

**IN THE MATTER OF THE INTESTATE ESTATE OF THE LATE SPOUSES
ANTONIO RICO AND DOLORES MURILLO.—FELIX SAMSON ET AL.,
APPELLANTS, VS. MARIANO HONRADO, APPELLEE.**

G.R. No. 4476. November 14, 1908

Ponente: TORRES, J.

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TORRES, J.:

By an order of the Court of First Instance of Albay, dated September 29, 1906, the sale of the property pertaining to the intestate estate of Antonio Rico and Dolores Murillo, situated in the town of Camalig, made to Mariano Honrado for the sum of P2,600, was annulled, for the reason that Felix Samson, acting on behalf of Pedro Murillo, an heir, requested the cancellation of said sale and offered to pay 2,800 at public auction, and to this end he deposited with the clerk of the court the sum of P1,000. The court thereupon directed the commissioners to again offer the said property for sale at public auction, after advertising it for twenty days in the towns of Guinobatan, Camalig and Albay, the sale to take place on the same day or the day following; that in case there should be a higher bidder than Pedro Murillo, such bidder should pay the amount in cash to the commissioners, but if no such bid were made, then Murillo should be held to be the highest bidder for at least the P2,800, or any sum he might be willing to pay over and above that amount; that in the event of another person or persons bidding higher, the clerk of the court should return to Samson the P1,000 deposited by him, and the commissioners should at once deliver the property to the highest bidder, the sale to be approved at the next term of court and the money to be distributed among the heirs in exchange for proper receipts.

By an instrument dated the 26th of November, 1906, Mariano Honrado set forth: That by virtue of the order of the court above referred to, the commissioners Silverio Morco, Mariano Nacion, and Juan M. Leoderes advertised in the towns of Guinobatan, Camalig and Albay, that on the 22d of October of, said year, the property or lands described in the writing would be sold at public auction, a house of strong materials with nipa roof being erected on one of them; that the public auction of the said property was held at the appointed place, and the sale was declared to be closed at half past four in the afternoon of the said 22d of October; that the property was adjudicated to the petitioner for the sum of P2,891.25 which amount was at once paid and delivered to the said commissioners; that shortly afterwards, at about 5 o'clock, the attorney Felix Samson made his appearance, at the place where the auction sale had been held and offered P3,000 for the property that had already been sold; that notwithstanding the fact that the petitioner protested against such an offer, because the sale was then closed and the property had been adjudicated to him, the purchase price being already in the hands of the commissioners, the latter, in view of the repeated requests of Attorney Samson that his offer, which was at first rejected, be accepted and his statements that he would bear any responsibility that might result therefrom, saw fit to cancel the sale made, and again put up the property already disposed of for sale at the upset price of P3,000, the amount of the offer made by Samson; that the commissioners recovered from the petitioner the documents of the property that had been delivered to him, and returned the P2,891.25 which he had paid them. For these reasons the petitioner protested against the action of the commissioners and reserved his right to bring such, suit as he might be entitled

to, inasmuch as the call for a new sale to be held on the 24th of October, 1906, was irregular, illegal, and improper, the commissioners having no authority to adopt such a course to the prejudice of the petitioner, who was the highest bidder and to whom the property had been adjudicated at the first sale; he therefore prayed the court to disapprove the sale held on the 24th of October, and on the other hand to declare that the sale which took place on the 22d of said month was valid, and that the adjudication made to him of the property for the sum of P2,891.25, be approved, which amount he was prepared to pay at once to the clerk of the court; and that, in case the court did not accede to his petition, he desired to state that he was willing to pay at once the sum of P3,000 for which the property was adjudicated to Attorney Samson at the auction sale of the 24th of October, and that, at any rate, conditions being equal, the petitioner be given the preference.

On the 15th of February, 1907, the last purchaser of the aforesaid property, Felix Samson, requested the court in writing to dismiss the petition of Mariano Honrado, and to finally approve the sale and adjudication of the property to him, alleging that the sale fixed for the 22d of October, was advertised in the town of Camalig without the hour being announced, and as he was obliged to go to the town of Ligao, he prayed Commissioner Silverio Morco in the afternoon of the 20th of October, to wait for him until between 4 and 5 p. m. of the 22d, when he would probably return, as he intended to bid for the property put up at auction; that he returned to Camalig in the afternoon of the said day, but, owing to an accident he met with on the return trip, he reached Camalig at 4.45 p. m. on the 22d; that he immediately went to the place where the sale was to be held, arriving before 5 o'clock, and made a bid of P3,000 for the property on sale, which bid was higher than that offered by Honrado, and although at first the commissioners declined to accept it because the sale was closed, yet, for the reasons advanced by him, and especially because his offer was more beneficial to the heirs, after consulting with those of the latter who were present as well as with the previous purchaser, the commissioners appointed the 24th at 8 a. m. for the new sale of the said property; that Mariano Honrado did not lodge any protest against this, but on the contrary, appeared at said second sale, although he did not bid; that for this reason the petitioner was declared to be the highest bidder and the property was adjudicated to him for the sum of P3,000, without any protest on the part of Mariano Honrado; that the proceeds of the sale were delivered to the commissioners in the afternoon and immediately apportioned by them among the heirs; that from the 24th of October until the 26th of November, 1906, the petitioner has not heard of any protest having been lodged by anyone excepting that made by Honrado before the court below asking that the property be adjudicated to him for the same sum of P3,000; that the present value of the property is comparatively greater than it was on the 24th of October, for the reason that the lands have been improved and abacd has been planted thereon; that if the property sold were to be adjudicated to Honrado for the sum of P2,891.25, the heirs would not be benefited, neither would they be if to the prejudice of the petitioner, the same were adjudicated to Honrado for P3,000 because petitioner has already paid the total amount of the sale to the commissioners, and the latter have already divided the money among the heirs.

