

CHENG SIONG LAM & CO., APPLICANT AND APPELLANT, VS. TEODORO R. YANGCO, OPPOSITOR AND APPELLEE.

G.R. No. 43933. September 22, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the applicant Cheng Siong Lam & Co. from the judgment rendered by the Court of First Instance of Nueva Ecija, the dispositive part of which reads as follows:

"Consequently, the court denies the aforesaid motion with respect to the cancellation of original certificate of title No. 18017 of the registry of deeds of Nueva Ecija and the issuance of a new one in lieu thereof in favor of the petitioner, and likewise denies the petition of Teodoro R. Yangco to the same effect while it is not satisfactorily proven that the final and definitive certificate of sale has already been issued in his favor by the sheriff of said province; but orders the cancellation of original certificates of title Nos. 16444 and 16449, and the issuance of new ones, free of all incumbrance, in lieu thereof in favor of the petitioner Cheng Siong Lam & Co., upon payment of the corresponding fees. So ordered."

In support of its appeal, the appellant assigns the following sole alleged error as committed by the court a quo in its judgment in question, to wit:

"The trial court erred in not declaring the attachment on lot No. 1322 in favor of the appellant is a lien more preferred than the lien of execution in favor of the appellee on the said property and in refusing to order the cancellation of original certificate of title No. 18017 and the issuance of another in its place in favor of the appellant notwithstanding the fact that the said writ of attachment in favor of the appellant was registered in accordance with the provisions of section 194 of the Administrative Code as amended prior to the annotation of the writ of execution and sale in favor of the appellee on the original certificate of title No. 18017."

Pursuant to the judgment rendered on lot No. 1322 of cadastral case No. 51, G. L. R. O. Rec. No. 1047, the corresponding final decree was issued on July 18, 1932, in favor of Pedro Goco and Rosa Borja, and original certificate of title No. 18017 of the registry of deeds of Nueva Ecija was issued on October 12th of the same year.

The applicant Cheng Siong Lam & Co., as plaintiff in civil case No. 42634 of the Court of First Instance of Manila, obtained a writ of preliminary attachment against the properties of the defendants Pedro Goco and Rosa Borja. Pursuant to said writ, the provincial sheriff of Nueva Ecija, on August 23, 1932, attached the properties of the defendants Pedro Goco and Rosa Borja, among which was lot No. 1322 described in said original certificate of title No. 18017. The writ of attachment in question and the notice that the same had been levied were registered in the registry of deeds on the same date, August 23, 1932, in accordance with the provisions of section 194 of the Administrative Code, as amended by section 1 of Act No. 3344. Inasmuch as the Court of First Instance of Manila had issued a writ of execution of the judgment in the above-stated civil case, said provincial sheriff of Nueva Ecija, on March 20, 1933, sold at public auction the attached properties of said defendants Pedro Goco and Rosa Borja, among them the above-mentioned lot No. 1322, to the therein plaintiff and herein applicant-appellant Cheng Siong Lam & Co., for having been the highest bidder.

On April 13, 1934, the above-stated provincial sheriff of Nueva Ecija issued in favor of Cheng Siong Lam & Co. the final certificate of sale which was also registered in the registry of deeds of Nueva Ecija, in accordance with Act No. 3344.

On November 23, 1934, the appellant Cheng Siong Lam & Co. filed a motion praying for the cancellation of original certificate of title No. 18017 covering lot No. 1322, and the issuance in its place of a transfer certificate of title in its favor, by virtue of the preliminary attachment levied by it on the lot in question (Appendix A), and of the final certificate of sale of said lot (Appendix B).

Teodoro R. Yangco opposed said motion on the ground that the property in question was levied on October 6, 1932, by virtue of a writ of execution of judgment issued in civil case No. 42026, and that, after due publication, the property in question was sold at public auction on December 2, 1932, to said Teodoro R. Yangco, who was the highest bidder, both the writ of execution in question and the sale at public auction made by virtue of said writ, having been noted on the original certificate of title No. 18017 covering lot No. 1322.

The only question to be decided in the present appeal is whether or not the writ of preliminary attachment issued in a civil case in favor of the applicant-appellant Cheng Siong Lam & Co. and against the defendants Pedro Goco and Rosa Borja, which was recorded only in the registry of deeds affecting unregistered real estate, in accordance with the provisions of section 194 of the Administrative Code, as amended by section 1 of Act No. 3344, but not noted on the corresponding original certificate of Torrens title, enjoys preference over a writ of execution of judgment, issued in another case in favor of another plaintiff and against the same defendants, which was noted on said original certificate of Torrens title.

Section 429 of Act No. 190, known as the Code of Civil Procedure, provides that: "Real property, standing upon the records in the name of the defendant or not appearing at all upon the record, shall be attached by filing with the registrar of titles of land, for the province in which the land is situated, a copy of the order of attachment, together with a description of the property attached, and a notice that it is attached."

Section 71 of Act No. 496 provides that: "In every case where a writing of any description or a copy of any writ is required by law to be filed or recorded in the registry of deeds in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the register of deeds for the province in which the land lies."

Section 51 of said Act No. 496 provides that: "Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering."

Under the provisions of the above-quoted section 71, the preliminary attachment levied by the plaintiff Cheng Siong Lam & Co. on lot No. 1322 under consideration herein, should have been filed in the office of the register of deeds of Nueva Ecija and registered in the corresponding registration book after the issuance of original certificate of title No. 18017, issued in favor of the defendant spouses Pedro Goco and Rosa Borja on October 12, 1932, noting it at the back of said original certificate of Torrens title, which was not done. Under the provisions of the above-quoted section 51 of Act No. 496, the filing and registration in the office of the register of deeds of Nueva Ecija of the writ of execution of judgment issued in favor of the oppositor Teodoro R. Yangco and of the sale at public auction of lot No. 1322, and the notation of said writ of execution as well as of said sale at the back of original certificate of Torrens title No. 18017, constituted notice to the whole world, including the herein

applicant-appellant Cheng Siong Lam & Co., of the issuance of the aforesaid writ of execution and of the sale. Finally, under the provisions of section 39 of Act No. 496, said certificate of title is free of all incumbrance except those noted thereon and those declared by said section as subsisting, among which the preliminary attachment does not appear. As the writ of preliminary attachment, issued in favor of the applicant Cheng Siong Lam & Co. and levied on lot No. 1322 described in the certificate of title in question, is not noted at the back of said certificate, it has not affected the lot in question in his favor. On the contrary, the notation at the back of said certificate of title of the writ of execution of the judgment, issued in favor of the oppositor Teodoro R. Yangco, and of the sale at public auction made by virtue of said writ, affected the lot in question in favor of the above-named oppositor, giving him a preferred right to said lot (William H. Anderson & Co. vs. Garcia, 35 Off. Gaz., 2847).

In view of the foregoing considerations, this court is of the opinion and so holds, that the recording of a preliminary attachment and of the notice of compliance therewith under the provisions of section 194 of the Revised Administrative Code, as amended first by Act No. 2837 and later by Act No. 3344, produced no legal effect whatsoever on the attached lot, for failure to file and register said writ of attachment in the office of the register of deeds and to note the same at the back of original certificate of Torrens title No. 18017, and enjoys no preference over the writ of execution of judgment, filed and registered in said office of the register of deeds and noted at the back of the aforesaid original certificate of title.

Wherefore, not finding any error in the appealed judgment, it is affirmed in toto, with the costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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