

CARLOS N. FRANCISCO, PETITIONER AND APPELLEE, VS. PARSONS HARDWARE CO., INC., OPPOSITOR AND APPELLANT.

G.R. No. 45246. April 10, 1939

Ponente: MORAN, J.

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MORAN, J.:

The proceedings taken in the instant case disclose the following facts:

On July 26, 1929, a homestead patent, with original certificate of title No. 2970, was issued to one Alfredo Hernandez for lot No. 615. Thereafter, he became an execution debtor to the appellee herein, Carlos N. Francisco, for a sum of money, in civil case No. 476 of the justice of the peace court of Mandaluyong, Rizal; and, also to the appellant herein, Parsons Hardware Co., Inc., for a mortgage credit, in civil case No. 44346 of the Court of First Instance of Manila. On July 26, 1934, the provincial sheriff of Nueva Ecija, at the instance of the appellee, levied upon the homestead in question; and, on August 9, 1934, a like levy was effected upon the same homestead in favor of the appellant. By virtue of these two levies, lot Na 615 was twice sold at public auction, first to the appellee herein, and secondly to the appellant. The lower court, in adjudication of the conflicting claims of both parties, decided that the appellee had a better title than the appellant. Wherefore, this appeal.

It appears that the executions levied by both appellee and appellant against the homestead in question were by reason and in satisfaction of debts contracted by Alfredo Hernandez prior to the expiration of the period of five years from the date the patent was issued in his favor. The case, then, for both claimants herein falls squarely within the prohibition of section 116 of Act No. 2874, and as such, the executions levied by both of them in satisfaction of their claims are null and void. (*Beach vs. Pacific Commercial Co. and Sheriff of Nueva Ecija*, 49 Phil., 365.)

Judgment is hereby reversed and it is ordered that the executions levied by both appellant and appellee and the other transactions taken in furtherance thereof, as annotated in the homestead certificate of title, be cancelled, without costs.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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