

PEDRO ENDEISA, PLAINTIFF AND APPELLANT, VS. JOSE M. TALEON, SHERIFF OF ILOILO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 4361. December 24, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

In his written complaint, the plaintiff alleged: (1) That he is the owner of a lorch named Leal, the dimensions and capacity of which are described in the document; (2) that the defendant Jesusa Laureano, in a suit brought by her against Luis Rivera, secured the attachment of the lorch as being the property of Luis Rivera, and had it sold at public auction; (3) that the defendant Jose M. Taleon, as deputy sheriff, levied upon the lorch on the 27th of April, 1906, and sold it at public auction on June 25 following; (4) that on the 28th of May of the same year, before the lorch was sold at public auction, the plaintiff legally notified the sheriff, Jose Maria Taleon, that the said lorch did not belong to Rivera, but that it was the property of the plaintiff, he having purchased it from Francisca de Herreras; (5) that notwithstanding this notification, the sheriff sold the lorch at public auction, at which Juan de Leon was the highest bidder; (6) that by reason of the attachment and sale, the plaintiff was unlawfully deprived of the ownership and possession of the said lorch, and he prayed: (1) That the attachment and sale of the said lorch to the defendant Juan de Leon, be declared null and void; (2) that it be held that the plaintiff is the owner and that he is entitled to the possession of the aforesaid lorch; (3) that the defendants be ordered to immediately deliver the lorch to the plaintiff in the city of Iloilo where it was attached and sold, in the same condition as it was prior to said attachment and sale.

The defendant limited himself to denying the allegations contained in paragraph 1 of the complaint.

The Court of First Instance of Iloilo, before which the case was heard, made the following findings of fact: That Jesusa Barrioso, as the legal administratrix of the hereditary succession of her late husband, Francisco Elorriaga, had been authorized to sell at public auction the lorch in question; that at said sale the lorch was acquired by Luis Rivera, but, as he was a Spanish subject and could not register the vessel in his own name, it became the property of Rivera & Watkins, a company of which Rivera was a member; that upon the dissolution of the partnership in the year 1904, Rivera took the lorch as part of his share of the capital of the concern and thus kept it until the time it was attached and sold. The said court rendered judgment in favor of the plaintiff for the recovery of costs.

The following facts have been fully proven:

- That the lorch Leal formerly belonged to Francisco Elorriaga.
- That after the death of Francisco Elorriaga, his widow, Jesusa Barrioso, solicited authority from the Court of First Instance of Iloilo to sell, either by private or public sale, all the personal property pertaining to the inheritance. Her request was granted on the 19th of January, 1903.
- That among other property of Elorriaga, an inventory of which, dated December 19, 1902, appears in the record

as Exhibit 3, and which was admitted without objection, the Panco Leal was found.

- That under a notarial instrument executed by Jesusa Barrios and Agustin Asensio on March 7, 1903, the former, as owner of one-half of the lorch Leal and judicial administratrix of the remaining portion on behalf of the intestate estate of her deceased husband, Elorriaga, sold the said lorch to Asensio for the sum of P1,800, Mexican currency.

This document, although at first rejected, was acknowledged at the trial by the purchaser, Asensio, who was asked the following question; "Is it not true that the lorch was placed in your name for the reason that you are an American citizen, and that it was not placed in Rivera's name because Rivera is not an American citizen?" He answered: "No, sir; it was placed in my name because I was the purchaser."

- That on May 17, 1905, Asensio sold the said lorch to Francisca Zulueta Jose for P2,000 under an instrument executed before a notary public.

- That on July 28 of the same year, Francisca Zulueta Jose sold it to Pedro Endeisa for P2,500 in the same manner.

These are the proven facts which fully support the petition of the plaintiff that his right of ownership to the lorch in question be declared and the finding contained in the judgment, to the effect that Luis Rivera was the purchaser of the lorch at the public sale, is absolutely incompatible with them, inasmuch as Agustin Asensio was the purchaser. The evidence of the document that proves this sale has not been rebutted or impugned in any manner.

Admitting that Luis Rivera was in possession of the lorch, as in reality he was when it was attached and sold, the record contains no proof as to when the said possession commenced and how it was acquired. And while, in accordance with paragraph 2 of article 573 of the Code of Commerce, the ownership of a vessel may be acquired by possession, such possession must be in good faith, continued for three years, and with a good title duly recorded. None of these requisites have been proven in favor of the possession of Luis Rivera.

Therefore, there are no grounds in law for sustaining the judgment appealed from, based as it was only on said possession as the principal foundation, and the first three remedies prayed for in the complaint should be granted.

We therefore decide that, reversing the judgment appealed from, we should and do hereby declare null and void the attachment and sale of the said lorch in favor of the defendant Juan de Leon; that the plaintiff is the owner and is entitled to the possession of the same; and that the defendants shall immediately deliver to the plaintiff the said lorch in the condition that it was prior to the attachment and sale, such delivery to be made in the city of Iloilo where it was attached and sold. No award of damages and costs is made, but each of the parties to the litigation shall bear his own in both instances. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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