

JUAN BRUSAS, PLAINTIFF AND APPELLEE, VS. EUTQUIO INFANTE, DEFENDANT AND APPELLANT.*G.R. No. 4114. March 20, 1909*

Ponente: TORRES, J.

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On the 15th of March, 1906, Juan Brusas filed a complaint with the Court of First Instance of Ambos Camarines, alleging that by virtue of a writ of execution issued by the justice of the peace of the town of Buhi, in said province, the deputy sheriff on August 18, 1903, levied upon two hemp fields owned by him, both situated in the sitio of Cambasan, in said municipality, each 400 brazas in circumference, the respective boundaries of which are described in the complaint; that on the 16th of November of said year, the deputy sheriff sold the said properties at public auction for the sum of 240 pesos to the sole bidder, Juan Garcia Vega, who, on the 24th of the same month assigned all his rights and title to said lands for the same sum to Sinforoso Dondis, and the latter in turn transferred them for an equal amount to Eutiquio Infante, the defendant herein; that on or about the 12th of June of the following year, 1904, or about seven months more or less afterwards, the plaintiff, availing himself of his right of redemption under the law, informed the deputy sheriff that he desired to redeem the said properties; that the sheriff thereupon wrote to the defendant to admit the redemption, and for this purpose the plaintiff, carrying with him the letter, called at the house of the defendant and offered to pay him the redemption money with legal interest thereon and the expenses incurred in the attachment proceedings, but the defendant, without any valid reason therefor, refused to admit the redemption, and unlawfully retained the lands against the will and to the prejudice of the plaintiff; that the latter for said reason has suffered damages and losses of the fruits which he has not received to the extent of P900, value of 450 arrobas of hemp unlawfully harvested by the defendant. Therefore, the plaintiff prayed that judgment be entered against the defendant, compelling him to admit the redemption of the said properties, and to pay the said amount to the plaintiff, deducting therefrom the sum of 240 pesos, Mexican currency, as redemption money, the interest for seven months from the 16th of November, 1903, to June 12, 1904, and the expenses occasioned by the attachment proceedings, and costs.

After excepting to the action of the court in overruling his demurrer, the defendant answered the foregoing complaint and denied each and all of the allegations therein contained, with the exception of those he expressly admitted in his answer. He admits paragraph 1 of the complaint, but states that the boundaries of the properties in litigation are not such as are described in the complaint, but those stated in the answer. He also admitted paragraphs 2 and 3. As a special defense he alleged that although it is true that on the 13th of June, 1904, the plaintiff called at the house of the defendant in Buhi, carrying with him money wrapped up in a piece of cloth for the purpose, as he said, of redeeming the properties in question, the redemption was not accomplished because the plaintiff did not have with him the documents required by law, and primarily because the plaintiff's wife, who shortly thereafter arrived at his house, forcibly took from her husband the packet of money, and, carrying it with her, left in anger. Her husband was unable to give a satisfactory explanation of her conduct; he therefore took his leave and did not return; that in November, 1904, the period of one year allowed by law for the redemption of property, expired, and for this reason alone the defendant considered that his title to the property purchased by

him had become vested, and that since January, 1905, he had made improvements thereon which cost him 9250; for these reasons he prayed that judgment be entered in his favor and against the plaintiff with costs.

After hearing the evidence of both parties, the lower court, on the 22d of January, 1907, rendered judgment against the defendant, ordering him to return the land in question to the plaintiff, and to pay the latter the sum of P370.50, less 250 pesos, Mexican currency, or the equivalent thereof in Philippine currency, with interest thereon and costs. Counsel for the defendant excepted to the above judgment and gave notice of his intention to present a bill of exceptions for the purpose of appealing therefrom. The bill of exceptions was filed and approved by the court below, and forwarded to the clerk of this court.

The question herein is one of right of redemption by reason of the execution of a final judgment as provided by section 464 of the Code of Civil Procedure; therefore, the controversy between the parties must be adjudicated under the provisions of the said code. The provisions of the Civil Code, article 1507 et seq., relating to conventional redemption, are not applicable to the present case.

On this supposition, and in view of the fact that the appellant did not move for the reopening of the case and because the evidence adduced in the first instance has not been submitted with the bill of exceptions, this court can not examine or review the same and will limit itself to deciding the questions of law raised by the appellant, accepting the facts such as they appear to have been admitted in the judgment appealed from.

