

MARIANO R. LACSON, PLAINTIFF AND APPELLEE, VS. GIL M. MONTILLA, EX-PROVINCIAL SHERIFF OF OCCIDENTAL NEGROS, ISIDORO ESPARES, EX-DEPUTY PROVINCIAL SHERIFF OF OCCIDENTAL NEGROS, A...

G.R. No. 44312. October 31, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant, Magdalena Mecho Vda. de Diez, appeals to this court from the judgment rendered by the Court of First Instance of Occidental Negros, the dispositive part of which is as follows:

"Wherefore, judgment is rendered ordering the defendant Magdalena Mecho Vda. de Diez to pay to the plaintiff the sum of P1,500, with the legal interest thereon from January 8, 1925, until fully paid, plus the costs, reserving to said defendant the right to take the steps which she deems necessary and appropriate for the recovery from Homobono Tupas, defendant in civil case No. 3152, of the entire amount she has to pay to the plaintiff by virtue of this decision. It is so ordered."

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

"1. The lower court erred in holding the defendant responsible for warranty in eviction and in not declaring that the person liable therefor is Homobono Tupas.

"2. The lower court erred in not dismissing the complaint and in applying section 470 of the Code of Civil Procedure, in this case, the plaintiff not being a purchaser in good faith.

"3. The lower court erred in holding that the plaintiff's own fault and negligence in failing to pay the fees for filing the appeal in case No. 3315, thereby causing the appeal to be declared abandoned, is not a bar to his action.

"4. The lower court erred in ordering the defendant-appellant to pay the sum of P1,500 claimed in the complaint and in not absolving her therefrom.

"5. The lower court erred in overruling the demurrer filed by the defendant-appellant against the amended complaint of the plaintiff-appellee.

"6. The lower court erred in denying the new trial of the case asked for by the defendant."

Being a question of procedural law, this court shall first pass upon that raised in the fifth assignment of alleged error, consisting in that the court a quo erred in overruling the demurrer filed by the defendant-appellant against the amended complaint.

On July 25, 1924, Ramon Diez filed a complaint against Homobono Tupas in civil case No. 3152 of the Court of First Instance of Occidental Negros for the recovery of the sum of P5,000, with the legal interest thereon from

February 22, 1921, until fully paid, plus the costs. Upon petition of said plaintiff, a writ of preliminary attachment was issued, by virtue of which properties belonging to said defendant Homobono Tupas were attached, among them being lot No. 492 of the cadastre of Cadiz, Occidental Negros. The case having been decided in favor of the plaintiff, Ramon Diez, and the judgment having become final, the corresponding writ of execution was issued. Pending the auction sale of the properties attached by virtue of said writ, Braulio Tupas filed a third party claim of ownership over said lot No. 492. To maintain the attachment on said lot in effect, the execution creditor, Ramon Diez, filed the corresponding bond with Pedro Katalbas and Buenaventura Rodriguez as his sureties. In the sale at public auction of said lot No. 492, the herein plaintiff-appellee Mariano R. Lacson was the only bidder for the sum of P1,500.

On February 5, 1925, Braulio Tupas filed a complaint in the Court of First Instance of Occidental Negros against Ramon Diez, Gil M. Montilla, as provincial sheriff of Occidental Negros, Pedro R. Katalbas, Buenaventura Rodriguez and Mariano R. Lacson (civil case No. 3315) for the annulment of the sale at public auction of lot No. 492 in favor of said Mariano R. Lacson. Judgment was rendered in favor of said plaintiff Braulio Tupas on May 11, 1926. As this court had dismissed the appeal taken by the defendant Mariano R. Lacson and a writ of possession having been issued, Mariano R. Lacson turned over the possession of lot No. 492 to Braulio Tupas, the plaintiff in said case.

On October 29, 1929, Mariano R. Lacson filed a motion in case No. 3152, wherein the sale at public auction of said lot No. 492 had been ordered, praying the court to order the refund to him of the P1,500 which he had paid to the sheriff for the above-stated lot No. 492. On November 16, 1929, the court issued an order overruling said motion and indicating that a separate action should be filed.

Ramon Diez having died, his widow, Magdalena Mecho, was appointed by the Court of First Instance of Iloilo administratrix of the estate left by her deceased husband on June 6, 1931 (Exhibit 7).

