

ANTONIO DE LA RIVA, PLAINTIFF AND APPELLANT, VS. AH KEE, JOSE BUCOY, PROVINCIAL SHERIFF OF ZAMBOANGA, AND THE PHILIPPINE NATIONAL BANK, DEFENDANTS AND APPELLANTS.

G. R. No. 40279. November 14, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case embraces three appeals taken, the first by the plaintiff, Antonio de la Riva, the second by the defendants Ah Kee and Jose Bucoy, and the third by the defendant Philippine National Bank, from the judgment rendered by the Court of First Instance of Zamboanga, the dispositive part of which reads as follows:

"In view of the foregoing, the court enters judgment ordering the defendant Philippine National Bank to pay to the plaintiff Antonio de la Riva the sum of P2,500, with the costs; likewise ordering the plaintiff Antonio de la Riva to deliver to the defendant Ah Kee or to the provincial sheriff of Zamboanga, the materials from the buildings and wharf which he had appropriated and used; but in case the plaintiff Antonio de la Riva delivers said materials to the sheriff or to Ah Kee, as ordered in this decision, the Philippine National Bank is also ordered to pay to the plaintiff the sum of P8,050 representing the total value, 'in the opinion of the court, of the property described in the last amended complaint, from which should be deducted the sum of P2,500, which is the value of the remaining part of the wharf, or P5,550. The plaintiff is ordered to pay the costs in favor of the cross-plaintiffs Ah Kee and Jose Bucoy. The latter defendant provincial sheriff of Zamboanga, Jose Bucoy, is absolved from the complaint. So ordered."

In support of their respective appeals, the appellants Antonio de la Riva, Ah Kee and Jose Bucoy, and the Philippine National Bank assign, the first four alleged errors; the two second, ten; and the third five, which will be discussed in the course of this decision.

The pertinent facts which are necessary for the resolution of the questions raised in these appeals and which have been proven without question at the trial, are as follows:

On October 26, 1928, the Panabutan Lumber & Plantation Co., Inc., executed an instrument whereby it constituted a chattel mortgage on certain personal and real properties in favor of the Philippine National Bank to secure payment of the sum of P120,000 (Exhibit N).

On February 15, 1930, judgment was rendered in civil case No. 1676 of the Court of First Instance of Zamboanga, entitled Ah Kee et al. vs. Panabutan Lumber & Plantation Co., Inc., in favor of the therein plaintiffs. On November 20, 1930, the first writ of execution of said judgment was issued (Exhibit 5-Ah Kee and Bucoy). By virtue of said writ, the then provincial sheriff of Zamboanga, Luis de la Vega, on December 24, 1930, attached certain properties of the-, Panabutan Lumber & Plantation Co., Inc., which are stated in Exhibit "5-Ah Kee and Bucoy" and which were not included in the mortgage in favor of the Philippine National Bank. Inasmuch as the plaintiffs in whose favor the execution was to be made could not deposit the estimated amount of the expenses and costs of execution, the sale of the attached properties could not be made and said sheriff had to return to

Zamboanga. The attached properties, together with those bought by the Philippine National Bank at the foreclosure sale of the chattel mortgage constituted in its favor by the Panabutan Lumber & Plantation Co., Inc., were delivered under receipt to E. A. Robertson (Exhibit 3-Ah Kee and Bucoy).

During the pendency of case No. 1683 entitled *Torrejon Jurika & Co., Inc., Ah Kee et al. vs. Panabutan Lumber & Plantation Co.*, the Philippine National Bank and Luis Panaguiton, as provincial sheriff of Zamboanga, wherein annulment of the chattel mortgage executed by the Panabutan Lumber & Plantation Co., in favor of the Philippine National Bank was sought and a writ of preliminary injunction which was later dissolved had been issued, said bank, with Ah Kee's opposition (Exhibit 2-Ah Kee and Bucoy), ordered said provincial sheriff to foreclose said mortgage and sell all the mortgaged properties at public auction, which said sheriff did on December 24, 1930, with said Philippine National Bank as the highest bidder (Exhibit 4-Ah Kee and Bucoy and Exhibit N). When on February 19, 1931, judgment was rendered in said civil case No. 1683 declaring said chattel mortgage null and void with respect to the real properties included therein, all the properties covered thereby had already been sold to the Philippine National Bank. All the properties of the Panabutan Lumber & Plantation Co., however, were not included in said mortgage. The defendant Philippine National Bank received a copy of said decision from its attorney at Zamboanga on February 28, 1931 (Exhibit 2-Philippine National Bank). On May 14, 1931, said bank received notice from its attorney that the decision in question had become final (Exhibit 5-Philippine National Bank).