The plaintiff, Juan Brusas, was the defendant against whom an execution was levied by virtue of a judgment rendered against him on the 18th of August, 1903, by the justice of the peace of Buhi. By reason of the said judgment two parcels of land owned by him were levied upon and sold at public auction on the 16th of November of said year to the highest bidder, Juan Garcia Vega, for the sum of 240 pesos. The latter on the 24th of said month, sold all of his rights, title and interest in the said two parcels of land to Sinforoso Dondis, for the same amount of 240 pesos, Mexican currency, and Dondis, in turn, sold all of his rights, title and interest in the said two parcels of land to Eutiquio Infante, the defendant herein, on May 21, 1904. When, therefore, about the 12th of June, 1904, Juan Brusas offered to redeem the two parcels of land from the last purchaser, Eutiquio Infante, and, in the latter's own house, tendered the sum of P287 with a letter from the sheriff informing him that the redemption which Brusas desired and proposed was in accordance with the law, he exercised a perfect right within the twelve months fixed by the law, and the defendant Infante could not refuse the redemption, or decline to receive the money that Brusas, in compliance with the law, tendered him for that purpose. These facts were considered by the trial judge as fully proven, and this court can not do otherwise than accept them, especially as the judgment can not be reviewed, and, moreover, they have not been questioned, and nothing has been proved to the contrary.

Section 464 of the Code of Civil Procedure in determining with whom lays the right of redemption enumerates:

- The judgment debtor, or his successors in interest in the whole or in any part of the property;
- A creditor having a lien by attachment, judgment, or mortgage on the property sold, or on some part thereof, subsequent to that on which the property was sold. Such a creditor is termed a redemptioner.

The defendant in his answer to the complaint alleged as special defense, that, although it is true that the plaintiff, Brusas, called at his house on the 13th of June, 1904, and for the purpose of redeeming the two parcels of land in question proffered a certain amount of money which he carried with him wrapped in a piece of cloth, the said plaintiff did not have with him, nor did he present, the documents required by law. Later on, in his brief filed in the second instance, the defendant added that the plaintiff had not deposited in court the value of the redemption, and that, therefore, he had not complied with the provisions of section 467 of the Civil Code. [Code of Civil

Procedure.]

In order to demonstrate how utterly the allegation of the appellant lacks foundation, it is sufficient to refer him to the language of said section 464 of the Code of Civil Procedure wherein, as already stated, two classes of persons are enumerated as entitled to exercise the right of redemption, and they are: The judgment debtor and his successors in interest, and the creditor having a lien, and who, according to law, is termed the redemptioner.

The judgment debtor is entitled to redeem the property sold without further requisites than those of paying the amount paid by the purchaser and complying with the other provisions of section 465 within the twelve months fixed therein. It is not necessary for him to present a copy of the judgment and other documents required of the redemptioner because the right of redemption inhering in him as such judgment debtor appears in the proceedings and the documents held by the purchaser in possession, since the former was the original owner thereof and was dispossessed of it by virtue of the attachment and judgment. None of the provisions of sections 465 and 466 of the Code of Civil Procedure require that the judgment debtor shall present any document to prove his status as such judgment debtor entitled to redeem, nor to deposit the price thereof.

Section 467 requiring the redemptioner, that is, the second of the creditors mentioned as entitled to redeem under section 464 of the Code of Procedure, to produce the documents therein stated, refers as may be seen from the language of the aforesaid section 467, not to the judgment debtor, but to the redeeming creditor. The object of this provision is to prove and convince the purchaser, who is in possession of the property sold by the court, that the said creditor is entitled to redeem the same.

If it were proven that the defendant, without good reason, refused to admit the redemption of the said two parcels of land, and to accept the amount tendered therefor by the judgment debtor, the plaintiff herein, he must of course be considered as possessing them in bad faith since the 12th of June, 1904, as appears in the judgment appealed from, and the other data in the case.

For the above considerations and accepting those contained in the judgment appealed from, it is our opinion that the same should be affirmed, and we hereby affirm it with the costs against the appellant, provided, however, that the rate of interest shall be as fixed by section 465 of the Code of Procedure. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Willard, JJ., concur.

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