

ALBINO SARMIENTO, PETITIONER, VS. IGNACIO VILLAMOR, JUDGE OF FIRST INSTANCE, ET AL., RESPONDENTS.

G.R. No. 3805. March 06, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an application for a writ of certiorari presented by the plaintiff in this court on the 26th of January, 1907. The facts upon which the said petition is based are as follows:

First. On the 5th day of December, 1905, the said Cornelia Ponteris commenced an action in the Court of First Instance of the Province of La Laguna against Agaton Argente and Leon Argente for the purpose of recovering of the defendants a certain sum of money. The defendants were duly notified of the commencement of said action and served with a copy of the petition filed therein.

Second. On the 11th day of January, 1906, the defendants appeared in said cause by their attorneys and on the 19th day of the same month presented a demurrer to the said petition. On the 24th day of January, 1906, the judge over-ruled the said demurrer and ordered the defendants to answer, which they did on the 2d day of February, 1906, a copy of which answer was served upon the plaintiff on the 5th day of February, 1906.

Third. Later the cause was set down for hearing on the 18th day of July, 1906. Later, by the consent of all the parties the cause was set down for trial on the 16th day of October, 1906.

Fourth. On the said 16th day of October, 1906, the plaintiff having failed to appear, the judge dismissed the cause and rendered a decision in favor of the defendants for the costs.

Fifth. On the 24th day of October, 1906, the costs were assessed at P28.70.

Sixth. On the 21st day of November, 1906, the judge ordered that execution issue against the plaintiff and in favor of the defendants for the said costs.

Seventh. In accordance with the terms of the writ of execution which was issued on the 4th day of December, 1906, and after having attached certain personal property belonging to the plaintiff, the property was sold on the 10th of December, 1906, to the said Albino Sarmiento.

Eighth. On the 9th day of January, 1907, the plaintiff in said cause in the Court of First Instance, or the said Cornelia Ponteris, presented a motion in the lower court, asking that the judgment by default rendered by the said court on the 16th day of October, 1906, be set aside and that a new trial be granted. This motion was opposed by the defendants.

Ninth. On the 16th day of January, 1907, the judge of the lower court, the Hon. Ighacio Villamor, granted said motion, set aside the writ of execution and sale under the same, and ordered the property sold to the said Albino Sarmiento to be returned to the said Cornelia Ponteris, by; the sheriff.

Tenth, On the 21st day of January, 1907, the sheriff notified the said Albino Sarmiento of the order of the court and requested that said property be returned to the said Cornelia Ponteris. The said Albino Sarmiento refused to comply with the order of the court until he was paid for certain expenses which he had incurred in the repair of the property purchased.

Eleventh. On the 22d day of January, 1907, the judge of said court made a further order that the said Albino Sarmiento return to the said Cornelia Ponteris the property in question, reserving to the said Albino Sarmiento the right to recover the amount paid for the said property of the defendants in that action or Agaton Argente.

Twelfth. On the 26th day of January, 1907, the said Albino Sarmiento presented a petition in this court praying that the writ of certiorari be issued against the said Hon. Ignacio Villamor, judge of the Court of First Instance of the Province of La Laguna, ordering him to send the record of said cause to this court, in order that the same might be examined for the purpose of ascertaining whether or not the lower court had exceeded its jurisdiction in its order of the 22d of January, 1907. The defendants answered said petition and the parties were duly heard.

The question presented by the said petition and answer is, Did the said judge have authority under the law to set aside the sale of the personal property made under said execution and order the return of the same, without giving the said purchaser a hearing and a right to defend his property rights acquired by virtue of said execution? The fact that the property was sold under the execution is not denied, neither is the fact denied that the court, after the said sale, ordered the return of the property. Section 461 of the Code of Procedure in Civil Actions provides;

"When the purchaser of any personal property, capable of manual delivery, pays the purchase money, the officer making the sale must deliver to the purchaser the property and, if desired, execute and deliver to him a certificate of sale. Such sale conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied."

It will be noted that under execution sales, the purchaser of personal property acquires all of the rights which the execution debtor had in such property on the day the execution or attachment was levied, (Sees. 461, 462.) No claim whatever is made here that the property sold was not the property of the said Cornelia Ponteris. The title, therefore, of the property in question passed to Albino Sarmiento en absoluto on the 10th day of December, 1906, and he could not be deprived of such property except by due process of law. (Perez vs. Sweeney, 8 Phil. Rep., 157.) The judge had no authority, after the sale of the property in question, under the execution, granting that the same was made in accordance with law, to set aside the sale and order a return of the property. Therefore, the order of the judge of the 22d of January, 1907, is hereby declared and void, with costs.

Arellano, C. J., Torres and Mapa, JJ., concur.

Carson, J., concurs in the result.

Willard, J., dissents.

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