

MACONDRAY & CO., INC., PLAINTIFF AND APPELLANT, VS. PEDRO COLETO, DEFENDANT AND APPELLEE. ISABEL COLETO DE ORTIZ, INTERVENOR, MACONDRAY & CO., INC., ET AL., CROSS-DEFENDANTS.

G. R. No. 41223. December 19, 1934

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The plaintiff prays that it be declared the owner of the properties described in paragraph 2 of its complaint and, alleging that the defendant is illegally in possession thereof, also prays that the latter be ordered evicted therefrom and to pay the sum of P5,000 as damages.

On September 19, 1927, the defendant constituted a mortgage on a Chrysler car in favor of the plaintiff to secure the payment of several promissory notes amounting to P2,600 which represent the balance on said mortgaged car purchased from the plaintiff. As some of these promissory notes had not been paid, the plaintiff foreclosed the mortgage and in this manner the car was attached and sold at public auction to said plaintiff for P1,000. Inasmuch as the defendant later failed to pay the balance of the indebtedness not covered by the proceeds of the sale of the car, the plaintiff, on September 10, 1928, brought an action in the Court of First Instance of Cebu (civil case No. 7363) for the recovery of said balance. The defendant was ordered to pay the sum of P1,800 with interest thereon at 12 per cent from May 3, 1928, until fully paid, plus P180.80 as attorney's fees and collection expenses. On September 2, 1928, a writ of execution of said judgment was issued to the provincial sheriff of Surigao. As the defendant Pedro Coletto was then the provincial sheriff of Surigao, the Court of First Instance of Cebu appointed Mamerto Labita special sheriff to proceed with the execution.

In compliance with this writ of execution, Labita attached the real properties in question as the defendant's properties and sold them to the plaintiff, as the highest bidder, at public auction in Cebu.

Two questions are raised in this case one of which is the nullity of this sale made by sheriff Labita.

One of the grounds alleged in support of the nullity of the sale is the fact that it was made in Cebu, the properties sold being situated in the Province of Surigao. This court is of the opinion that this irregularity is sufficient to render the sale null and void.

"SALE IN ANOTHER COUNTY OR JUDICIAL DISTRICT.— Except where otherwise provided by statute, the sale of real property must be had in the county where it is situated, and this applies to sales by a United States marshal. It is well settled that a sale in one county or judicial district, of property located in another county or district, is at least voidable, and in many cases it has been held to be absolutely void, and open to collateral attack. If land is located in two counties or districts, the sale is valid as to the part within the county or district where it is sold but is void as to the remainder. Where a new county has been created but has not been organized, a sale of land in the new county may be made in the mother county." (23 Corpus Juris, page 631.)

In this jurisdiction the law is silent as to the place where the sale of the properties attached by virtue of a writ of execution should be had. However, the fact that the sale thereof in another province is not expressly authorized by law is sufficient to make the above cited doctrine applicable. But it may be stated as an inference that these sales must be had in the province where the properties are situated. Said sales must be made by the sheriff. The sheriff is appointed for each province which defines his territorial jurisdiction. It is clear that the sheriff of a certain province cannot act as such in another province. Therefore, it seems clear that the sale of real property must be had in the same province where it is situated for it must be made by the sheriff appointed for said province. In this case, Labita acted as sheriff of the Province of Surigao in lieu of the latter who could not act as such, being the execution debtor. In the same manner that the sheriff of Surigao cannot sell in Cebu properties located in the Province of Surigao, Labita, acting in lieu of the sheriff of Surigao, could not sell the properties in question in Cebu.

In addition to this, the reason for requiring that the sale of real properties by virtue of a writ of execution must be had in the same province where they are situated, is clear. The purpose of the requirement that these sales be made at public auction is to obtain the best price. When said sales are made in another province, more particularly when, as in this case, they take place in a distant island, this purpose is defeated. The higher or lower price obtained depends upon the greater or less demand therefor as a result of greater or less interest in acquiring the properties. It is obvious that in Cebu there can be no greater interest in acquiring real properties located in Surigao than in Surigao. On the other hand, those in Surigao who might have been interested in acquiring these properties, would have to make a trip to Cebu and this might have dissuaded them from bidding at the sale.

Although, as indicated, the foregoing is sufficient to render the sale of the properties in question to the plaintiff null and void, there is furthermore another irregularity in the procedure followed by Labita which may produce the same effect. Copies of the notice of sale have not been posted anywhere in the municipality of Surigao. An attempt was made to prove that copies of this notice were sent to the municipal president of Surigao for posting at public places within said municipality. However, even granting that this is true, it is a fact that this notice has not been posted anywhere in Surigao as required by law.

Due to these irregularities the properties in question valued at P25,000, more or less, were sold to the plaintiff for only P2,300, for lack of another higher bidder. This great difference between the value of the properties and the price obtained! at the sale constitutes an injustice to the defendant, which the law is precisely trying to avoid by prescribing the procedure to be followed in sales by virtue of a writ of execution of a judgment.

The other question raised in this case is that the properties sold to the plaintiff and described in its complaint belonged not exclusively to the defendant Pedro Coletto but also to the intestate estate of his deceased wife Pancracia Parrucho, pro indiviso. In this sense it is claimed that the sale is also null and void as to one-half of the properties sold. This claim is founded. The properties belong to the conjugal partnership of the, spouses Pedro Coletto and Pancracia Parrucho. Both spouses begot children during their marriage. Pedro Coletto's indebtedness to the plaintiff, for the payment of which the proDerties were sold, was contracted after the death of his wife Pancracia Parrucho whose intestate proceedings have been instituted and are pending, and whose estate is intervenor in this case. Pancracia Parrucho's death dissolved the conjugal partnership and thenceforth the personal indebtedness contracted by Pedro Coletto should not be imputed to it.

The appealed judgment declares the auction sale of the properties in question by Mamerto Labita null and void and declares furthermore that said properties belong pro indiviso to the defendant Pedro Coletto and the intestate estate of his deceased wife Pancratia Parrucho.

For the foregoing considerations, the judgment appealed from is affirmed, with costs against the appellant So

ordered.

Street, Abad Santos, Hull, and Vickern, JJ., concur.

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