

## ALEJO BASCO, PETITIONER AND APPELLANT, VS. MANUEL ERNESTO GONZALEZ, OPPOSITOR AND APPELLEE.

*G.R. No. 38989. December 01, 1933*

Ponente: VICKERS, J.

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### VICKERS, J.:

On April 6, 1932, the appellant, Alejo Basco, filed a petition in the above entitled land registration case in the Court of First Instance of Pangasinan, praying that he be declared the owner of the two parcels of land described in the petition and given a certificate of title to them, and be placed in possession of said parcels of land. This petition was opposed by the appellee, Manuel Ernesto Gonzalez.

After considering the evidence presented by the parties, the trial judge found that Manuel Ernesto Gonzalez had the right to redeem his properties at the time when he did it; that he redeemed them within the time prescribed by law, and that the deed of conveyance executed by deputy sheriff Theo. R. Pasion in favor of Cipriano P. Primicias is null and void, and likewise the sale made by Cipriano P. Primicias to the petitioner Alejo Basco; and overruled the claim presented by Cipriano P. Primicias, and ordered the sheriff Arturo G. Maramba to deliver the sum of P2,240 to Cipriano P. Primicias, and declared Manuel Ernesto Gonzalez the owner of the two parcels of land in question.

The attorneys for the appellant make the following assignments of error:

"The lower court erred:

"I. In holding that 'Gonzalez no perdio su caracter de ejecutado y, como tal, tenia derecho de recomprar sus propiedades del Sr. Primicias, de acuerdo con las disposiciones del articulo 464 de la Ley No. 190.'

"II. In holding that the offer to redeem made by Manuel Ernesto Gonzalez to the provincial sheriff Maramba was legal and valid.

"III. In holding that the deed of final sale executed by deputy provincial sheriff Theo. R. Pasion in favor of Cipriano P. Primicias, as well as the sale executed by the latter in favor of Alejo Basco, are invalid and without legal effect.

"IV. In giving judgment for the oppositor and appellee and against the petitioner and appellant."

The facts of the case may be briefly stated as follows: In civil case No. 5515 of the Court of First Instance of Pangasinan (G. R. No. 32953)[1] Manuel Ernesto Gonzalez was ordered to pay Jose Feliciano the sum of P2,740. On January 15, 1931 a writ of execution was issued in said case directed to the provincial sheriff of Pangasinan. The provincial sheriff through his deputy, Theo. R. Pasion, levied on the two parcels of land now in question and sold them at public auction on February 12, 1931. They were bought by Cipriano P. Primicias for P2,000, and Theo. R. Pasion as deputy sheriff issued to him the corresponding certificate of sale.

In civil case No. 6201 of the Court of First Instance of Pangasinan, E. G. Turner obtained a judgment against

Manuel Ernesto Gonzalez, and on February 6, 1932, in pursuance of an order of execution and levy, any right, title or interest which Gonzalez still had in the two parcels of land in question was sold at public auction to Turner for P989.25.

On February 11, 1932, Manuel Ernesto Gonzalez applied to the provincial sheriff of Pangasinan, Arturo Maramba, for the redemption of the two parcels of land that had been sold to Primicias on February 12, 1931, for P2,000, and delivered to the provincial sheriff P2,240 to cover the purchase price and interest, and on the day following, the provincial sheriff executed the corresponding certificate of redemption in favor of Manuel Ernesto Gonzalez, and notified Cipriano P. Primicias of the redemption by the judgment debtor, and placed at the disposition of said Primicias the sum of P2,240. On February 13, 1932, Primicias refused to accept the said sum, and notified the provincial sheriff that he would take steps to have Theo. R. Pasion execute a deed of conveyance in his favor, and on the same day the said Theo. R. Pasion as ex-deputy provincial sheriff of Pangasinan executed a deed in favor of Cipriano P. Primicias.

On March 21, 1932, Primicias executed in favor of Alejo Basco, the appellant herein, a document which purports to be a sale of the two parcels of land in question for P10,000.

On June 11, 1932, Manuel Ernesto Gonzalez paid E. G. Turner the sum of P1,032.12, and Turner executed and delivered to Gonzalez the corresponding certificate of redemption.

