The deed to the land in question, therefore, was admissible in evidence for the purpose of showing that the title which Emiliano Boncan had in the said land had been transferred to the said Juliana Boncan, and until this deed is set aside by competent authority the same will stand, showing that the interest thereby conveyed belongs to Juliana Boncan.

With reference to the second objection above noted, to wit, that the deed had not been signed by both grantor and grantee, we are of the opinion, and so hold, that in this respect the deed in question complied with section 127 of Act No. 496.

The evidence presented during the trial of the cause on the part of the plaintiff shows clearly that the land in question had been transferred by Emiliano Boncan to Juliana Boncan several months prior to the attachment levied upon said property in favor of the defendants. This being true, the said attachment was levied upon the property of Juliana Boncan and not upon the property of Emiliano Boncan, and therefore was illegally levied and the same is hereby dissolved.

The judgment of the lower court is therefore hereby reversed. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

[1] 8 Phil. Rep., 496.

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