

FRANCISCO MAGNO, PLAINTIFF AND APPELLANT, VS. MONICA VIOLA AND VICENTE SOTTO, DEFENDANTS AND APPELLANTS.*G. R. No. 37521. December 20, 1934*

Ponente: ABAD SANTOS, J.

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This action was brought in the Court of First Instance of Nueva Ecija by the plaintiff and appellant against the defendants and appellants to try the titles to two parcels of land referred to in the record as lots Nos. 2 and 3. The case was tried upon an agreed statement of facts and upon the documentary evidence submitted by the parties. After trial, the court below rendered judgment the dispositive part of which reads as follows:

"En su virtud, el Juzgado es de opinion que debe fallar y falla esta causa en cuanto a la demanda, declarando que el demandante Francisco Magno es dueño de las 3/6 partes del lote No. 2 descrito en el parrafo 2.º de la demanda, y en 2/3 partes del lote No. 3 descrito en el parrafo 3.º de la misma. Y se ordena a la demandada Monica Viola que restituya inmediatamente a la posesion de dicho demandante dichas porciones de terreno mediante y previa la correspondiente delimitación de las mismas. Y por la ocupación por la demandada Monica Viola de dichas participaciones del demandante equivalentes a 4/6 partes de la totalidad de ambos lotes, dicha demandada debe indemnizarle a dicho demandante en la cantidad de P660 igual a 4/6 partes de la cantidad de P990 importe de los 600 cavanos al precio de P1.65 cavan estipulado por ambas partes como frutos de dichos dos terrenos.

"En cuanto a la reconvencción de los demandados, por falta de meritos y pruebas, se absuelve de ella al demandante.

"Y siendo hechos declarados probados en esta decision aunque no pedidos expresamente por una y otra parte en sus respectivos escritos, el Juzgado declara al demandante obligado a restituir la suma de P665.68, la cual debiera depositar o consignar en la Escribania del Juzgado a disposicion de los apellidados Salvanera, demandantes que fueron en la causa civil No. 4089 de este Juzgado, en cuyos autos en su caso y en su día se hara tambien constar dicha restitucion. Se declara a la demandante Monica Viola con derecho a rescatar del demandante 2/6 partes del lote No. 2 y 3 parte del lote No. 3 mediante reembolso o devolución a dicho demandante de la suma de P666.67 en el lote No. 2 y P330.78 en el lote No. 3, previa tambien la correspondiente delimitación. Con las costas a los demandados."

From this judgment, both parties appealed.

The pertinent facts in this case may be briefly stated as follows: In a partition case in the court of origin between the predecessors in interest of the parties herein and others, the two parcels of land here in question were adjudicated as follows: Lot No. 2, 4/6 to Vidal and Cecilia Salvanera, 1/6 to Santiago and Dorotea Padua, and 1/6 to Francisco Magno plaintiff herein. Lot No. 3, 2/3 to Vidal and Cecilia Salvanera, and 1/3 to Tomas Joson. In the same case, Vidal and Cecilia Salvanera were ordered to pay Francisco Magno 4/6 of the sum of P3,490, or P2,326.66. Upon failure to pay this amount, the shares of Vidal and Cecilia Salvanera in the two lots were levied on execution and sold at public auction to Francisco Magno, the 4/6 share in lot No. 2 for P2,000, and the 2/3

share in lot No. 3 for P992.34. Within the period of redemption prescribed by law, Monica Viola, defendant and appellant herein, believing that the two lots were sold at public auction in their entirety, offered to redeem them on the strength of a deed of sale executed in her favor by her codefendant and coappellant Vicente Sotto, who conveyed to her $\frac{1}{2}$ of lot No. 2 and $\frac{1}{2}$ of lot 3, of which portions the latter claimed to be the owner by virtue of a contract of retainer he had with Vidal and Cecilia Salvanera. Sotto claimed that he was entitled to redeem as a coowner, not only his own shares just mentioned, but also the other halves of said two lots. On the strength of the offer to redeem, Monica Viola in October 1930 took possession of the two lots. Claiming that he was the exclusive owner of the two lots mentioned, Francisco Magno instituted the present action.

Upon the facts stated, the resolution of the various errors assigned by both parties in their briefs depends upon the following main points: (1) The share or shares acquired by the plaintiff in the property in question; (2) the right of the defendants to redeem; and (3) granting that such right exists, the extent thereof.

- We agree with the plaintiff that he is entitled to be declared the owner of $\frac{5}{6}$ of lot No. 2 and of the entire lot No. 3, for the reason that (1) by virtue of the decision on the partition case, he was adjudged the owner of $\frac{1}{6}$ of lot No. 2; (2) by virtue of the sheriff's sale he acquired $\frac{4}{6}$ of lot No. 2 and $\frac{2}{3}$ of lot No. 3; and (3) by virtue of a private sale made in his favor by Tomas Joson, he also acquired the latter's share of $\frac{1}{3}$ of lot No. 3. This is practically the same conclusion reached by the court below. The apparent difference arises from the fact that from the portions to which the plaintiff was entitled, were taken the portions which defendants had right to redeem.

