

ROMAN DE LA ROSA, PLAINTIFF AND APPELLEE, VS. GREGORIO REVITA SANTOS, DEFENDANT AND APPELLANT.*G.R. No. 4043. February 17, 1908*

Ponente: MAPA, J.

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The defendant herein was the owner of property consisting of seven tenement houses in Calle P. Herrera, district of Tondo, Manila. Under a writ of execution the said tenement houses were sold by the sheriff of Manila on the 5th day of February, 1906, and were bought by and adjudicated to the plaintiff, as the highest bidder, for the sum of P100. At the time, the property was in the possession of the defendant, who occupied one of the tenement houses. After the sale, the plaintiff requested the defendant to vacate the property within the term of thirty days, or, in case he desired to continue occupying the same, to pay him a gross rental of P175 per month, at the rate of P25 for each apartment. The defendant, however, continued to occupy the building without paying any rent to the plaintiff, and in consequence thereof the latter, on the 17th of July, 1906, filed a complaint asking the court to put him in possession of the tenement houses, and that the defendant be required to pay the rent already accrued and to accrue, at the rate above mentioned, until the close of this action.

The judge in deciding the case ordered that the defendant should pay the sum of P540 as rent due, at the rate of P90 a month. To this ruling the defendant excepted. Nothing is provided for in the decision with regard to the surrender of the possession demanded in the complaint, but as the plaintiff has not objected we are not obliged to dwell upon this question.

Where real estate is sold by virtue of a writ of execution, the judgment debtor is entitled to redeem within the period of one year from the date of the sale. (Sec. 465, Code of Civil Procedure.) During the period allowed for redemption, the purchaser is entitled to recover rent from the tenants in accordance with section 469, which provides as follows:

"The purchaser, from the time of the sale until a redemption, * * * is entitled to receive, from the tenant in possession, the rents of the property sold or the value of the use and occupation thereof."

As may be seen, the provision of the law in cases where the property sold is occupied by tenants in express and positive; in such cases the purchaser is entitled to recover rent from them until a redemption takes place. Would the same thing happen if the occupant of the property, at the time of its sale, is the judgment debtor himself, as in the present case? The law makes no provision on this point, and from its silence we infer that the purchaser can not recover any rent during the time which the judgment debtor continues to occupy the property within the period allowed for redemption. Otherwise, if it were the intent of the legislator that the judgment debtor should pay rent for his occupation of the property, it would have been so stated in the law, as has been done with respect to tenants. From the fact that express mention is made of the latter alone, and not of the judgment debtor, as being under obligation to pay rent to the purchaser, the law clearly shows that this obligation is not imposed upon the judgment debtor. We consider that the rule of law that *inclusio unius est exclusio alterius* is strictly applicable

herein, in view of the fact that section 4G9, cited above, is exclusively and solely devoted to the establishment and definition of the right of the purchaser to recover rent during the term fixed for redemption.

It certainly does not seem logical to consider that the judgment debtor is obliged to pay rent to the purchaser, if we take into account the provisions of said section 469 with regard to the application to be given to such rents as the purchaser may receive during the redemption period. According to this section, the amounts of such rents shall be considered as a credit to be applied on account of the redemption money to be paid. Accordingly, the same section expressly grants to the judgment debtor the right to compel the purchaser to render him an account of the rents and profits received from the property sold before the same is redeemed. Hence, as a matter of fact, rents are received by the purchaser for the benefit of the judgment debtor himself, and this being the case, nothing practical would result from compelling him to pay such rent because, looking at the question from one point of view, it would come to the same thing as if he paid them to him self, because, at all events, they would be applied on account of the redemption. The judgment, so far as it requires the defendant to pay rent to the plaintiff, should be reversed.

The defendant asked as a cross complaint that the plaintiff be compelled to accept the price which he states he had offered for the redemption of the property sold. No mention of this matter is made in the judgment, and this omission by the court is alleged as error by the defendant.

With regard to this point, the plaintiff in his brief states the following:

"It appears from the same record that, at the time when the trial was being held, the right of redemption had been exercised by Mr. Wolfson, successor to the same defendant, Revita Santos; therefore, such a judicial declaration became unnecessary, inasmuch as said right had already been transferred, and did not exist as one of the rights of the defendant."

The record sustains the allegations of the plaintiff, therefore it is absolutely unnecessary to decide the question set up by the defendant in his cross complaint.

The judgment appealed from is hereby reversed, and the defendant absolved. As to the demand of the latter in his cross complaint, the same is also dismissed. No special ruling is made as to the costs in either instance. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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