The court below, on the 15th of February, 1907, held that the sale of the property above referred to, which took place on the 24th of October, 1906, and the adjudication thereof to Felix Samson were null and void, and declared that the sale made on the 22d of October, 1906, and the adjudication of the property to Mariano Honrado for the sum of P2,891.25 was valid and subsisting; the latter sale and adjudication were approved and the purchaser, Honrado, was directed to make immediate payment of the purchase money to the clerk of the court on behalf of the administrator of the intestate estates or whoever was entitled to receive the same; the administrator was ordered to execute an absolute bill of sale in favor of the purchaser, Honrado, for the amount above stated, and to make immediate delivery of the property to him; and finally, the court below directed that its order be entered in the registry of property, for which purpose the clerk of the court should send a certified copy thereof to the registrar.

By a writing dated the 22d of February, the attorney, Samson, in his own name and on behalf of the interested

heirs of the intestates, appealed from the foregoing order of the court; he asked that the appeal be allowed and that the amount of the bond to perfect the same be named. On the 27th of February the appeal was admitted under a bond of P1,000, and the court ordered Samson to deliver to Honrado the property sold, the purchase price of which remained in the hands of the clerk of the court.

The contention between the parties rests upon whether the commissioners in charge of the sale of property can lawfully annul the sale, foreclosure, and adjudication of real property belonging to an intestate estate, and again offer the same property for sale at public auction on another day and hour appointed for such purpose.

When the judge below, by his order of the 29th of September, 1906, directed the aforesaid commissioners to hold a new public sale of the said property, he gave them particular instructions as to the manner in which they should act so as to comply with the provisions contained in his order, and expressly directed them to make immediate delivery of the property sold to the highest bidder, and to at once divide the proceeds among the heirs, taking their receipts for the same, without prejudice to the sale being approved at the next term of the court following the order.

It does not appear that the judge below had authorized the commissioners to annul the previous sale in order to repeat the same on some other day and hour; such a proceeding was not within their power, nor was it contained in the order which directed the sale of the property.

For the purpose of effecting a partition among the heirs and legatees when they hold pro indiviso, the public sale of realty forming part of an estate must be made under the direction of the court, as provided by section 762 of the Code of Civil Procedure, in connection with section 187 of said code which is of the following tenor:

"Assignment or sale of the estate.—When it is made to appear to the commissioners that the estate, or a portion thereof, can not be divided without great inconvenience to the parties interested, the court may order it assigned to one of the parties, provided he pays to the other party such sum of money as the commissioners judge equitable. But, if no one of the parties interested will take such assignment and pay such sum, the court shall order the commissioners to sell such estate at public or private sale. In that case the commissioners shall sell the estate agreeably to such order; but the sale shall not be valid to pass the title to the property until confirmed by the court, unless the order of sale itself shall otherwise provide."

The judge below basing his action upon the foregoing legal provision, and notwithstanding the authority granted to the commissioners by his said order of the 29th of September, reserved his approval of the sale authorized thereby until the next term of court; thus, the judge acted in accordance with law when he confirmed the sale of the property made on the 22d of October, 1900, and held the same to be valid and subsisting, whereas the sale made without judicial authority on the 24th of said month and the improper adjudication of the property sold he held to be null and void, as the said commissioners were not authorized by law, nor by the said order of the 29th of September, and had no authority whatever to cancel a public sale and the adjudication of the property sold and disposed of in the manner provided by the court below, whatever may have been the reason for such an act.

Even though the public sale held on the 22d of October were defective or for any reason should have been annulled, only the judge who ordered it is competent to consider, approve, or disapprove the sale, and under no circumstances could the commissioners, being without power or authority, annul a proceeding executed by virtue of a judicial mandate and in accordance with the law of procedure, and repeat such proceeding for which they were not expressly authorized.

The actions of the commissioners and delegates of a court of justice partake of the character of judicial proceedings ; they must be formal and in accordance with law and absolute morality and justice; these officials may not use their discretion in enforcing judicial orders, because in the performance of their duties they have no

other obligation than to comply with such orders, and any excess of authority on their part would be illegal and could not be made valid by the consent of the heirs or parties in interest. The will of the latter can not be considered as a rule of procedure; the law established for the purpose must be followed.

On the other hand it is true that a public sale without the approval of the court does not confer any right on the purchaser, but as soon as confirmed by the court, in its discretion, which confirmation must be presumed to have been obtained in conformity with the law and the strict principles of justice, unless the contrary is proven, the said sale must always be sustained against any claim which is not based on law.

In view of the foregoing it is our opinion that the order of court of the 15th of February, 1907, from which the appeal is taken, should be and is hereby affirmed with the costs against the appellant. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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