

TOMAS MATIENZO AND AUELIO PALILEO, PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF LAGUNA-, GUADALUPB SAN JOSE, ADRIANA FRANCISCO DE GUILATCO, AND THE PROVINCIAL SHERIFF OF LAG...

G. R. No. 45333. July 27, 1937

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DIAZ, J.:

Tomas Matienzo and Aurelio Palileo filed a petition for certiorari against the Court of First Instance of Laguna, Guadalupe San Jose, Adriana Francisco de Guilatco and the provincial sheriff of Laguna, alleging that the respondent court, at the instance of Guadalupe San Jose and Adriana Francisco de Guilatco, abused its discretion by ordering, in spite of their objections made in writing, the delivery to said respondents of the parcels of land described in paragraph 3, subparagraphs (a), (b) and (c) of their petition, particularly that under letter (a), thereby depriving them of their real right to the lands in question, without due process of law; and that they have no other more speedy and adequate remedy for the protection of their rights than to resort to the petition for certiorari.

The pertinent facts of the case are as follows: On February 16, 1930, the spouses Raymundo Ysaac and Antonina Alay mortgaged the three parcels of land described in said paragraph 3 of the petition to Dr. M. D. Calupitan, to secure the payment of a debt of P1,000 which they had contracted with him, promising to pay the same on or before May 8, 1930.

A few days before the obligation became due, that is, on April 12, 1930, Dr. M. D. Calupitan transferred his credit to Guadalupe San Jose. Inasmuch as the Ysaacs refused to pay her the credit in question, notwithstanding the fact that the period granted to them for said purpose had already elapsed, Guadalupe San Jose instituted civil case No. 5480 against them in the Court of First Instance of Laguna to compel them to make such payment. After the trial the court rendered judgment against said spouses, ordering them to pay to the plaintiff the above-stated sum of P1,000. They did not have any better luck on appeal because this court affirmed the appealed judgment in toto on October 31, 1931 (G. R. No. 35074 [66 Phil., 808]).

On January 5, 1932, the trial court, upon petition of the respondent Guadalupe San Jose, issued the corresponding writ of execution of the judgment, and the sheriff of Laguna, by virtue of said writ, proceeded to attach all the rights, interest and participation of the Isaac spouses in the lands in question, preparatory to selling them later at public auction. However, before the day of the sale arrived, Tomas Matienzo. and Maria Carcalin, who claimed to have purchased with the lands in question from the spouses Raymundo Ysaac and Antonina Alay, filed a third party claim. Nine days later, the above-stated third party claimants brought an action against the sheriff and Guadalupe San Jose asking that they be declared owners of said lands and that a writ of preliminary injunction be issued to restrain the sheriff from proceeding with the sale of the lands in question, thereby instituting civil case No. 5952 entitled "Tomas Matienzo and Maria Carcalin, plaintiffs, vs. Guadalupe San Jose and the Provincial Sheriff of Laguna, defendants." This last case was decided by the Court of First Instance of Laguna in favor of the plaintiffs on March 2, 1933, and the defendants Guadalupe San Jose and the provincial sheriff of Laguna, who did not agree to the decision rendered by the court, appealed to the Supreme Court, resulting in the reversal of the

appealed judgment in all its parts on June 16, 1934 (G. R. No. 39510 [60 Phil., 1018] and Exhibit B).

It was proven in the above-stated case that the owners of the lands in question, Raymundo Ysaac and Antonina Alay, had mortgaged them, as already stated, to Dr. M. D. Calupitan, to secure the payment of their debt of P1,000. Tomas Matienzo and Maria Carcalin then attempted to prove that on December 26, 1929, said spouses had sold the lands to them with for a period of ten (10) years. It appears, however, that the deed of the alleged transfer made in their favor was registered in the registry of deeds only after the lapse of one year, eight months and seventeen days from the registration therein of the mortgage deed executed by said spouses in favor of Dr. Calupitan (Exhibit B).

Long before this court reversed the judgment rendered in said civil case No. 5952, that is, on June 15, 1933, Tomas Matienzo sold to the petitioner Aurelio Palileo, for P410, "all his right, participation and interest" in the lands in question, having executed the deed Exhibit A to that effect. One of the last paragraphs of said deed which, by the way, states that the contract referred to therein is that of sale with pacto de retro, reads as follows: "I hereby declare that hereafter and until the repurchase said Mr. Aurelio Palileo, his heirs and successors in interest are the absolute owners of said lands and possessors thereof, free from all liens and incumbrances for which I am liable for their warranty and eviction in accordance with law, and he may register this document pursuant to Act No. 3344," thus making it understood that Tomas Matienzo had the possession of said lands and therefore was already the absolute owner thereof. However, it appears from the pleading filed in civil case No. 5480 (Exhibit 2) by the petitioner Aurelio Palileo, as attorney for the spouses Raymundo Ysaac and Antonina Alay, that the latter were the owners of said lands and the ones who, all the time prior to the execution of the judgment rendered in said case, had been in possession thereof. There is no doubt about this fact because it was said spouses Raymundo Ysaac and Antonina Alay themselves who delivered the parcels of land indicated by letters (6) and (c) to Guadalupe San Jose (answer under oath, paragraph X), when it was not possible for them to exercise their right of redemption. They confined themselves only to opposing the delivery to Guadalupe San Jose of the parcel of land indicated by letter {a). The reason then alleged by them through attorney and petitioner Aurelio Palileo was that said property constituted their homestead and that it was exempt from execution inasmuch as the value thereof did not exceed P300. They likewise suggested that if said Guadalupe San Jose were to agree to pay them the value thereof, ^300, there would be no question (Exhibit 2). On October 2, 1935, the respondent judge, acting by virtue of the reasons alleged by said petitioner Aurelic Palileo, issued an order of the following tenor:

"Upon consideration of the. defendants' motion of September 18, 1935, the provincial sheriff of Laguna is ordered to refrain from executing the final deed of the defendants' house and lot stated in said motion, which the sheriff sold for P500, unless the purchaser at public auction pay the sum of P300 to the defendants."

Pursuant to said order, Adriana Francisco de Guilatco, one of the respondents as assignee of the rights of the other respondent Guadalupe San Jose, who was the highest bidder at the auction sale, paid the sum of P300 to the spouses Raymundo Ysaac and Antonina Alay, turning over said sum to the latter's attorney, the herein petitioner Aurelio Palileo. It was only after said payment had been made that the sheriff executed the deed of absolute sale of the land indicated by letter (a) in the petition, in favor of Adriana Francisco de Guilatco.

When the spouses Raymundo Ysaac and Antonina Alay refused to turn over the parcel of land in question to the respondents Guadalupe San Jose and Adriana Francisco de Guilatco, notwithstanding the fact that they had received the selling price thereof, the respondent judge, at the instance of the interested parties, issued the order now questioned by the petitioners, who claim that it is the result of an abuse of discretion and is, furthermore, unconstitutional because it deprives them of a right due them, without due process of law.

Taking into consideration the foregoing facts, there seems to be no doubt that there is no other conclusion than that the petitioners' petition is absolutely without merit: first, because, granting that the sale with allegedly made

by the spouses Raymundo Ysaac and Antonina Alay in favor of the petitioner Tomas Matienzo, from whom the other petitioner Aurelio Palileo claims to have derived his right, is true, it is inferior to the mortgage lien constituted on the lands in question in favor of Dr. M. D. Calupitan, predecessor in interest of Guadalupe San Jose, on the ground that the registration of the sale in question in the registry of deeds took place, as already stated, one year, eight months and seventeen days after that of the mortgage deed executed in favor of Dr. Calupitan, which was made about the middle of the month of February, 1930 (Exhibit B); and second, because said transfer cannot be considered a sale with pacto de retro, inasmuch as it is clearly inferred from the above-stated facts and transactions, in the performance of which the petitioner Aurelio Palileo took part, that the lands which were the subject matter of the contract never left the hands of the owners thereof, the alleged vendors under pacto de retro. The petitioners are estopped from falsifying this fact because petitioner Aurelio Palileo himself, by his own declaration and acts, intentionally and deliberately led, not only the parties to said civil case No. 5480 but also the judge who tried it, to believe that the parcels of land, which were then the subject matter of said action and are precisely the ones referred to in this petition, belonged and continued to belong to the spouses Raymundo Ysaac and Antonina Alay and that they were in their possession. If the contract entered into between said spouses and the petitioner Tomas Matienzo, to secure with the three parcels of land in question the payment to the latter of their obligation, if there ever was any, were to be considered a mere mortgage—which would be the most that could be done—the petitioners' petition would have less merit because, under the provisions of article 1927, rule 2, of the Civil Code, the mortgage credit of Dr. Calupitan, or of his assignee Guadalupe San Jose, is superior to and enjoys preference over that of said petitioner Tomas Matienzo.

Furthermore, inasmuch as the lands in question were sold at public auction by virtue of the writ of execution of the judgment issued in the aforesaid civil case No. 5480, and as the spouses Raymundo Ysaac and Antonina Alay and their alleged successors in interest, the herein petitioners, failed to exercise their right of redemption within the period fixed for said purpose (section 466 of Act No. 190), it necessarily follows that they have already lost every right on the ground that, admitting the preference of the credit of Dr. Calupitan or of his assignee, the respondent Guadalupe San Jose, said petitioners should have satisfied the credit in question first, if they had the intention of enforcing their mortgage lien at all, but they did not do so. The most that they would perhaps be entitled to is to claim the excess of the proceeds of the sale at public auction, if any, after the amount of the judgment has been satisfied. The situation, however, is such that this cannot happen in the present case because the judgment credit of the respondent Guadalupe San Jose was P1,000, exclusive of interest and costs, and the amount of her bid at the auction sale was Pi,450. From this latter amount, the sum of P300 was taken to be turned over to the spouses Raymundo Ysaac and Antonina Alay, through the petitioner Aurelio Palileo, in payment of a portion of parcel (a) which they refused to deliver unless they were paid the value thereof, under the pretext that it was exempt from execution. It may, therefore, be said that all that she had recovered by virtue of the judgment in her favor was the sum of P1,150 which was hardly sufficient to cover her entire credit.

The remedy prayed for is denied, with costs to the petitioners. So ordered.

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

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