Inasmuch as the properties, the inclusion of which in the chattel mortgage was declared null and void, were not specified in the decision of February 19, 1931, rendered in said civil case No. 1683, the court, on April 8, 1931, upon motion of Ah Kee, entered an order enumerating all the real properties excluded from the mortgage, but not all those included therein. This gave rise to Ah Kee's appeal from said order. The appeal, however, was not continued because the attorney for the Philippine National Bank had agreed to exclude all the houses and buildings of whatever kind or description from the mortgage constituted in favor of said bank (Exhibit 18-Ah Kee and Bucoy). The stipulation was approved by the court in an order dated July 8, 1931 (Exhibit 19-Ah Kee and Bucoy). Said attorney for the Philippine National Bank, was not authorized to make said stipulation (Exhibit 6-Philippine National Bank).

On December 4, 1931, the defendant-appellant Philippine National Bank sold to the plaintiff-appellant Antonio de la Riva (Exhibit A) all the properties acquired by it in the sale of December 24, 1930, resulting from the foreclosure of the chattel mortgage constituted by the Panabutan Lumber & Plantation Co.

On January 13, 1932, another writ of execution was issued in favor of Ah Kee in said civil case No. 1676 and the properties which were not included in the mortgage as well as those which were excluded therefrom in the order of April 8, 1931, and in the stipulation of July 8, 1931, were attached on February 22, 1932, by the then provincial sheriff Jose Bucoy. Serafin de la Riva, Antonio de la Riva's attorney in fact, was notified by deputy sheriff Jose G. Fernando of the second writ of execution issued in favor of Ah Kee and was required to surrender all the properties of the Panabutan Lumber & Plantation Co. in his possession which were not covered by the mortgage and which had been attached by the sheriff by virtue of the first writ of execution (Exhibits 21, 22 and 23-Ah Kee and Bucoy).

On March 2, 1932, plaintiff-appellant Antonio de la Riva filed a third party claim of better right to all the properties attached by virtue of the first and second writs of execution, alleging that he had bought them from the Philippine National Bank (Exhibit 28-Ah Kee and Bucoy). In view of this third party claim, the sheriff required Ah Kee, the plaintiff in case No. 1676 and defendant in this case, to file an indemnity bond in the sum of P40,000, which the latter was unable to do for lack of means, and the writ of attachment was dissolved (Exhibit 21-Ah Kee and Bucoy).

The first question to be decided in these appeals, which is raised by the defendant-appellant Philippine National Bank, is whether or not the order of the Court of First Instance of Zamboanga clarifying its decision of February 19, 1931, and specifying the real properties which should be excluded from the chattel mortgage under consideration is binding on said bank.

The dispositive part of the trial court's decision rendered in civil case No. 1683 thereof on February 19, 1931, reads as follows:

"The court, therefore, decides this case declaring that the mortgage in question is valid and effectual with respect to all the personal properties described therein. It is not so with respect to the real properties above stated." (Exhibit 16-Ah Kee and Jose Bucoy.)

The aforesaid explanatory order dated April 8, 1931 (Exhibit 17-Ah Kee and Jose Bucoy), explains the above stated dispositive part and enumerates and describes the real properties with respect to which said chattel mortgage was declared nugatory. Inasmuch as the real properties enumerated and described by the court in its said explanatory order did not include all the properties covered by said chattel mortgage and said court denied the motion for reconsideration filed by the therein plaintiff and herein defendant-appellant Ah Kee, the latter announced his intention to appeal from said order. The appeal was not continued, however, because the attorneys for the respective parties made a stipulation (Exhibit 18-Ah Kee and Jose Bucoy) relative to the real properties which should be excluded from the chattel mortgage, which stipulation dated July 8, 1930, was approved by said court on said date (Exhibit 19-Ah Kee and Jose Bucoy). It appears positively that the attorney who represented the Philippine National Bank was not duly authorized by his client to make a compromise regarding the exclusion of the real properties from the chattel mortgage. In view of the provision of section 27 of Act No. 190, said compromise was not binding on the bank in question. However, the defendant-appellant Philippine National Bank, on February 28, 1931, received from its attorney notice of said decision of February 19, 1931, declaring said chattel mortgage nugatory with respect to the real properties, which decision was binding on said bank. Consequently, if on February 28, 1931, the defendant-appellant Philippine National Bank already knew that the chattel mortgage constituted in its favor had been declared null and void with respect to the real properties included therein, it cannot allege that when it sold the personal as well as the real properties included in said mortgage to the herein plaintiff-appellant Antonio de la Riva on December 4, 1931, it was ignorant of the exclusion therefrom of the real properties which it had purchased at public auction inasmuch as the annulment of said mortgage security with respect to the real properties produced the effect of excluding said real properties therefrom.

This court, therefore, is of the opinion that although the defendant-appellant Philippine National Bank was not bound by the compromise made by its attorney and those of the defendant-appellant Ah Kee, it was, however, bound by the decision of February 19, 1931, declaring the chattel mortgage nugatory with respect to the real properties.

The second question to be decided refers to the amount of the indemnity which the defendant-appellant Philippine National Bank should pay to the plaintiff-appellant Antonio de la Riva for the real properties sold to him and of which he could not take possession.

