

ONG LIONG TIAK, PLAINTIFF AND APPELLANT, VS. LUNETA MOTOR COMPANY AND THE SHERIFF OF MANILA, DEFENDANTS AND APPELLEES.

G.R. No. 44552. November 07, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

Ong Liong Tiak appealed from the decision rendered by the Court of First Instance of Manila in civil case No. 47997 of said court, overruling and dismissing his complaint, wherein he sought an injunction against the defendant and a judgment in his favor for damages in the sum of P500, plus the costs.

In his brief, Ong Liong Tiak, the appellant, makes the following enumeration of the errors alleged by him to have been committed by the lower court in rendering its decision appealed from, to wit:

"1. The trial court erred in holding that the indebtedness of Jeronimo Angeles to Macondray & Co., Inc. was also guaranteed by the chattel mortgage executed by S. Arellano Choa Siong in favor of the Luneta Motor Co.

"2. The trial court erred in holding that the automobile in question was still encumbered at the time it was sold by S. Arellano Choa Siong to the plaintiff-appellant.

"3. The trial court erred in not finding as a fact that the chattel mortgage over the automobile in question was extinguished upon payment of the last promissory note.

"4. The trial court erred in not holding that the automobile in question was, at the time of the levy on execution by the defendant sheriff, the exclusive property of the plaintiff-appellant."

It is undisputed that about August 21, 1933, S. Arellano Choa Siong, the registered owner of Chrysler Sedan automobile, motor No. 4253, serial No. 6524936, transferred the ownership thereof to the plaintiff-appellant, to which effect he endorsed his certificate of registration, Exhibit A, in favor of the latter.

S. Arellano Choa Siong purchased said automobile from the Luneta Motor Co. about June 11, 1931. However, instead of paying the price thereof, which was P1,800 he executed eighteen promissory notes for P100 each in favor of the vendor, binding himself to redeem one after another, every month. To secure the payment of said eighteen promissory notes and that of articles he might take from his creditor, such as gasoline, tires, automobile accessories, etc., and to secure also the payment of any other obligation that he might contract with it, he constituted a mortgage on the automobile in question, executing to that effect in favor of the Luneta Motor Co., the instrument of mortgage, Exhibit 2, one of the clauses of which reads as follows:

"* * * it being expressly agreed further that this mortgage shall also serve as security for the payment to the said mortgagee in addition to the aforesaid notes of the purchase price or cost of any and all gasoline, tires, automobile accessories or parts, and repairs furnished or made by the said mortgagee at any time up to the date this mortgage is completely satisfied as and when the same becomes due, and of any other indebtedness of the mortgagor in favor of the mortgagee incurred in any other manner whatever." (Italics ours.)

About the months of October and November, 1932, one Jeronimo Angeles obtained from Macondray & Co., Inc. paints and other, merchandise of the total value of P407. For the payment of this amount, S. Arellano Choa Siong acted as surety up to the sum of P300, having paid the sum of P160 on account, on March 30, 1933, thereby leaving a balance against him in the sum of P140. In this state of affairs, Macondray & Co., Inc., assigned its credit against S. Arellano Choa Siong to the defendant-appellee, after notice of said assignment had been served upon said S. Arellano Choa Siong, who offered no objection thereto. On the contrary, he paid P40 on account, shortly thereafter, thereby leaving a balance of P100.

About April 4, 1933, S. Arellano Choa Siong made the last payment of the eighteen promissory notes which he had executed in favor of the defendant-appellee. However, as there still existed in its favor a credit of P100 for the paints and other merchandise taken by Jeronimo Angeles from Macondray & Co., Inc., under the personal guaranty of S. Arellano Choa Siong, which sum was assigned to it by said Macondray & Co., Inc., without any objection on the part of S. Arellano Choa Siong, the defendant-appellee refused to cancel the instrument of mortgage Exhibit 2. On the contrary, it foreclosed the mortgage constituted in its favor, causing the sheriff to attach the above-mentioned automobile. It is for the purpose of setting aside said attachment that the plaintiff filed his complaint in this case, seeking what has already been set forth herein-before.

Taking into account the circumstances of the case, and particularly the obligation assumed by S. Arellano Choa Siong, according to the terms of the above-quoted clause of the instrument of mortgage Exhibit 2, this court holds that the lower court committed none of the errors attributed to it by the appellant. It was right in holding that, by interpreting the terms of Exhibit 2, the automobile in question still remained subject to the lien stated in said instrument, inasmuch as the account, which S. Arellano Choa Siong accepted and bound himself to pay for Jeronimo Angeles, had not been completely settled. Instruments of mortgage, as said Exhibit 2, are binding, while they subsist, not only upon the parties executing them but also upon those who later, by purchase or otherwise, acquire the properties referred to therein. The right of those who so acquire said properties should not and can not be superior to that of the creditor who has in his favor an instrument of mortgage executed with the formalities of the law, in good faith, and without the least indication of fraud. This is all the more true in the present case, because, when the plaintiff purchased the automobile in question on August 22, 1933, he knew, or at least, it is presumed that he knew, by the mere fact that the instrument of mortgage, Exhibit 2, was registered in the office of the register of deeds of Manila, that said automobile was subject to a mortgage lien. In purchasing it, with full knowledge that such circumstances existed, it should be presumed that he did so, very much willing to respect the lien existing thereon, since he should not have expected that with the purchase, he would acquire a better right than that which the vendor then had.

For all the foregoing considerations, finding as this court finds that the decision appealed from is in accordance with law, the same is hereby affirmed, with the costs to the appellant. So ordered.

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

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