

MANUEL DY KIMCHONG, PLAINTIFF AND APPELLEE, VS. LUNETA MOTOR CO. AND THE PROVINCIAL SHERIFF OF CAVITE, DEFENDANTS. LUNETA MOTOR CO., DEFENDANT AND APPELLANT.

G. R. No. 44053. July 26, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant entity Luneta Motor Company appeals to this court from the judgment of the Court of First Instance of Cavite, the dispositive part of which reads as follows:

"Wherefore, the court renders judgment ordering the defendant Luneta Motor Co. to pay to the plaintiff Manuel Dy Kimchong the sum of P910 paid to the provincial sheriff of Cavite by said Dy Kimchong as purchaser at the public auction of February 10, 1932, at which the property was adjudicated to him as the highest bidder, with legal interest thereon from said date of February 10, 1932, until said sum of P910 is fully paid, with the costs of the suit. The defendant provincial sheriff of Cavite is absolved from the complaint. So ordered."

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

- "1. The lower court erred in finding that this case is not res judicata between the parties herein.
- "2. The lower court erred in not finding that the appellee is estopped from claiming the return to him of the amount bid by him because of his knowledge of adverse claims on the property before he bought the same.
- "3. The lower court erred in not holding that all that the appellee is entitled to is to become subrogated to the judgment that the appellant, Luneta Motor Co., had against the execution debtor, Jose Gil, in civil case No.39526 of the Court of First Instance of Manila, entitled Luneta Motor Company vs. Jose Gil.
- "4. The lower court erred in denying appellant's motion for new trial."

When the case was called for trial, the parties submitted to the court for decision the following stipulation of facts:

- "1. That the plaintiff is of legal age and a resident of Indang, Cavite, and the defendant Luneta Motor Co. is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands with principal office in the City of Manila.
- "2. That by virtue of a writ of execution issued in civil case No. 39526 of the Court of First Instance of Manila, entitled Luneta Motor Co. vs. Jose Gil,' the provincial sheriff of Cavite levied and advertised for sale the following property, to wit:

" 'A house of strong material construction known under Tax No. 29924 of the Property Registry of the municipality of Indang, Province of Cavite, and verified and confirmed by the records of the Provincial Assessor of Cavite, with an assessed valuation of P2,000 and built on a residential land owned by one Macario Tapia and bounded on the North, by Florentino Vasquez, on the East, by Maria Llamado and Cristina Flores,

on the South, by Bernardina Dorel, and on the West, by a Luna Street.'

"3. That copy of said tax declaration No. 29924 in the' names of Jose Gil and Maura Panganiban is attached hereto as Exhibit A.

"4. That said tax declaration No. 29924 was subsequently superseded by Tax No. 29966 (Exhibit B) in the names of Perpetua Panganiban and Maura Panganiban.

"5. That in the notice of sale, copy of which is attached as Exhibit C, made by the said provincial sheriff of Cavite, it was specified that the 'purchaser⁵ at the public auction 'must investigate for himself the titles to the said property and the encumbrances thereon, if any there be.'

"6. That before the sale, the said Maura Panganiban and Perpetua Panganiban presented a third party claim, but the Luneta Motor Co. gave the corresponding bond in favor of the provincial sheriff of Cavite and the sale proceeded on February 10, 1932, the highest bidder being the plaintiff herein, Manuel Dy Kimchong, who offered the sum of P910 of which amount the Luneta Motor Co. received from the sheriff only P831.83.

"7. That subsequently, the sisters Maura Panganiban and Perpetua Panganiban filed a complaint against the Luneta Motor Co., Benigno C. Agco as provincial sheriff of Cavite, and Manuel Dy Kimchong (Case No. 2547 of this Honorable Court), a copy of their second amended complaint being attached as Exhibit D and made a part of these stipulations, for the purpose, among other things, of annulling the sale of the house above-mentioned.

"8. That at the trial of said case No. 2547, a stipulation of facts was submitted to this court stating, among other things, that the purchaser is to investigate the title and encumbrances to the property, copy of which agreement is hereto attached as Exhibit E.

