

JOSE ANTILLON, RECEIVER, PLAINTIFF AND APPELLEE, VS. THE ASIATIC, PETROLEUM COMPANY (P. I.), LTD., THE PROVINCIAL SHERIFF OF TAYABAS, THE SHERIFF OF THE CITY OF MANILA, AND THE ...

G.R. No. 41885. November 25, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from an order of the judge of the Court of First Instance of Tayabas requiring the Asiatic Petroleum Company, Ltd., to pay into the hands of Jose Antillon, the plaintiff and receiver of the Orlanes and Banaag Transportation Co., Inc., the sum of P6,619.30 being the amount which the said Asiatic Petroleum Company, Ltd., bid for certain properties of the said corporation sold at an execution sale.

To understand the issue here presented, it is necessary to review as briefly as may be possible, one of the most involved and tangled up civil cases that has come before this court in many years. Three successive receivers have administered the affairs of the Orlanes and Banaag Transportation Company, Inc., and six different judges at various times made orders in this case and the present appeal arises from a conflict in the orders of two of the judges.

On July 2, 1931, the Asiatic Petroleum Company, Ltd., filed a petition in the Court of First Instance of Tayabas, civil case No. 3047, in the nature of a creditor's bill in equity as it is known to Anglo-American jurisprudence. In this petition it is alleged in substance that the defendant Orlanes and Banaag Transportation Co., Inc., a public utility, was indebted to the plaintiff in the sum of P37,488.66; that said defendant was indebted to various other creditors in excess of P150,000; that the value of the physical assets of the corporation would not exceed P60,000, but, if the corporation continued as a going concern, said value would approximate P200,000; that by reason of foreclosure of proceedings by other creditors and the acts of certain stockholders of the corporation the business is in imminent danger of insolvency, but if the corporation is enabled to continue in operation it would be able "to earn sufficient profit to pay all of its creditors in full or to dispose of its assets to the advantage and in the interest of its creditors and stockholders; that to obtain such results, it is necessary that a receiver be appointed. That unless such receiver be appointed, the amounts due from said corporation to plaintiff and other creditors will be wholly lost and the plaintiff and other creditors will suffer irreparable damage."

Upon this verified petition the said court on July 3, 1931, appointed the Philippine Trust Company as receiver with wide powers and it enjoined the creditors mentioned and "all other persons, firms, associations and corporations * * * until further order of this court from attaching", levying upon, taking possession of or in any manner whatsoever preventing the receiver from discharging his duties" and further from "instituting or prosecuting any actions, suits or proceedings in this court or before any other court * * * against said Orlanes and Banaag Transportation Co., Inc., or against said receiver without first obtaining the permission of the court."

On September 16, 1931, the Asiatic Petroleum Company, Ltd., filed an amended complaint in which it prayed

among other things that the receiver heretofore appointed be authorized "if necessary, under proper order of this court to sell the assets of the said defendant corporation or so much thereof as may be necessary for the purpose of liquidating and satisfying the claims of this plaintiff and other creditors pursuant to the orders and directions of this court."

Under these pleadings and in this state of the case, seventeen creditors intervened and presented their claims all of which were adjudicated with the plaintiff's in a decision rendered on October 26, 1931. The defendant Orlanes and Banaag Transportation Company, Inc., and the receiver were ordered to pay the said seventeen claims within thirty days from date and "si no dispone de suficientes fondos para el pago de las mismas se ordena al depositario no pague a ninguno hasta nueva orden que se dictara oportunamente en orden a la prelacion que se establezca despues de oir a dichos acreedores".

On December 11, 1931, the Asiatic Petroleum Company, Ltd., and other creditors having brought to the attention of the court that more than thirty days had passed and neither the defendant nor the receiver had paid the various creditors as required by the judgment of October 26, 1931, the court directed the receiver to offer at public sale eighteen automobiles "para que con su producto pague a Asiatic Pretroleum Company el importe de la sentencia" it appearing that said automobiles were covered by a mortgage in favor of the Asiatic Petroleum Company, Ltd. Some other properties covered by mortgages were ordered sold in favor of the respective mortgagees. On December 22, 1931, the Orlanes and Banaag Transportation Company, Inc., by its attorneys, excepted to these various orders amending the aforesaid judgment of October 26, 1931, and the case came up on appeal to this court which, on December 7, 1933, rendered its decision affirming the judgment of October 26, 1931, and the various amendatory orders complained of. On

October 4, 1932, the trial court, through the clerk, issued an order of writ of execution in favor of the Asiatic Petroleum Company, Ltd., for the sum of P37,488.16 for which it had judgment as aforesaid on October 26, 1931. This writ of execution follows the usual language of such writs and directs the sheriff to recover from the Orlanes and Banaag Transportation Company, Inc., the sum of P37,488.16 and to deliver said sum to the plaintiff, the Asiatic Petroleum Company, Ltd., aforesaid. On October 19, 1932, the court amended the writ by excluding from seizure thirty trucks' of the defendant for which a bond had been posted, but otherwise authorized the sheriffs to proceed with the execution.

On October 24, 1932, the Orlanes and Banaag Transportation Company, Inc., and the receiver, Jose Antillon, presented in this court a petition for injunction to restrain the sheriffs of Manila and Batangas from implementing the said writ of execution of October 4, 1932, the essential ground of the petition being that the property of the corporation which is in custodia legis cannot be seized on a writ of execution. This court, by resolution of October 25, 1932, and without discussion dismissed the petition for lack of merit.

