

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT
CHING LIU & CO., PETITIONER AND APPELLEE, VS. PAULA
MERCAUO, OPPOSITOR AND APPELLANT.**

G.R. No. 45290. April 19, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal from an order of the Court of First Instance of the City of Manila directing the register of deeds of the same city to cancel the annotation of a writ of attachment in favor of the herein appellant, Paula Mercado, which appears on transfer certificate of title No. 44406.

It appears that one Fernando Co Chioco was the owner of a piece of land with the improvements thereon described in the transfer certificate No. 39578, issued by the register of deeds of the City of Manila, which is now title No. 44406. On January 22, 1932, to secure an obligation in the sum of P5,500, he executed a first mortgage in favor of Ching Yng Si over the said property for a period of one year at 10 per cent annual interest, which encumbrance was duly registered. While the said mortgage was in force, Paula Mercado, the appellant herein, brought an action against Go Chioco in the Court of First Instance of this city, being civil case No. 41738, in which an order of attachment was issued over any right, title, interest or share which said Go Chioco might have had over said property. Said attachment was also duly annotated on April 12, 1932, on the back of said title No. 39578. In civil case No. 41738, judgment was rendered in favor of Mercado for which an execution was issued on November 25, 1932, but the sheriff returned the writ unsatisfied because there was no property appearing in the name of Go Chioco in the registry and the appellant was unable to point to any property belonging to the debtor.

Fernando Go Chioco having failed to comply with the conditions of said mortgage, Ching Yng Si brought a foreclosure suit on February 21, 1933, against said Go Chioco, civil case No. 43820, for which on July 21 1933, a judgment was rendered in favor of the mortgagee. On November 13 of the same year the court ordered the sale at public auction of the mortgaged property and the sale was effected on December 9, 1933, for P4,000, in favor of Ching Yng Si, as the highest bidder. The sale was approved on January 2, 1934, and the corresponding transfer certificate of title No. 44405 was issued in his favor. On February 13, 1934, Ching Yng Si, being then the registered owner thereof, sold and conveyed the said property to Ching Liu & Co., the appellee herein, for which transfer certificate of title No. 44406 was issued in its favor, and said attachment as an encumbrance was duly annotated at the back of said title as was done in the previous ones already cancelled. On May 25, 1936, Chin Liu & Co., filed in the Court of First Instance of Manila a motion alleging absolute ownership over the land and improvements evidenced by transfer certificate of title No. 44406, and praying that the register of deeds of said city be ordered to cancel the annotation of attachment issued in civil case No. 41738 appearing on the back of said transfer certificate, and to return the same to said petitioner free from all encumbrances. The lower court, notwithstanding the opposition of the appellant, granted the motion. The appellant, Paula Mercado, has brought this case before this court for review on the errors assigned in her brief. Of the six errors assigned the most important are errors two and four which are as follows:

"II The court a quo erred in declaring that the attachment levied upon by the herein appellant over whatever right, title, interest or share which Fernando Go Chioco, the owner of the mortgaged property, may have had over said property, did not create any right in favor of the herein appellant over the same.

"IV. The court a quo erred in declaring that the herein appellant is not entitled to be notified of and included in the foreclosure proceedings instituted by the alleged mortgagee, Ching Yng Si, notwithstanding the writ of attachment validly levied upon the mortgaged property prior to said foreclosure proceedings, and in not declaring that appellant cannot be affected by such foreclosure proceedings."

At the outset, it should be observed that at the time of the attachment of the property, Go Chioco was still the registered owner of said property. This is true because the mortgage is merely an incumbrance upon the property and does not extinguish the title of the debtor who does not lose his principal attribute as owner, that is the right to dispose. (E. C. McCullough & Co. vs. Veloso and Serna, 46 Phil., 1, 4.) It should also be observed that the attachment in favor of the appellant was annotated and recorded in accordance with the provisions of sections 51 and 56 of the Land Registration Act. This being the case, "the notation of the attachment of this lot in the entry book of the register of deeds produces all the effects which the law gives to its registration or inscription." (Director of Lands vs. Abad, 61 Phil, 479, 486.) Attachment is in the nature of a proceeding in rem. It is against the particular property. The attaching creditor thereby acquires a specific lien upon the attached property which ripens into a judgment against the res when the order of sale is made. Such a proceeding is in effect a finding that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The law does not provide the length of time an attachment lien, shall continue after the rendition of the judgment, and it must therefore necessarily continue until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law. (Cf. *raison d'etre*, Yambao and Garcia vs. Po Huat Suy, 52 Phil., 237.)

It has been held that the lien obtained by attachment stands upon as high equitable grounds as a mortgage lien:

"The lien or security obtained by an attachment, even before judgment, is a fixed and positive security, a specific lien, and, although whether it will ever be made available to the creditor depends on contingencies, its existence is in no way contingent, conditional, or inchoate. It is a vested interest, an actual and substantial security, affording specific security for satisfaction of the debt put in suit, which constitutes a cloud on the legal title, and is as specific as if created by virtue of a voluntary act of the debtor and stands upon as high equitable grounds as a mortgage lien." (7 *Corpus Juris Secundum*, 433, and authorities therein cited.)

Appellee cites and relies on *Molina Salvador vs. Somes* (31 Phil., 76), and *Lopez vs. Alvarez* (9 Phil., 28, 35). Examination of these cases will disclose that they dealt with the preference of credits and the attachment therein referred to were not recorded under the Land Registration Act (No. 496). Inasmuch as the facts of those cases and the questions therein involved are not similar to the facts and Questions of the case under consideration, we decline to be bound thereby. Every case must be judged upon its own facts. A decision in one case is no authority upon which to rest the decision in a later case unless the entire factual basis in the latter is similar in kind or principle to that of the former.

We are of the opinion, and so hold, that an attachment properly levied upon a property registered under the Land Registration Act once annotated, recorded, or registered in the office of the register of deeds, affects the realty to which it refers, and that from the moment it is inscribed, recorded or noted in the office of the register of deeds for the province or city in which the realty lies, it constitutes a lien on the property (Cf. *Lava and Llamas vs. Usapdin* [C. A.], 36 Off. Gaz., 1591, 1592). It follows that, in accordance with section 225 of the Code of Civil Procedure, the herein appellant should have been included as party defendant, she "having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage."

The judgment is accordingly reversed, with costs against the appellee. So ordered.

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

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