

TAN SOO HUAT, PLAINTIFF AND APPELLEE, VS. PEDRO ONGWICO, DEFENDANT AND APPELLANT. MONICO UY YT, JUDICIAL ADMINISTRATOR OF THE DECEASED IGNACIO UY QUIMCO, INTERVENOR AND APPELLEE.

G. R. No. 43762. October 31, 1936

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Tan Soo Huat, plaintiff, obtained a money judgment against Pedro F. Ongwico, defendant, in civil case No. 41907 of the Court of First Instance of Manila. On the issuance of a writ of execution the provincial sheriff of Tayabas levied on two parcels of land belonging to the defendant and sold them to Ignacio Uy Quimco, as the highest bidder for P2,487.65. Under section 463 of the Code of Civil Procedure, certificates of sale dated September 13 and December 9, 1933, were issued to the vendee, subject to the right of repurchase within one year as provided in the aforecited section and in sections 464 and 465 of the same Code.

The period for redemption expired and neither the judgment debtor nor any other person had repurchased the property. The purchaser having died, his judicial administrator, Monico Uy Yt, filed a motion in the case asking that the provincial sheriff be ordered to issue to him the final certificates of sale pursuant to section 466 of said Code and to place him in possession of the property. The defendant challenged the motion in writing alleging that the court was without jurisdiction over the subject matter involved therein. The latter, however, after trial, granted the motion and ordered the provincial sheriff to issue the final certificates of sale and to place the movant in possession of the property purchased by the deceased. Having presented a motion for reconsideration which was denied, the defendant brought this appeal.

Defendant's brief assigns two errors, namely, that the court went against the law in ordering the provincial sheriff to yield possession to the movant of the property purchased by his predecessor at the public sale, and in denying his motion for reconsideration.

Defendant insists that the court was without jurisdiction to order the sheriff to place the movant in possession of tile property sold. Without pointing out any applicable law, defendant cites American authorities to the effect that in the absence of any legal rule, the purchaser cannot go upon the real property purchased at a judicial sale, but should bring a separate action for the recovery of ownership or for ejectment, as the case may be.

In *Pabico vs. Ong Pauco* (43 Phil., 572), *Flores vs. Lim* (50 Phil., 738), and *Powell vs. National Bank* (54 Phil., 54), we have held, contrary to the ruling in *Diaz vs. Azcune* (31 Phil., 213), that in this jurisdiction the purchaser at a sheriff's sale of real property is not entitled to have possession thereof within the year fixed by law for its redemption; but this case is not applicable to the case at hand, because the period of redemption has already expired, and the movant is to be placed in possession after the issuance and delivery of the final certificates of sale. The form of the deed of sale found in section 473 of the Code of Civil Procedure says in part that by virtue of said deed the purchaser is entitled to have and to hold the purchased property. The, in our opinion, means that

the purchaser is entitled to go immediately upon the real property and that it is the sheriff's inescapable duty to place him in such possession.

There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. There is neither legal ground nor reason of public policy precluding the court from ordering the sheriff in this case to yield possession of the property purchased at public auction where it appears that the judgment debtor is the one in possession thereof and no rights of third persons are involved.

In view of the fact that the period of redemption has expired, that the right to redeem has not been exercised, and that the judgment debtor, and not a third person, is in possession of the real property sold, we hold that the movant is entitled to the issuance of the deeds of sale and to the possession prayed for, not being obliged to bring a separate action for possession.

Being founded upon the same grounds which we held untenable, the court properly denied the motion for reconsideration.

Wherefore, the appealed order is affirmed, with the costs in this instance to the defendant-appellant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

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