

JOSE P. BANZON AND LUCILA ROSAURO, PLAINTIFFS AND APPELLEES, VS. GEORGE C. SELLNER, DEFENDANT AND APPELLANT.

G.R. No. 42839. September 12, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

This action was instituted by the plaintiffs in the Court of First Instance of Bataan, on April 16, 1932, for the purpose of foreclosing a mortgage, executed by the defendant in their favor on September 1, 1929.

The following facts are undisputed:

On December 8, 1932, the court entered a judgment in favor of the plaintiffs, ordering the defendant to pay the plaintiffs the sum of P35,000 with interest at 10 per cent per annum from March 1, 1934, until fully paid, plus 5 per cent as attorney's fees, and directing the sheriff to sell the properties mortgaged should the defendant fail to pay the amount of the judgment within three months from the date of the judgment. The defendant failed to pay and the court issued an order for the sale of the mortgaged property at public auction. The dispositive part of that order, dated February 26, 1934, reads as follows:

"Por cuanto las propiedades hipotecadas por el demandado George C. Sellner a los demandantes Jose P. Banzon y Lucila Rosauro consisten en doce parcelas de terreno, con sus mejoras existentes eh los mismos, y son como sigue: * * *."

On March 28, 1934, the provincial sheriff of Bataan sold the properties described in the aforementioned order. The plaintiffs, Jose P. Banzon and Lucila Rosauro, were the purchasers.

About an hour previous to the public auction sale, a third party claim on the actual crop was filed by one B. A. Green, general manager of the Abucay Plantation Company. Notwithstanding the opposition filed by Green in the name of the Abucay Plantation Company, the sale was made including the cane crops on the 12 parcels of land.

On March 28, 1934, counsel for the plaintiffs filed a motion for the confirmation of the sheriff's sale and on March 31, 1934, counsel for the defendant filed an opposition thereto. On the 14th day of May, 1934, the court entered! an order confirming the sale of March 28, 1934.

A motion for new trial, filed on June 13, 1934, having been denied, counsel for the defendant, on July 11, 1934, filed an exception thereto and notice of intention to appeal.

The appellant George C. Sellner, prays for the reversal of the order of the Court of First Instance of Bataan, of May 14, 1934, confirming the sheriff's sale of March 28, 1934, of the twelve lots of land mortgaged by the defendant-appellant to the plaintiffs-appellees without excluding therefrom the cane crop existing thereon at the time of the sale, and also for the reversal of the order of the same court of July 5, 1934, declaring the aforementioned order of May 14, 1934, final and executory.

The appellant makes the following assignments of error:

"I. The lower court erred in confirming the sale of. March 28, 1934, of the land under mortgage, excluding therefrom the cane crop pending thereon at the time of the sale.

"II. The lower court erred in issuing its order of July 5, 1934, declaring its order of May 14, 1934, confirming the sale of March 28, 1934, final and executory."

The defendant-appellant contends under his first assignment of error that he is not the owner of the sugar crop which was growing on the land sold by the sheriff and that the Abucay Plantation Company was the owner of that crop, therefore it should have been excluded by the lower court fore confirming the sale.

In confirming the sheriff's sale the trial court held:

"En el caso de autos, la escritura de venta de marzo 28, 34, no especifica ni describe las siembras de cana dulce el terreno objeto de dicha escritura, pues emplea s61o Id frase 'Together with its improvements thereon' (consus is mejoras); y, por consiguiente, el Juzgado no puede detdrminar en este incidente de confirmation quien tiene de>cho preferente sobre dichas siembras de cana dulce en descusion entre los interesados y existentes en el terreno s objeto de dicha escritura.

"En vista de los hechos y consideraciones antes expuestos, Juzgado confirma la escritura de venta de marzo 28,1934, in perjuicio de que los interesados puedan hacer prevalecer u derecho de preferencia mediante action oportuna sobre s siembras de cana dulce en discusion que no estan ex>resamente descritas en la mencionada escritura."

As stated above Sellner claims no interest in the sugar op in question. He admits that it belongs, to the Abucay Plantation Company and consequently it is evident that he is not prejudiced by the order from which he appeals and, therefore, he cannot question the validity of the sale of the sugar crop if it was really included in the sale of the parcels of land mortgaged to the plaintiffs. If anyone is injured by the appealed order it is the Abucay Plantation Company, which is not a party to this action. That company protected itself by filing a third party claim with the sheriff who, in turn, required a bond from the plaintiffs before proceeding with the sale. Furthermore the order confirming the sale was made without prejudice to the right of interested persons to institute an action to vindicate their rights.

The appeal is dismissed with costs in both instances against the defendant-appellant.

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

Appeal dismissed.

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