On the same date, June 6, 1931, the commissioners on claims and appraisal were appointed, and on the 9th of said month and year, they took their oath of office and entered upon the discharge thereof. On the 16th of said month and year, they published the notices for the filing of claims against the intestate estate of Ramon Diez, in accordance with law. On December 16, 1931, they submitted their report to the court with only one claim for P500 filed by Tomas Serra, which was approved and recommended for payment (Exhibit 7 Annex).

Pursuant to what had been indicated in the order of November 16, 1929, the purchaser Mariano R. Lacson filed the complaint, which gave rise to this suit, on September 14, 1932, against Gil M. Montilla et al. Said complaint was amended on March 16, 1933, by including therein as party defendant Magdalena Mecho Vda. de Diez, in her capacities as surviving spouse, heiress of Ramon Diez and administratrix of the estate left by said deceased.

It will be seen from the foregoing that Ramon Diez died between November 16, 1929, the date on which the Court of First Instance of Occidental Negros denied the motion of the plaintiff-appellee Mariano R. Lacson, seeking for the refund of the sum of P1,600 paid by him for lot No. 492 at public auction, and September 14, 1932, on which this case was instituted. Although the intestate proceedings of Ramon Diez were had in the Province of Iloilo and, therefore, the publication of the notices of the committee to the creditors was made in said province, as required by section 687 of the Code of Civil Procedure, Mariano R. Lacson was authorized by section 690 of the same Code to file his claim before the final settlement of the intestate estate if the committee had failed to give the corresponding notice, which is equivalent to the nonpublication of said notice in another province.

Furthermore, according to paragraph 14 of the amended complaint, the plaintiff Mariano R. Lacson had repeatedly required the defendants to pay said sum of P1,500 but they always refused to do so. This repeated demand for payment made by the plaintiff Mariano R. Lacson must have taken place from the time the court

indicated in its order of November 16, 1929, that his claim should be determined by means of a separate action and, therefore, he must have made the demand to Ramon Diez, in his lifetime, and to his widow, the herein defendant-appellant Magdalena Mecho, after his death. The plaintiff-appellee, Mariano R. Lacson, therefore, must have had knowledge of the death of Ramon Diez.

It does not appear that the intestate proceedings of the deceased Ramon Diez have been finally settled. However, it is to be supposed that such is now the case inasmuch as the report of the committee was submitted on December 16, 1931, and the complaint has been filed against the widow of Ramon Diez, Magdalena Mecho, as heiress of her deceased husband. Inasmuch as the plaintiff Mariano R. Lacson failed to take the steps prescribed by said section 690, he has lost the right to enforce his claim against the intestate estate of said deceased Ramon Diez, in accordance with the provisions of section 695 of the Code of Civil Procedure. But even if the intestate proceedings of the deceased Ramon Diez had not been finally settled, neither would the plaintiff be entitled to bring the present action for the recovery of the sum in question from the widow of said deceased, either as heiress or as administratrix of the estate, left by her husband, because, as his claim consists in the recovery of a certain sum of money, it is not among those that survive after the death of the debtor, pursuant to the provisions of section 703 of said Code of Civil Procedure. Consequently, it should be filed before the committee on claims and appraisal, in accordance with the provisions of section 686 of said Code.

Therefore, the court a quo erred in overruling the demurrer to the amended complaint, interposed by the defendant-appellant Magdalena Mecho, widow of Ramon Diez.

Having arrived at this conclusion, it becomes unnecessary to pass upon the other assignments of alleged error.

In view of all the foregoing considerations, this court is of the opinion and so holds that when a purchaser of a piece of land at an execution sale is deprived thereof in a suit filed by a third party claimant, said purchaser should file his claim for the refund of the proceeds of said sale before the committee on claims and appraisal appointed in the intestate proceedings of the execution creditor, who died after the annulment of the execution sale in question. If he fails to do so, he loses the right to enforce his said claim and the action later brought against the widow of the deceased for such purpose is without cause, and the demurrer interposed upon said ground should be sustained.

Wherefore, the judgment appealed from is reversed, and the case is ordered remanded to the court of its origin, for further proceedings in accordance with the law, with costs to the plaintiff. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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