

ENCARNACION GUTIERREZ, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF ROMBLON ET AL., RESPONDENTS.*G.R. No. 40016. October 14, 1933*

Ponente: STREET, J.

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This is an original petition filed in this court to obtain the writ of certiorari, to annul a sale upon execution issuing from the Court of First Instance of Romblon, directing the seizure of property belonging to the execution debtor, petitioner herein, Encarnacion Gutierrez, pursuant to a judgment obtained in that court in a criminal proceeding (No. 1993 of the Court of First Instance of Romblon), wherein the petitioner was prosecuted for arson by rash imprudence and sentenced to imprisonment for one month and one day, *arresto mayor*, with requirement that he pay indemnity to the heirs of one Perfecto Martinez. In addition to the Judge of the Court of First Instance of Romblon, the clerk and the sheriff, as well as Jose Olgado, who, it is alleged, has officiously acted as attorney for the supposed heirs of Perfecto Martinez, are named as respondents. The cause is now heard upon the petition and the answers of the respondents.

The petitioner, Encarnacion Gutierrez, was prosecuted and convicted in criminal case No. 1993 of the Court of First Instance of Romblon, wherein he was charged with arson by rash imprudence. In this case he was sentenced to imprisonment for one month and one day and required to indemnify the heirs of Perfecto Martinez, deceased, in the amount of P500. The petitioner acquiesced in the decision, served the period of imprisonment, and on December 21, 1931, an execution was issued from the Court of First Instance of the Province of Romblon, directing the sheriff to make the sum of P500, with interest at 6 per centum per annum, together with costs, out of the property of the petitioner, for the indemnization awarded by the court to the heirs of Perfecto Martinez as aforesaid. Pursuant to this execution the sheriff levied upon and sold a parcel of coconut land, belonging to the petitioner. At this sale on December 29, 1932, Asuncion Roco, widow of Perfecto Martinez, purchased the property in representation of herself and the children begotten with her by Martinez.

In the view we take of the case the, foregoing facts are all that are necessary for a decision, although a number of collateral issues have been raised. Thus, it is alleged in the petition that the Court of First Instance, in criminal case No. 1993, did not in fact condemn the petitioner to indemnify the heirs of Perfecto Martinez in the amount of P500, and it is asserted that this provision was inserted in the decision by afterthought and that the petitioner knew nothing of it until many months after the judgment had become final and he had served the term of imprisonment imposed upon him. The record, however, clearly shows that judgment was entered from the first requiring the indemnization of the heirs in the amount stated, and we think that the recitals of the record should control.

The principal point which the petitioner intends to raise, and which he has raised by motion duly presented in the court of origin, as well as in his petition here, is that a judgment in favor of the "heirs" of a deceased person is a nullity, for failure to name the individuals who are intended to be the beneficiaries of the judgment, and that an execution running in favor of "heirs", pursuant to such judgment, must likewise be a nullity.

We are of the opinion that the question thus presented cannot be raised in this petition, for the reason that the execution against which the petition is directed has served its purpose, and it has become, in contemplation of law, functus officio. Any question as to whether the sale under such execution has passed a title to the purchaser should be raised in an ordinary action to try the property right, brought by the person who is out of possession, either the purchaser or the owner, as the case may be. A petition for certiorari is not maintainable to annul an execution which has already served its purpose, nor to annul a sale which has already been consummated under the circumstances above stated.

The petition will therefore be dismissed. So ordered, with costs against the petitioner.

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

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