The first and principal contention of the appellant is that Gonzalez had no right to redeem the property from Primicias without first redeeming from Turner. We cannot agree with this contention. The property was sold to Primicias, subject to the right of Gonzalez to redeem it within one year. The right of Gonzalez to redeem the property was not sold by him to Turner, as stated in appellant's brief, but was sold by the sheriff to Turner a few days before the expiration of the period of redemption. The interest of Gonzalez in the property was not extinguished thereby. It is our opinion that he still retained the right to redeem the property. Any redemption effected by him would naturally redound to the benefit of Turner, and Primicias, the purchaser at the first sale, had no right to interpose any objection on behalf of Turner to the redemption by the judgment debtor.

The further contention of the appellant that the redemption made by Gonzalez through the provincial sheriff is not valid, and that redemption could be made legally only through Primicias or the former deputy sheriff, Theo. R. Pasion, is untenable.

In the case of *Papa vs. Manalo* (29 Phil., 360, 364), this court held that although the purchaser at the auction is the only person who has a right to receive the price of the thing redeemed, the redemptioner may, however, deposit it in the hands of the sheriff for its delivery to such purchaser, especially in the case where the latter refuses to receive it, or when for any reason it may be feared that the period for redemption may lapse without its being shown in an authentic manner that the redemptioner has in due course of time complied with his duty to pay the price of the sale and interest thereon.

It appears that Theo. R. Pasion, the deputy sheriff who sold the property at public auction to Primicias, was no longer a deputy sheriff at the time of the redemption, and that he was residing in another province. The evidence further shows that Primicias, the purchaser of the property at public auction, was unwilling to allow Gonzalez, the judgment debtor, to redeem the property. Under these circumstances, we are of the opinion that the judgment debtor could legally redeem the property by depositing with the provincial sheriff a sum sufficient to cover the price at which the property was sold and the interest thereon at the rate of one per cent per month.

In the case of *Enage vs. Viuda e Hijos de F. Escaño* (38 Phil., 657), we held that it is the duty of the sheriff to accept the payment and to issue the certificate of redemption, when the purchaser refuses to permit redemption.

It is provided in sections 465 and 466 of the Code of Civil Procedure that written notice of any redemption must be given to the officer who made the sale, and that the payments mentioned in said sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale. We take that to mean the provincial sheriff to whom the order of execution was directed, or his successor, if he is no longer in office when the property is redeemed, and not the individual deputy sheriff that conducted the sale. To require notice of redemption to be given to the officer who made the sale would in many cases be unreasonable, if such sheriff or deputy sheriff is no longer in office. He may have died or moved away. Although the deputy sheriff, who made the sale, is still in office at the time of redemption, we see no valid reason nevertheless why redemption can not be effected through the provincial sheriff then in office. He is the responsible officer. The deputies are subject to his orders, and may be absent from the sheriff's office when the judgment debtor desires to redeem his property. The provincial sheriff is responsible for the acts of his deputies, yet it is urged that he cannot lawfully do what one of his deputies may do.

Great stress is laid by appellant's attorneys upon section 472 of the Code of Civil Procedure, which provides that in case of the death of the officer making the sale, before the expiration of the period of redemption, the deed may be executed by his successor in office; and that in case the officer's term of office expires before the termination of the period of redemption, he may execute the deed at the expiration of such period notwithstanding he has ceased to remain in office, and such deed shall have the same validity as though he had continued in the office. We do not find it necessary at this time to construe this section, as we are not now dealing with an officer's deed of conveyance, but with a certificate of redemption; and since the property was redeemed according to law, as we have found, it naturally follows that the deed of conveyance executed by the former deputy sheriff in spite of the redemption is null and void.

The appellant prays finally that he be reimbursed in the sum of P10,000 in the event that the judgment appealed from be affirmed. This prayer is obviously without merit, in so far as Gonzalez is concerned. We are not here concerned with appellant's right of action against Primicias.

The motion of appellant's attorneys, praying that the attorney for the appellee be subjected to some disciplinary action because of the "improper, disrespectful, and insulting statements in his brief" is denied for lack of merit.

The decision appealed from is affirmed, with the costs against the appellant.

Street, Abad Santos, Butte, and Diaz, JJ., concur.

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[1]Gomez and Gonzalez vs. Feliciano, promulgated December 3, 1930, not reported.

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