

**MARIA ARRIETE, IN HER CAPACITY AS GUARDIAN OF THE MINOR
CARMEN JAGUNAP, PLAINTIFF AND APPELLANT, VS. THE DIRECTOR
OF PUBLIC WORKS, THE PROVINCIAL SHERIFF OF ILOILO,
ANTONINA LED...**

G.R. No. 37125. September 30, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Iloilo, sustaining a sheriff's sale of the appellant's right and title to lots Nos. 1381, 1382 and 1880 of the cadastral survey of Santa Barbara. The sale was made by the provincial sheriff of Iloilo to Antonina Ledesma under authority of the Irrigation Act No. 2152 as amended by Act No. 3523.

The appellant, Carmen Jagunap, a minor 12 years of age, by her legal guardian, Maria Arriete, filed this suit in the Court of First Instance of Iloilo to recover the title and possession of said lots. These lots had been sold to satisfy the judgment in civil case No. 7610 in said court, entitled the Santa Barbara Irrigation System vs. Delinquent Persons, among whom Adela Gustilo (not Carmen Jagunap) was named and sued as the owner of said lots. Said suit was filed on September 20, 1928, and judgment by default rendered on October 24, 1929. It is admitted in the agreed statement of facts that said lots were the exclusive property of said minor, Carmen Jagunap, by inheritance from her deceased father, Mauricio Jagunap, who in turn inherited the same from his father, Justo Jagunap, who held certificates of title Nos. 13204, 13857, and 12209, which covered said lots respectively. At the time of the institution of said suit No. 7610 said lots were in course of administration as part of the estate of Mauricio Jagunap, Rafael Almacen (administrator) who was never made a party in said suit.

Said suit No. 7610 was brought against persons delinquent in the payment of the taxes of the Irrigation System of Santa Barbara covering the years 1924, 1925 and 1926. There are indications in the record (receipts, Exhibits B-1, B-2 and B-3) that the tax for said years on lots 1381, 1382 and 1880 had in fact been paid in the sum of P726.36 before said judgment was rendered.

The said three lots, containing an area of 28 hectares, 76 ares and 17 centares, were sold to Antonina Ledesma by the sheriff under the judgment aforesaid for the sum of P892.91. They are assessed at P3,800 and have a market value of P14,000. A few months after her purchase, Antonina Ledesma sold said lots to the appellee, Fermin Caram, for P1,868.38. The latter is now in possession, holding certificates of title Nos. 10028, 10029 and 10030, which bear notice lis pendens of the claim of said minor, Carmen Jagunap.

Obviously, Fermin Caram acquired no better title than his grantor, Antonina Ledesma, acquired at said sheriff's sale.

The question for determination then is: What right, if any, Antonina Ledesma acquired under the final deed of sale of the provincial sheriff, under the circumstances stated? We have come to the conclusion that she acquired none.

Section 13 of Act No. 2152 as amended by Act No. 3523 provides in part as follows:

"The municipal and provincial treasurers shall, in the performance of their official duties, collect the charges for administration expenses for each year upon the completion of each harvest, acting in this respect as delegates of the Director of Public Works. Such lien shall have preference over all other liens except that for taxes on the land and any mortgage lien in favor of the Philippine Agricultural Bank, or its successor, and such preferred lien shall not be removed until all charges are paid or the property is sold for payment thereof. Within one year after default of payment on an installment payable on any parcel of land, the municipal president, the provincial governor, or the Director of Public Works shall file with the clerk of the Court of First Instance of the district in which the land is situated, a list of all lands upon which default has been made. The clerk of the court shall thereupon publish in the manner provided for the publication of the summons in a civil action, a list of the lands so filed by the Director of Public Works, accompanied by a notice requiring the owners to file an answer thereto within thirty days after the completion of the publication.

"Upon the filing of an answer by the person interested, the action in respect to such person shall proceed to judgment, as provided for other actions by the Code of Civil Procedure. Upon termination of such thirty days, judgment shall be entered against such persons as have not answered, and their lands, or the portion thereof, deemed necessary, shall be sold, after ten days' public notice, at public auction by the sheriff to satisfy such preferred lien.