On October 31, 1932, Jose Antillon, the receiver, filed civil case No. 3377 against the Asiatic Petroleum Company, Ltd., the provincial sheriff of Tayabas, the sheriff of the City of Manila and the provincial sheriff of Batangas, in which a supplementary complaint was filed on December 8, 1932. It is in this case that the order involved in this appeal was made. The petition recites the proceedings had in the former suit of the Asiatic Petroleum Company, Ltd., against the Orlanes and Banaag Transportation Co., Inc., civil case No. 3047, and after stating the substance of the plaintiff's petition in said case quotes the judgment of October 26, 1931, and complains of the writ of execution of October 4, 1932, above-mentioned, alleging in substance that said writ of execution is void because the property of the judgment debtor is in custodia legis actually in the hands and possession of the receiver Jose Antillon. It alleges that the sheriff's sale held on November 7, 1932, in pursuance of said writ of execution is void; that the said writ of execution of October 4, 1932, in favor of the Asiatic Petroleum Company, Ltd., in said civil case No. 3047 is unjust to the rest of the judgment creditors who

intervened in said cause and whose claims were recognized and confirmed by the judgment of October 26, 1931; that if effect is given to said writ of execution in favor of the Asiatic Petroleum Company, Ltd., the receiver will be unable to pay any of the other creditors or even the expenses of the receivership which amount to some P5,000.

The prayer is that the court declare null and void the writ of execution of October 4, 1932, and the sale thereunder of the properties of the Orlanes and Banaag Transportation Company, Inc., which were then in the possession and in the custody of the receiver and that in case said writ of execution and sale may not be declared void, that the defendants be required to pay to the plaintiff receiver the proceeds of said sale.

The defendants denied that the properties sold by the sheriffs were in custodia, legis and under the control of the plaintiff receiver. They further set up as a special defense that in the prior case, No. 3047, the same questions now raised were decided against the Orlanes and Banaag Transportation Co., Inc., by the trial court and no appeal taken therefrom; that the question of the validity of the writ of execution of October 4, 1932, is *res judicata*.

On September 25, 1933, upon the case as stated above, the trial court rendered the decision in case No. 3377 which is involved in this appeal. It confirmed the execution sales made to the Asiatic Petroleum Company, Ltd., under the said writ of execution of October 4, 1932, but required the company as purchaser to deliver to the receiver in cash the amount of its bid, namely, P6,619.30. The sheriff's sales at which the Asiatic Petroleum Company, Ltd., was highest bidder for the property of the judgment debtor, the Orlanes and Banaag Transportation Co., Inc., were apparently held after the filing of civil case No. 3377, which is the case now on appeal, but prior to the rendition of the decision therein. We have been unable to find anywhere in the record the dates of the sheriff's sales or a complete list of the properties sold. We assume that in accordance with the usual practice, the bid of the Asiatic Petroleum Co., Ltd., was credited on its judgment.

As stated, the decision appealed from confirmed the sale to the Asiatic Petroleum Company, Ltd., but required the company to deliver to the receiver the amount of its bid in cash, reserving to the company the right to recover said sum from the defendant, the Orlanes and Banaag Transportation Co., Inc., "por la via de ejecucion de sentencia". Just what is meant by that expression is far from clear. The first execution which was issued on October 4, 1932, as amended by the order of the court of October 19, 1932, was based on the judgment of October 26, 1931, and like any other writ of execution, was issued for the benefit of the judgment creditor. We can find no legal basis for depriving the Asiatic Petroleum Co., Ltd., of the benefit of said orders and requiring it to pay its bid in cash and institute a new suit for reimbursement. If the judgment in favor of the Asiatic Petroleum Co., Ltd., was reduced by the amount of its bid, upon what consideration may it be required to pay the amount of its bid a second time? On the other hand, if the judgment be not reduced by the amount of the bid and the bid be paid in cash to the receiver, the execution sale deprives the Orlanes & Banaag Transportation Co., Inc., of its property without compensation for it still remains liable for the full amount of the judgment.

We recognize that there is much force in the argument of the plaintiff-appellee that this litigation, which began with civil suit No. 3047, was originally in the nature of an equitable proceeding for the protection not only of the plaintiff Asiatic Petroleum Co., Ltd., but also of all the creditors of the defendant Orlanes and Banaag Transportation Co., Inc.; that it is inequitable that the Asiatic Petroleum Co., Ltd., should have, by the steps mentioned, acquired an advantage over the other creditors. But the erroneous orders (if such there were) which brought about these results cannot be reviewed on this appeal. The receiver has not appealed and does not question now the validity of the sheriff's sale to the Asiatic Petroleum Co., Ltd.

In view of the premises, the decision appealed from is reversed with directions to dismiss the complaint without special pronouncement as to costs in this instance.

Abad Santos, Hull, Vickers, Imperial, Goddard, and Diaz, JJ., concur.

DISSENTING

MALCOLM AND VILLA-REAL, JJ.,

We are unable to agree with the majority. The case has equitable aspects which appeal to our sense of justice. When a receiver was secured for the Orlanes & Banaag Transportation Company, Inc., all the creditors stood on the same footing, and whatever assets were recovered should be applied to the claims of all of the creditors and not to the claim of one of them. To hold otherwise would be to sanctify technicality and to disregard equity.

Judgment reversed.

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