

R. KAGAHASTIAN & CO., INC., PETITIONER, VS. JOSE P. CARAG, JUSTICE OF THE PEACE OF TUGUEGARAO, ET AL., RESPONDENTS.

G.R. No. 42809. January 23, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for a writ of certiorari filed in this court by the firm R. Kagahastian & Co., Inc., against the Honorable Jose P. Carag, et al., praying that, after the necessary proceedings, the writ of preliminary injunction issued by the respondent judge on October 19, 1934, restraining the provincial sheriff of Cagayan from proceeding with the sale at public auction of certain parcels of land described therein, pending the resolution of the motion for notation of a lien filed by the respondents, be declared null and void, on the ground that said respondent judge acted in excess of his jurisdiction.

The pertinent facts necessary for the resolution of the question raised in this case are as follows:

On November 23, 1933, the Court of First Instance of Manila rendered judgment in civil case No. 44580 of said court, wherein the herein petitioner was plaintiff and Felix B. Bautista, Florencia H. de Bautista and Melquiades B. Bautista, were defendants, the dispositive part of which reads as follows:

"Wherefore * * * judgment is rendered ordering the defendants Felix B. Bautista, Florencia H. de Bautista and Melquiades B. Bautista to pay to the plaintiff on or before May 31, 1934, the sum of P6,000, it being understood that should they fail to pay the sum in question within said period, they shall furthermore pay interest thereon at 12 per cent per annum from November 23, 1933, until fully paid. It shall be understood further that the amount of this judgment shall be considered a preferred lien on the parcels of land adjudicated to said defendants in registration case No. 91 of the Court of First Instance of Cagayan, G. L. R. 0. Record No. 34438, without special pronouncement as to costs."

In view of said judgment, the petitioner filed a motion in the Court of First Instance of Cagayan in registration case No. 91 of said province, G. L. R. 0. Record No. 34438, praying that said lien be noted on the certificates of title to be issued. On December 17, 1933, the Court of First Instance of Cagayan, granted said motion and issued an order in said case, which reads as follows:

"Wherefore, this court orders that upon issuance of the certificate of title to the land which is the subject matter of the application for registration, the lien in favor of the Bureau of Lands in the sum of P2,506.20, representing the expenses incurred in the preparation of the amended plan, be noted first and the Director of Lands is directed to forward to the General Land Registration Office the amended plan Rs-407 on tracing paper attached to said record. It is ordered further that after the lien in said amount in favor of the Bureau of Lands is noted on the certificate of title, the lien in the sum of 6,000 in favor of R. Kagahastian & Co., Inc., which sum should be paid on or before May 31, 1934, be likewise noted second on said certificate of title. It shall also be understood that if said amount should not be paid within said period, the applicants and grantees of the title shall pay interest thereon at 12 per cent per annum from November 23, 1933, until fully paid"

In view of this order, the register of deeds of Cagayan issued the corresponding certificates of title noting thereon

the liens stated in said order.

Inasmuch as the defendants in said civil case No. 44580 failed to pay the amount of the judgment rendered against them, a writ of execution was issued on July 20, 1934, and the provincial sheriff of Cagayan advertised the sale at public auction of all the rights, interest and participation of the execution debtor in the 15 parcels of land which he had attached as their property, to take place on October 20, 1934.

On October 19, 1934, the day before the sale, the herein respondents Yaleriano Ziuagan, Juan Lingan, Maria Canapi, Valentina Canapi, Basilia Canapi and the heirs of Mariano Canapi filed a third party claim of joint ownership of lots Nos. 8, 9 and 10, Psu-64030, under oath, through their counsel Jose P. Carag. On said date, October 19, 1934, the respondent Jose P. Carag, justice of the peace of Tuguegarao, the capital of Cagayan, in the absence of the judge of the Court of First Instance, issued in registration case No. 91 of said province, the writ of injunction in question by virtue of an ex parte motion filed by said respondents praying at the same time for the notation of a promissory note for P10,600, as a lien, on the certificates of title to the parcels of land which are the subject of the third party claim.

The question to be decided in this case is whether or not Jose P. Carag, as justice of the peace of Tuguegarao, the capital of Cagayan, upon an ex parte motion praying for the notation of a lien on certain certificates of title, had authority to issue in said registration case a writ of preliminary injunction for the purpose of preventing the sale at public auction of the interest, rights and participation of some defendants in certain parcels of land which were attached by virtue of a writ of execution and to which a third party claim of joint ownership was filed under oath.. The pertinent part of section 3 of Act No. 1680, amendatory to section 17 of Act No. 496, reads as follows:

"Sec. 17. *****

"The Court of Land Registration, in all matters over which it has jurisdiction, may issue an injunction for the protection of either or any of the parties in interest, in the following cases:

"(1) When it appears by the application, by verified petition, or by affidavits that the commission or continuance of some act during the proceedings for registration of title would produce waste or great or irreparable injury to the subject matter of the registration proceedings.

"(2) When it appears during the pendency of the proceedings that either or any of the parties in interest is doing, or is about to do, or is threatening to do, or is procuring or suffering to be done, some act in violation or to the prejudice of the rights of another party to the action respecting the subject matter of the proceedings and tending to render the judgment ineffectual.

"Except as herein provided, preliminary and permanent injunctions shall be obtained, enforced, dissolved, or modified in the same manner as such injunctions are obtained, enforced, dissolved, or modified under the provisions of the Code of Civil Procedure."

It will be noted that the power to issue writs of injunction in registration cases may be exercised only by the Courts of Land Registration (now Courts of First Instance) during the pendency of the registration proceedings and not after the final decree of registration has already been issued. Therefore, the respondent judge, acted in excess of his jurisdiction in issuing the writ of preliminary injunction in question, in order to prevent the sale at public auction of some parcels of land, in view of a motion praying for the notation of a lien on said properties which were attached in pursuance of a writ of execution.

For the foregoing considerations, we are of the opinion and so hold: that a Court of First Instance has no authority to issue a writ of preliminary injunction in a registration case, in connection with a motion for the notation of a lien filed after the final decree of registration had already been issued.

Wherefore, the writ prayed for is granted and the writ of injunction issued by the respondent judge is declared illegal and void on the ground that he had acted in excess of his jurisdiction, with costs against the private respondents.

This decision is rendered in lieu of that promulgated on December 21, 1934. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Writ granted.

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