

LEVY HERMANOS, INC., PLAINTIFF AND APPELLANT, VS. ILDEFONSO RAMIREZ AND JOSE CASIMIRO, THE LATTER IN HIS CAPACITY AS SHERIFF EX-OFFICIO OF THE CITY OF MANILA, DEFENDANTS AND APP...

G. R. No. 41284. November 28, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

This is an appeal from a decision of the Court of First Instance of Manila, which reads as follows:

"Visto el escrito presentado el 4 del actual por el abogado de la demandante, pidiendo que se dicte sentencia a base de los escritos de las alegaciones de las partes; se sobresee la demanda, sin costas, por los fundamentos expresados en la orden dictada el 26 de octubre ultimo, estimando el demurrer sobre el fundamento de que los hechos alegados en la demanda no constituyen causa de accion."

The pertinent facts of this case, as disclosed by the record, may be stated as follows:

On or about March 2, 1927, the plaintiff-appellant sold a Packard automobile to Gregorio Olegario, on the installment plan, for the sum of P4,489.85. The unpaid balance was secured by a chattel mortgage on the automobile which was duly registered in the office of the register of deeds of the City of Manila. Thereafter the defendant-appellee secured a judgment against Gregorio Olegario, the mortgagor, and one Catalina Ramirez in civil case No. 93156 of the municipal court of the City of Manila and obtained a writ of execution which was turned over to the sheriff of the City of Manila with instructions to levy upon the Packard car which was mortgaged to the plaintiff. The sheriff seized the automobile and advertised it for sale at public auction. At that time Olegario still owed the plaintiff around P1,000. The plaintiff immediately filed, under oath, with the defendant sheriff a third party claim. The defendant-appellee Ramirez then filed an indemnity bond in favor of the defendant sheriff and on April 22, 1933, the Packard automobile was sold at public auction to a third party and the proceeds of the sale were turned over to the defendant. Whereupon the plaintiff brought this suit and after alleging in substance the above facts prayed that the defendants be sentenced jointly and severally to pay it P382.68 with interest at 10 per cent per annum from May 25, 1933, and P613.93 with legal interest from the date of filing the herein complaint.

The defendants-appellees demurred to the complaint alleging (1) that the complaint does not state facts sufficient to constitute a cause of action and (2) that there is a defect of parties. The trial court in sustaining the demurrer held that the facts alleged in the complaint did not constitute a cause of action and granted the plaintiff five days within which to file an amended complaint if it so desired. The plaintiff excepted to this ruling and moved for a reconsideration of the order sustaining the demurrer. After a denial of this motion the plaintiff excepted and prayed that a decision be rendered upon the pleadings. This prayer was granted and the trial court rendered the decision quoted above.

The plaintiff-appellant contends that the trial court erred (1) in not finding that the equity of the mortgagor in a

mortgaged chattel is not subject to execution and that the mortgagor has no attachable interest therein; (2) in finding that plaintiff's action does not lie against the defendants herein and in holding that the action should have been brought against the mortgagor and the purchaser at the sheriff's sale and (3) in denying plaintiff's motion for reconsideration of the court's order sustaining defendants' demurrer and in dismissing plaintiff's complaint on its merits.

The question raised by these assignments of error is whether or not the mortgagor's interest in a mortgaged chattel is subject to execution.

This court has held that since a chattel mortgage is a conditional sale (section 3, Act No. 1508) and that the ownership of the chattels mortgaged passes to the mortgagee (*Meyers vs. Thein*, 15 Phil., 303), the only thing that can be attached under an execution against the mortgagor is his right to redeem the mortgaged chattels. (*Manila Mercantile Co. vs. Flores*, 50 Phil., 759, 763.)

Under this doctrine and the provisions of section 461 of the Code of Civil Procedure the purchaser at public auction of the Packard automobile in question acquired no more than Gregorio Olegario's right of redemption, provided for in section 13 of Act No. 1508.

Furthermore section 450 of the Code of Civil Procedure provides:

"SEC. 450. Property liable to execution.—All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interest in any corporation or company, and debts, credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property, not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment."

It will be noted that this section expressly authorizes the sale upon execution of "any interest * * * of the judgment debtor." This section has been construed by this court as follows:

"* * * This statute authorizes the sale under execution of every kind of property, and every interest in property which is, or may be, the subject of private ownership and transfer. It deals with equitable rights and interests as it deals with legal, without anywhere expressly recognizing or making any distinction between them." (*Reyes vs. Grey*, 21 Phil., 73, 75.)

It is evident that, under the provisions of this section of the Code of Civil Procedure, as construed by this court, Gregorio Olegario had an attachable interest in the Packard automobile which he had sold conditionally to the herein plaintiff under Act No. 1508 (Chattel Mortgage Law). That interest was his right to redeem the automobile by paying the balance due the herein plaintiff under the chattel mortgage (conditional sale, sec. 3, Act No. 1508). It therefore follows that the attachment and sale, under a writ of execution in case No. 93156 of the municipal court of Manila, of Olegario's interest in said automobile was legal and as Olegario had a right to its possession the delivery of the automobile to the purchaser was also legal.

