

**APOLONIA GOMEZ, PLAINTIFF AND APPELLEE, VS. LEVY HERMANOS, INC., THE PROVINCIAL SHERIFF OF LAGUNA, MARTA MACALALAG, AND MARIANO VILLANUEVA, DEFENDANTS AND APPELLANTS.**

*G.R. No. 45112. April 03, 1939*

Ponente: CONCEPCION, J.

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**CONCEPCION, J.:**

This is an appeal from a judgment of the Court of First Instance of Laguna in an action brought by the appellee, Apolonia Gomez, against Levy Hermanos, Inc., the defendant-appellant, to annul the sale at public auction of two parcels of land which were bought by the appellant.

There is no dispute as to the facts but only as to the questions of law arising therefrom.

The two parcels of land, subject of the litigation, were sold by the spouses Marta Macalalag and Mariano Villanueva to the plaintiff Apolonia Gomez on September 18, 1929, with the right of repurchase within three years. Said lands were at that time not registered either under the Torrens or the old system but were in the process of registration under the cadastral law.

In compliance with a writ of execution issued by the Court of First Instance of Manila in civil case No. 40899 entitled Levy Hermanos, Inc. vs. Marta Macalalag, said parcels of land were attached on October 25, 1932 and on the same date the attachment was recorded on the back of the certificates of title thereof which had then been issued. The plaintiff filed a third party claim with the provincial sheriff of Laguna, but Levy Hermanos, Inc., having given an indemnity bond, the sale at public auction was carried out and the lands were sold to Levy Hermanos, Inc. as the highest bidder on December 2, 1932. After the attachment and the notation thereof in the certificates of title, but before the public auction, the plaintiff-appellee, on November 21, 1932, caused to be inscribed on the back of the certificates of title of the lands in question the sale made to her by the spouses Mariano Villanueva and Marta Macalalag on September 18, 1929.

On December 18, 1933, the provincial sheriff of Laguna executed a deed of absolute sale in favor of Levy Hermanos, Inc., the right to redeem the land not having been exercised within the legal period of twelve months.

Finally, on March 2, 1933, the plaintiff-appellee, in the cadastral proceedings, asked to have the inscription of the attachment levied by Levy Hermanos, Inc., cancelled and new certificates of title issued in her favor. Her petition was denied but she did not appeal. In the same cadastral case, on August 4, 1934, the court issued an order requiring the plaintiff to deliver to the register of deeds of Laguna the certificates of title covering the lands in question for cancellation and issuance of new certificates in the name of the defendant-appellant Levy Hermanos, Inc. From said order Apolonia Gomez likewise did not appeal, limiting herself to filing the present action to annul the sale of the lands in question to the defendant-appellant, Levy Hermanos, Inc.

One of the grounds of the appealed judgment is the following:

"The court believes that the sale with the right of repurchase of the two parcels of land in question in favor of the plaintiff Apolonia Gomez enjoys preference over the sale made by the provincial sheriff of Laguna in favor of Levy Hermanos, Inc. inasmuch as all that said company acquired by virtue of the sale at public auction was such right, interest or participation which Marta Macalalag and Mariano Villanueva had in those two parcels of land (see the back of Exhibits A and B). On the day of the public auction, the defendants had no other right on said parcels of land except that of repurchase from the plaintiff in the sum of P1,300, a right which Levy Hermanos, Inc. did not exercise."

We believe that the above-quoted ground of the lower court cannot be sustained because it is against the law. The undisputed facts of this case disclose that when Levy Hermanos, Inc. attached the parcels of land in question and when said attachment was noted on the back of the certificates of title, there was nothing to show in the registry that Apolonia Gomez had any right over the land. It is true that she bought the lots with pacto de retro but the fact of her purchase was not noted on the certificates of title until long after the attachment and its inscription on the certificates. In the registry, therefore, the attachment appeared in the nature of a real lien when Apolonia Gomez had her purchase recorded. The legal effect of the notation of said lien was to subject and subordinate the right of Apolonia Gomez, as purchaser, to the lien. She acquired the ownership of the said parcels only from the date of the recording of her title in the register, which took place on November 21, 1932 (sec. 51 of Act No. 496; *Liong-Wong-Shih vs. Sunico and Peterson*, 8 Phil., 91; *Tabigue vs. Green*, 11 Phil., 102; *Buzon vs. Licauco*, 13 Phil., 354; and *Worcester vs. Ocampo and Ocampo*, 34 Phil., 646), and the right of ownership which she inscribed was not an absolute but a limited right, subject to a prior registered lien, by virtue of which Levy Hermanos, Inc. was entitled to the execution of the judgment credit over the lands in question, a right which is preferred and superior to that of the plaintiff (sec. 51, Act No. 496 and decisions cited above). If she wanted to have an absolute title, free of all lien, she had to pay the judgment credit of Levy Hermanos, Inc., or exercise, after the auction, the right of repurchase within one year granted by law, in order to redeem the property purchased by Levy Hermanos, Inc.

It is not true, as alleged in the appealed judgment, that on the day of the auction, Levy Hermanos, Inc., had no other right in said two parcels except that of repurchase from the plaintiff. On that date, Levy Hermanos, Inc. had already recorded its attachment which created a real lien on the land, a lien which, because of the priority of its inscription, cannot be ignored by the plaintiff Apolonia Gomez.

We have so far discussed the respective rights of the parties in relation to the effects of the inscriptions in the registry; but there is another aspect to this question which relates to the efficacy of the judicial proceedings. We refer to the circumstance that the herein appellee, in the cadastral case, asked for the cancellation of the inscriptions in the certificates of title in favor of Levy Hermanos, Inc., which petition was denied without any exception on the part of the plaintiff. She was, moreover, ordered by the court to surrender to the register of deeds the certificates of title over the lands so that new ones could be issued in favor of Levy Hermanos, Inc. This and the first order both legally bar the plaintiff from obtaining a favorable judgment, as such a judgment would annul already final orders, rendered by a competent judge with jurisdiction to issue them, the nullity of which had never been asked by the commencement of the proper remedy or by an action directly impugning the validity thereof.

The judgment of the trial court is reversed, with the costs to the appellee. So ordered.

Avancena, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

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