"9. That on October 27, 1932, decision was rendered in the said case No. 2547 of this Honorable Court, the dispositive part of which is as follows:

" 'Wherefore the court renders judgment declaring the herein plaintiffs as undivided owners of the house in question and therefore, holds that the sale at public auction of said property is null and void. Consequently, the defendant Luneta Motor Company is ordered to pay to the defendant Manuel D. Kimchong the sum of P910 paid to the provincial sheriff of Cavite by the latter as purchaser at the public auction of February 10, 1932, at which the property was adjudicated to him as the highest bidder, without special pronouncement as to costs.' Copy of which decision is likewise attached as Exhibit F and made a part of these stipulations.

"10. That from said decision the Luneta Motor Co. appealed to the Supreme Court of the Philippine Islands where the case was docketed as G. R. No. 39186, and the Supreme Tribunal later rendered a decision modifying the judgment of the Court of First Instance of Cavite by vacating the order against the Luneta Motor Co. to pay the sum of P910 to Manuel Dy Kimchong, the herein plaintiff. Copy of the amended bill of exceptions and the decision rendered by the Supreme Court of the Philippine Islands are hereto attached as Exhibits G and H and made parts of these stipulations."

The first question to be decided in this appeal is that raised by the defendant company in its first assignment of alleged error, which consists in that the lower court erred in holding that the present case does not constitute res judicata between the parties.

According to the above-quoted stipulation of facts, the provincial sheriff of Cavite, in order to satisfy the judgment rendered in civil case No. 39526 of the Court of First Instance of Manila in favor of the Luneta Motor Co. and against Jose Gil, attached and advertised for sale at public auction a house of strong materials which appeared to be declared for taxation purposes in the name of Jose Gil and Maura Panganiban and assessed at P2,000. Before said sale was carried out, Maura Panganiban and Perpetua Panganiban filed a third party claim of

better right to the property in question but the Luneta Motor Co. filed the corresponding bond in favor of the provincial sheriff of Cavite and the sale was made on February 10, 1932, the highest bidder having been the herein plaintiff-appellee Manuel Dy Kimchong who offered the Bum of P910 which was accepted by the sheriff. After deducting his fees and expenses, said sheriff delivered the sum of P831.83 to said Luneta Motor Co. The sisters Maura Panganiban and Perpetua Panganiban immediately filed a complaint against the Luneta Motor Co., Benigno G. Agco, provincial sheriff of Cavite, and Manuel Dy Kimchong, which was docketed in the Court of First Instance of Cavite as civil case No. 2547, the prayer of which reads as follows: "Wherefore, it is respectfully prayed: (a) that the sale made by the provincial sheriff of Cavite through his deputy of the house in question to Manuel Dy Kimchong be declared null and void; (b) that plaintiffs be declared exclusive owners of the house in question; (c) that the defendants be sentenced to pay the plaintiffs the sum of Three Thousand Pesos (P3,000) as damages; (d) that the defendants be ordered to pay the costs and that plaintiffs be granted such other relief which this Honorable Court may deem just and equitable in the premises." (Exhibit D.)

The therein defendant and herein plaintiff Manuel Dy Kimchong neither appeared nor filed a demurrer or answer to the complaint, whereupon he was declared in default on August 19, 1932, upon an ex parte petition.

After the case had been submitted for decision upon, the above-stated stipulation of facts, the Court of First Instance of Cavite rendered judgment the dispositive part of which reads as follows:

"Wherefore, the court renders judgment declaring the herein plaintiffs as undivided owners of the house in question and therefore, holds that the sale at public auction of said property is null and void. Consequently, the defendant Luneta Motor Company is ordered to pay to the defendant Manuel D. Kimchong the sum of P910 paid to the provincial sheriff of Cavite by the latter as purchaser at the public auction of February 10, 1932, at which the property was adjudicated to him as the highest bidder, without special pronouncement as to costs."

As the judgment in question had been appealed to this court, a division of three thereof, composed of Justices Hull, Imperial, and Goddard, modified the dispositive part of the appealed judgment by omitting therefrom that part which reads: "Consequently, the defendant Luneta Motor Company is ordered to pay to the defendant Manuel D. Kimchong the sum of P910 paid to the provincial sheriff of Cavite by the latter as purchaser at the public auction of February 10, 1932, at which the property was adjudicated to him as the highest bidder," on the ground that said defendant could not be granted any affirmative relief because he not only had not asked for it but had also been declared in default.