- Plaintiff contends that Vicente Sotto had never acquired any proprietary right over the land in question by reason of the contract of retainer with his former clients. On this point, it should be stated that the right of redemption is not predicated on proprietary right, which, after the sale of property on execution, leaves the judgment debtor and vests in the purchaser, but on a bare statutory privilege to be exercised only by the persons expressly named in the statute. (*McQueeney vs. Toomey*, 36 Mont., 282; 122 Am. St. Rep., 358; 92 Pac., 561; 12 Ann. Cas., 316; *Banking Corp. of Montana vs. Hein*, 52 Mont, 238; 156 Pac, 1085.) In other words, the statute does not make actual ownership at the time of sale or redemption a condition precedent, the right following the person and not the land. (*Henderson vs. Prestwood*, 115 Ala., 464; 22 S., 15; *Yoakum vs. Bower*, 51 Cal., 539; *Floyd vs. Sellers*, 7 Colo. A., 491; 44 Pac., 371; *Livingston vs. Arnoux*, 56 N. Y., 507.)

Section 464 of the Code of Civil Procedure provides that property sold subject to redemption may be redeemed by the judgment debtor, or his successor in interest in the whole or any part of the property. Does Vicente Sotto or his assignee fall within the term "successor in interest"? The rule is that the term "successor in interest" includes one to whom the debtor has transferred his statutory right of redemption (*Big Sespe Oil Co. vs. Cochran*, 276 Fed., 216, 223); one to whom the debtor has conveyed his interest in the property for the purpose of redemption (*Southern California Lumber Co. vs. McDowell*, 105 Cal., 99; 38 Pac., 627; *Simpson vs. Castle*, 52 Cal., 644; *Schumacher vs. Langford*, 20 Cal. App., 61; 127 Pac., 1057); one who succeeds to the interest of the debtor by operation of law (*XI McKinney's California Jurisprudence*, 99); one or more joint debtors who were joint owners of the property sold (*Emerson vs. Yosemite Gold Min. etc. Co.*, 149 Cal., 50; 85 Pac, 122); the wife as regards her husband's homestead by reason of the fact that some portion of her husband's title passes to her (*Hefner vs. Urton*, 71 Cal., 479; 12 Pac., 486). This court has held that a surety can not redeem the property of the principal sold on execution because the surety, by paying the debt of the principal, stands in the place of the creditor, not of the debtor, and consequently is not a successor in interest in the property. (*G. Urrutia & Co. vs. Moreno and Heyes*, 28 Phil., 260, 268.)

In the present case, Vicente Sotto had a contract with his former clients in the partition case, whereby the latter agreed to give to him one-half of what they would obtain in said case. His former clients having obtained $\frac{4}{6}$ of lot No. 2 and $\frac{2}{3}$ of lot No. 3, it is clear that Sotto was entitled to $\frac{1}{3}$ of each of said lots. Construing liberally the

provisions of section 464 of the Code of Civil Procedure, we are of the opinion that Vicente Sotto or his assignee is a successor in interest in the part of the property above indicated. (Javellana vs. Mirasol and Nunez, 40 Phil., 761.)

It remains to consider whether or not defendants had the right to redeem the entire lots. In Powers vs. Sherry (115 Minn., 290; 132 N. W., 210), the court held that one who owns a separate part of the land sold or has some interest therein may redeem the whole tract. In Eldridge vs. Wright (55 Cal., 531, 534), the court also held that successors in part could not redeem at all, except by redeeming the whole. The rule may vary however where the purchaser is himself a part owner. So in Horton vs. Maffitt (14 Minn., 216), the court held that a cotenant may redeem the entire joint estate, though in so doing he will be deemed to have acted for the benefit of all the cotenants. The civil law rule goes even further. It completely 'denies the right of redemption to a coowner when the purchaser is a part owner. The rule proceeds on the theory that the privilege conferred by statute upon the coowner to redeem is to facilitate a method for terminating ownership in common and to consolidate the dominion in one sole owner. (Estrada vs. Reyes, 33 Phil., 31.)

In the instant case, the purchaser, Francisco Magno, was a part owner. Hence, Sotto or his assignee had no right to redeem the shares of his former clients Vidal and Cecilia Salvanera. Sotto's right of redemption must be limited to that part of the property to which he was estopped under the contract with the Salvaneras. The conclusion of the lower court is in accordance with this view of the law.

Plaintiff claims that the lower court erred in requiring him to deposit with the clerk of the court, for the use and benefit of Vidal and Cecilia Salvanera, the sum of P665.68. We are unable to accept this view. The sum required to be deposited was a part of the amount of plaintiff's bid which, according to the decision of the court below in civil case No. 4089, should belong to the Salvaneras. While it is true that the Salvaneras are not parties in the present suit, they were parties in said civil case No. 4089 of which this suit is but a corollary. Plaintiff's contention that he made a mistake in fixing the amount of his bid can not be properly raised in this action.

In the view we have taken of the case, we consider the other points raised by counsel in their briefs not sufficiently substantial to require serious consideration.

The judgment appealed from is affirmed, without special pronouncement as to costs in this instance. So ordered.

Malcolm, Villa-Real, Butte, and Diaz, JJ., concur.

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