"Any excess over the amount of said lien and the cost of such procedure shall be returned to the interested person who shall have one year thereafter to redeem his land by payment of the amount of judgment, and costs with interest at six per centum: Provided, however, That in the event of the cost of maintenance being so exceptionally high in any year that it exceeds fifty per centum of the net profits, such exceptional cost shall be distributed in an equitable manner, over two or more years, but not more than five: And provided, further, That in the case in which a crop is unharvested at the time of the execution of the lien the execution shall be levied first on said crops."

Section 399 of the Code of Civil Procedure which relates to service by publication of summons in civil actions is the section contemplated by the provision in the foregoing section 13 of the Irrigation Act which requires the clerk of the court to "publish in the manner provided for the publication of the summons in a civil action, a list of the lands so filed by the Director of Public Works, accompanied by a notice requiring the owners to file an answer thereto within thirty days after the completion of the publication."

Neither the minor, appellant Carmen Jagunap, nor her legal guardian, Maria Arriete, nor the administrator of the estate of Mauricio Jagunap, were named in the order of the court or the list of lands filed by the director, or in the notice published in the newspaper; nor were they or either of them served with any notice requiring them to appear and answer the complaint in the civil action which resulted in the judgment upon which said sheriff's sale was had.

The evidence that the mother and grandmother or the administrator or the legal guardian had actual but unofficial knowledge of the pendency of said suit is wholly immaterial. Due process requires that the statutes under which it is attempted to deprive a citizen of private property without or against his consent must, as in expropriation cases, be strictly complied with, because such statutes are in derogation of general right. The purchaser of a tax title is bound to take upon himself the burden of showing the regularity of all proceedings leading up to the sale. (Tenorio vs. Manila Railroad Co., 22 Phil., 411; Camo vs. Riosa Boyco, 29 Phil., 437, 445. Cf. also Zarate and Zarate vs. Director of Lands, G. R. Nos. 37084 and 37085, decided March 24, 1933[1].)

It follows that we must sustain and do hereby sustain the appellant's second and third assignments of error which are as follows:

"El Juzgado inferior erro al no declarar nulos la sentencia, el embargo y la venta en publica subasta de los lotes 1381, 1382 y 1880, en el asunto civil No. 7610, debido a que la menor Carmen Jagunap dueña de estos lotes o su representante legal, no han sido incluidos como partes de dicho asunto ni han sido notificados de las actuaciones habidas en el mismo.

"3. El Juzgado inferior erro al no declarar nulos el embargo y la venta en publica subasta de los lotes 1381, 1382 y 1880, a favor de Antonina Ledesma y la de esta a favor de Fermin Caram, debido a que estos lotes se vendieron como de la propiedad de Adela Gustilo, en virtud de una sentencia dictada contra dicha Adela Gustilo, siendo dichos lotes de terreno son de la propiedad exclusiva de la menor Carmen Jagunap."

It is recited in the agreed statement of facts that the provincial sheriff of Iloilo placed the defendant-appellee, Fermin Caram, in possession of the lots in question on April 25, 1931, and that on August 5, 1931, the register of deeds of Iloilo issued certificates of title Nos. 1028, 1029 and 1030 to the defendant-appellee, Fermin Caram, with notice of lis pendens of the present suit. The certificates of title being void are hereby cancelled and the original certificates of title Nos. 13657, 13204 and 12209 covering the lands as particularly set out in the complaint, are hereby recognized as retaining their full force and effect and the attempted cancellation of the same is declared void.

The defendant-appellee, Fermin Caram, and his tenants, Mariano Nava and Severino Quidato, are ordered to surrender and restore to Maria Arriete, the guardian of Carmen Jagunap, the immediate possession of said lots.

The plaintiff-appellant is required and ordered to pay to the defendant-appellee, Fermin Caram, as the successor and assignee of Antonina Ledesma, the sum of P892.91 less the cents and profits of said lands since April 25, 1931, to be determined after hearing on due notice by the court a quo. Should said rents and profits exceed P892.91, let judgment for the excess be entered against the defendant-appellee, Fermin Caram, and in favor of the plaintiff-appellant, for such excess. The judgment appealed from is reversed and the Case is remanded, with costs in both instances against the defendant-appellee, Fermin Caram, for further proceedings consistent with this decision.

Avanceña, C. J., Street, Abad Santos, and Vickers, JJ., concur.

[1] Page 156, ante.

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