It is already a well settled doctrine of this court that to constitute *res judicata*, there must be: (a) identity of parties, (b) identity of things, and (c) identity of questions involved. (*Ocampo vs. Jenkins and Worcester*, 14 Phil., 681; *Isaac and Abella vs. Padilla*, 31 Phil., 469; *Donato vs. Mendoza*, 25 Phil, 57; *Roman Catholic Archbishop of Manila vs. Director of Lands*, 35 Phil., 339; *Aquino vs. Director of Lands*, 39 Phil., 850.)

In civil case No. 2547 of the Court of First Instance of Cavite the plaintiffs were Maura Panganiban and Perpetua Panganiban and the defendants were the Luneta Motor Company, Benigno G. Agco, provincial sheriff of Cavite, Manuel Dy Kimchong and Jose Gil. The subject matter of the litigation was a house and the cause of action was the nullity of the sale of said house at public auction. In this case the plaintiff is Manuel Dy Kimchong and the defendants are the Luneta Motor Co. and the provincial sheriff of Cavite; the subject matter of the litigation is the sum of P910 with interest thereon, and the cause of action is the recovery of said sum with interest thereon. Between the two cases, therefore, there is no identity of plaintiffs or of defendants. Neither is there identity of the thing which is the subject matter of the litigation, nor of cause of action. Consequently there is no reason to warrant the consideration that the decision in civil case No. 2547 of the Court of First Instance of Cavite (G. R. No. 39186[1] of this court), has decided the question in controversy in this case. The question decided in that case was one of ownership of the house attached and sold at public auction while the question discussed herein is

whether or not the plaintiff is entitled to recover from the defendant entity Luneta Motor Co. the sum of P910 with interest thereon, paid by him to the defendant provincial sheriff of Cavite as the purchase price of said house sold at public auction.

The second question to be decided is whether or not the herein plaintiff is now estopped from seeking the refund of the sum of P910, having failed to set up a counterclaim for the same in civil case No. 2547 of the Court of First Instance of Cavite (G. R. No. 39186 of this court).

While it is true that section 97 of the Code of Civil Procedure provides that "If the right out of which the counterclaim arises exists at the time of the commencement of the auction and arises out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or is necessarily connected with the subject of the action, neither the defendant nor his assignee can afterwards maintain an action against the plaintiff therefor, if the defendant omits to set up a counterclaim for the same," and it is also true that the right to recover the sum of P910 existed at the time of the commencement of this action and arose out of the transaction set forth in the complaint, that is, from the sale of the house, the annulment of which sale was sought and obtained, and was necessarily connected with the subject of the action; nevertheless, it is likewise true that said counterclaim was not in favor of all the defendants in said case but of only one, that is, Manuel Dy Kimchong, and against the plaintiffs Maura Panganiban and Perpetua Panganiban. Consequently such counterclaim was not available as a defense in the answer, under the provision of section 96 of the Code of Civil Procedure, and failure to set it up is no bar to the filing of the complaint in the present case (section 97, Act No. 190).

With respect to the question whether or not the herein plaintiff Manuel Dy Kimchong can recover the sum of P910 paid by him to the provincial sheriff of CaVite as the selling price at public auction of the house attached as property of Jose Gil, the sale of which was later declared null and void on the ground that said property belonged to the sisters Maura Panganiban and Perpetua Panganiban, this court, in the case of *Bonzon vs. Standard Oil Co. of New York and Osorio* (27 Phil., 141), laid down the doctrine that "If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom, because of a total failure of title, it appearing that the judgment debtor had no right, title, or interest in or to the property sold under execution, he may recover the price paid, with interest, from the judgment creditor." This same doctrine was ratified and reiterated in the case of *Bonzon vs. Standard Oil Company of New York* (34 Phil., 211).

In view of the foregoing considerations, and finding no error of fact or of law in the appealed judgment, it is affirmed in toto, with costs to the appellant. So ordered.

Avancena, C. J., Abad Santos, imperial, Diaz, and Laurel, JJ., concur.

[1] *Panganiban vs. Luneta Motor Co.*, 60 Phil., 996.

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