

VENANCIO QUEBLAR, PLAINTIFF AND APPELLEE, VS. LEONARDO GARDUNO, DEFENDANT. MARIA ANDRADA, THIRD-PARTY CLAIMANT AND APPELLANT.*G.R. No. 45529. April 13, 1939*

Ponente: DIAZ, J.

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In civil case No. 2778 of the Court of First Instance of Cavite, the plaintiff and appellee Venancio Queblar obtained judgment in his favor and against the defendant Leonardo Garduno whereby the latter is sentenced to pay the former the sum of P7,750, with legal interest from May 4, 1933, and the costs of suit. The action which Queblar then instituted was for the recovery of a mortgage credit. Both Queblar and Garduno appealed to this court from said judgment which, on January 16, 1936, was affirmed with the slight modification that Garduno was also ordered to pay to Queblar an amount equivalent to 5 per cent of P,750 in the nature of penalty for attorney's fees. (G. R. No. 43012.) When the case was returned to the court of origin, the latter, upon petition of Queblar, ordered the execution of the judgment and issued the corresponding writ.

From the sale at public auction of the land which had been mortgaged by Garduno to secure the payment of the credit which Queblar had against him, the amount of only P100 was obtained, for which reason Queblar asked for and obtained on October 19, 1936, another writ of execution in order to be able to collect the unpaid balance. By virtue of this last writ, the sheriff of the City of Manila, on October 28, 1936, levied upon the property situated at No. 174 Marquez de Comillas Street, Manila, and technically described in transfer certificate of title No. 48775 of the office of the register of deeds of the City of Manila issued in the name of Maria Andrada, in order to sell the same at public auction, thereby giving occasion for said levy to be, as it was in fact, noted not only in the corresponding register but also on the back of said transfer certificate of title. A few days thereafter, or on November 5, 1936, Maria Andrada filed with the sheriff her third-party claim which she later amended on the 17th of the same month and year, alleging that the property in dispute belonged to her as she had purchased it from Carmen Garduno on February 13, 1936, and transfer certificate of title No. 48775 of the office of the register of deeds of the City of Manila covering the same was in her name. In view of this incident, the sheriff desisted from carrying out the sale until Queblar could file the bond required by law and afterwards fixed by the lower court at P10,000. Said sale has not, however, been effected until now, because when it was to be made, Maria Andrada asked for the dissolution of the writ of execution, and as she failed in her attempt because the court denied her petition in its order of January 25, 1937, she announced her intention to appeal, as she in fact did, from said order.

The appellant Maria Andrada contends that the lower court erred in not declaring the levy made by the sheriff on the disputed property, which she says is hers, illegal and in not ordering the dissolution thereof.

The question raised by the appellant is without merit, because the provisions of section 451 of the Code of Civil Procedure, as amended by Act No. 4108, are positive. They impose upon the sheriff, in case of third-party claim,

the obligation to proceed with the sale of a real property levied upon by him in compliance with a judicial writ of execution, as soon as the person interested in such sale or the judgment creditor has filed the necessary bond to indemnify him for any damage that he may suffer by reason of any action that may be instituted against him by the third-party claimant. The especially pertinent part of the cited section provides:

"* * * Upon the filing of such bond, the sheriff shall forthwith proceed to comply with the writ, unless an injunction has been issued, in which case, as well as in the event that action is not brought upon the bond within one hundred and twenty days after the sale, the same shall be understood to be cancelled."

The aforesaid section indicates the steps that a third-party claimant should take under circumstances like those in which the appellant has found herself. They are: the institution of an action to recover the property levied upon and sold, and the institution of an action for damages, if any, within the periods therein fixed. This is clearly stated by the last paragraph of the above-mentioned section which reads as follows:

"Nothing contained in this section shall prevent the owner of the property levied on from vindicating his claim thereto by any proper action within the period established by the laws governing prescription."

Strictly speaking, the appeal interposed by the third-party claimant-appellant is improper, because she was not one of the parties in the action who were exclusively Venancio Queblar as plaintiff and Leonardo Garduno as defendant. Considering the provisions of said section 451 of the Code of Civil Procedure, as amended by Act No. 4108, the appealed order was not appealable. The appeal that should have been interposed by her, if the term "appeal" may properly be employed, is a separate revindicatory action against the execution creditor or the purchaser of her property after the sale at public auction, or a complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff.

For the foregoing reasons, we affirm the appealed order, with costs against the appellant. So ordered.

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

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