The Court of Appeals of New York, in the case of *Hull vs. Carnley* ([1854], 11 N. Y., 501, 505), says:

"* * * the sheriff had a right to sell the interest of the mortgagor, and to deliver the property to the purchaser, and the purchaser was warranted in taking it into his possession, and in using it for the purposes to which it was adapted, until the day of payment; and he had, moreover, a right to pay the mortgage-debt, and thus extinguish the lien. Now, whether the sheriff assumed to sell the whole interest, ignoring the existence of the mortgage, or limited the sale to the mortgagor's interest, expressly recognizing the mortgage, and selling subject to it, the rights of the purchaser and of the mortgagee, would, in either case, be precisely the same. The mortgagee would not be deprived of his interest, by a sale, which did not recognize the mortgage, nor would

the purchaser, under such a sale, acquire anything more than the interest which was bound by the execution, to wit, the right of the mortgagor to the possession, and the equity of redemption; and these would be the respective rights of the parties, if the sale was limited, in terms, to the interest which could effectually be sold, that is, the title of the mortgagor. The effect of the sale, on execution against the mortgagor, would be the same as a voluntary transfer of the mortgaged articles, by the mortgagor, to a third person. Such a disposition of them would not oust the mortgagee, whether his interest was repudiated or was recognized. Such sales, whether judicial or private, pass such title as the vendor, or party against whom the authority to sell exists, had to part with, and no other. The mortgagee, it is true, may be in a worse position, in some respects, by the property passing into other hands, for he must keep sight of it, so as to be able to find and take possession of it, when his title shall become absolute, by a default in payment. But he is not legally prejudiced, for the mortgagor may, when not restrained by the terms of the mortgage, remove it from place to place, at his pleasure; he has the same right to do so, which a purchaser on execution against him has. I do not, therefore, see any reason why such a sale as was made in this case, should be considered a conversion of the property, or a disturbance of the mortgagee's title. That title was not divested or interfered with, and there was no disposition of the corpus of the property, which was not authorized by law. When the mortgagee's title became absolute, he could claim his goods in the hands of the purchaser, or maintain an action, if they should be withheld from him. * * *

The appellant's assignments of error must be and are hereby overruled. The judgment of the trial court is affirmed with costs in this instance against the plaintiff-appellant.

Malcolm, Villa-Real, and Butte, JJ., concur.

IMPERIAL, J., concurring in the result:

The majority opinion reaffirms the doctrine laid down by this court in *Meyers vs. Thein* (15 Phil., 303) and *Bachrach vs. Mantel* (25 Phil., 410), to the effect that, according to the definition given in section 3 of Act No. 1508, a chattel mortgage is almost equivalent to the contract of sale with pacto de retro as defined by the Civil Code, which cases were cited with approval in the more recent case of *Manila Trading & Supply Co. vs. Tamaraw Plantation Co.* (47 Phil., 513 et seq.) In reaffirming said ruling the majority opinion had undoubtedly in mind that in *Manila Trading & Supply Company* case as well as in the case of *Bank of the Philippine Islands vs. Olutanga Lumber Co.* (47 Phil., 20 et seq.), the main question at issue and affirmatively decided therein, was whether or not a mortgagee of a chattel can bring an action against the mortgagor for deficiency of the foreclosure judgment, after the chattel shall have been sold and the price obtained proved insufficient; and that what in effect was settled in the case of *Bachrach Motor Co. vs. Summers* (42 Phil., 3 et seq.), was that, according to the Chattel Mortgage Law, when the mortgagor refuses to deliver the chattel, the mortgagee must commence an independent action for the purpose of securing actual possession so that it may be sold as provided in section 14 of said law. In that case this court said that "a chattel mortgage is a contract which purports to be, and in form is, a sale of personal property, intended as security for the payment of a debt, or the performance of some other obligation specified therein, upon the condition subsequent that such sale shall be void upon payment of the debt or performance of the specified obligation according to the terms of the contract," which in no way contradicts the former ruling that "under the Chattel Mortgage Law the mortgagee becomes the owner of the property in the sense that he has the legal title, the mortgagor having the right of possession, to have the beneficial use, and to defeat the title of the mortgagee by compliance with the terms of the mortgage. In a sense, the mortgagee is the legal, the mortgagor the equitable owner."

On page 4 (982) of the majority opinion the following is said:

"It is evident that, under the provisions of this section of the Code of Civil Procedure, as construed by this court, Gregorio Olegario had an attachable interest in the Packard automobile which he had sold conditionally

to the herein plaintiff under Act No. 1508 (Chattel Mortgage Law). That interest was his right to redeem the automobile by paying the balance due the herein plaintiff under the chattel mortgage (conditional sale, sec. 3, Act No. 1508). It therefore follows that the attachment and sale, under a writ of execution in case No. 93156 of the municipal court of Manila, of Olegario's interest in said automobile was legal and as Olegario had a right to its possession the delivery of the automobile to the purchaser was also legal."

If the only attachable interest of Olegario was his right to redeem the automobile, upon payment of his indebtedness so secured by the mortgage, and if the purchaser at public auction could not acquire anything except such right of redemption, it seems obvious that this purchaser is not entitled to the actual possession and delivery of the automobile without first paying the debt of the mortgagor.

Because the possession of the car was removed from the mortgagor and given to the purchaser by the defendant sheriff, at the instance of the judgment creditor Ramirez, and because according to the allegation of paragraph VIII of the complaint the plaintiff could no longer recover the possession of the car, I am of the opinion that plaintiff had a right of action to recover damages from the defendants and the purchaser, which will consist in the value of the automobile at the time it was seized and sold at public auction.

But plaintiff failed to specifically allege why it was unable to recover the automobile, and refused to amend its complaint when so required by the court upon ruling on the demurrer. Due to this refusal I concur with the court below in its pronouncement that the complaint does not state sufficient cause of action and in the result of the majority opinion affirming said pronouncement.

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