The vendor is bound to deliver and warrant the thing which is the subject matter of the sale (article 1461, Civil Code); and shall be responsible to the vendee for the legal and peaceful possession of the thing sold and for any hidden faults or defects therein (article 1474, Civil Code) in case the vendee, by a final judgment based upon a right prior to the sale, is deprived of the whole or of any part of the thing purchased (article 1475, Civil Code), the warranty consisting in the restitution of the value which the thing sold had at the time of the eviction, whether it be greater or less than the price for which it was sold (article 1478, Civil Code). The declaration of nullity of the

chattel mortgage in question, with respect to the real properties included therein, is equivalent to a final judgment that the vendor thereof, Philippine National Bank, had no right to sell them and the purchaser, Antonio de la Riva, acquired no right to the ownership by virtue of the sale and can, therefore, be dispossessed thereof, which is equivalent to eviction. Consequently, the vendor, Philippine National Bank, is bound to warrant the real properties sold by restoring to the purchaser Antonio de la Riva the value thereof at the time of the eviction.

The evidence is extremely conflicting as regards the value of the real properties which were excluded from the chattel mortgage, but the court a quo which tried the case and heard the testimony of the witnesses, after considering the weight and evidentiary force of all the evidence arrived at the conclusion that the value thereof then amounted to P11,000. This court accepts this conclusion of fact arrived at by the court a quo as it has not found anything of record to justify an alteration. Therefore, the defendant Philippine National Bank, as vendor, is bound to indemnify the plaintiff-appellant Antonio de la Riva for said value of the real properties in question, which was the value thereof at the time of the eviction.

However, part of said real properties excluded from the chattel mortgage, valued at ₱8,500, was sold or otherwise disposed of by the purchaser Antonio de la Riva and the other part thereof valued at P2,500 was abandoned by him at the disposal of whomsoever believed himself entitled to its possession. As the purchaser, Antonio de la Riva, had not used the real properties valued at P2,500 which were excluded from the chattel mortgage and sold to him by the Philippine National Bank, the latter is bound to indemnify him for the value thereof at the time of the eviction.

Inasmuch as the real properties sold or otherwise disposed of by Antonio de la Riva, the value of which was assessed by the court at P8,500, had been excluded from the chattel mortgage, they continued to belong to said Panabutan Lumber & Plantation Co. at the time said Antonio de la Riva sold or otherwise disposed of them. However, as said lumber company is not a party to this suit, this court cannot make any pronouncement on this matter.

The third question to be decided in this appeal is whether or not the defendant-appellant Ah Kee is entitled to the real properties belonging to the Panabutan Lumber & Plantation Co., which were excluded from the chattel mortgage.

As was seen from the above statement of facts, the defendant-appellant, Ah Kee, obtained judgment in his favor in civil case No. 1676 against the Panabutan Lumber & Plantation Co. A writ of execution was issued against said Panabutan Lumber & Plantation Co. and its real properties which were excluded from the chattel mortgage and those which were not included therein were attached. This writ of execution could not be proceeded with, however, as it had to be dissolved because Ah Kee, as attachment-creditor, could not deposit the expenses for the execution and had consequently lost his right to retain them. Another writ of execution was later issued and the same properties were attached by virtue of said judgment in favor of Ah Kee but the plaintiff-appellant Antonio de la Riva filed a third party claim of better right by virtue of the sale of said properties to him by the defendant-appellant Philippine National Bank. Inasmuch as Ah Kee, upon being required by the sheriff to file the necessary bond for his protection, failed to do so, the latter was compelled to dissolve the writ of attachment. For the second time, therefore, the defendant-appellant Ah Kee lost his right of retention over said properties.

Therefore, if Ah Kee has acquired no right to said properties, the cross-complaint filed by him lacks merit.

For the foregoing considerations, this court is of the opinion and so holds: (1) That a mortgage creditor, who purchases real properties at an extrajudicial foreclosure sale thereof by virtue of a chattel mortgage constituted in his favor, which mortgage has been declared null and void with respect to said properties, acquires no right thereto by virtue of said purchase; and (2) neither does the subsequent purchaser of said properties acquire any

right to the real properties which were excluded from the chattel mortgage, and upon being evicted therefrom by virtue of a judgment declaring that the vendor had no right to the properties which had been excluded from the chattel mortgage constituted in the latter's favor and which said vendor purchased in the foreclosure sale thereof, said subsequent purchaser is entitled to be indemnified for the value thereof at the time of the eviction.

Wherefore, the appealed judgment is modified and the defendant-appellant Philippine National Bank is ordered to pay to the plaintiff-appellant Antonio de la Riva the sum of P2,500, plus legal interest thereon from the date of the filing of the complaint until fully paid, with the costs against the defendant-appellant Philippine National Bank.

The plaintiff-appellant, Antonio de la Riva, is absolved from the cross-complaint of the defendant-appellant Ah Kee, without special pronouncement as to costs.

The defendant-appellant Jose Bucoy, provincial sheriff of Zamboanga, is likewise absolved from the complaint, with costs against the plaintiff-appellant Antonio de la Riva. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

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