

ANTONIO DEL ROSARIO AND APOLONIA GALICIA, PETITIONERS AND APPELLEES, VS. EMILIANA SANTOS, OPPOSITOR AND APPELLANT.

G.R. No. 45578. September 27, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the oppositor Emiliana Santos from the judgment rendered by the Court of First Instance of Nueva Ecija, the dispositive part of which reads as follows:

"In view of the foregoing considerations, the court, finding the motion in question well founded, orders the cancellation of transfer certificate of title No. 8211 and the issuance in lieu thereof, upon payment of the corresponding fees, of another, free of all liens and encumbrances, in the name of the herein petitioners, the spouses Antonio del Rosario and Apolonia Galicia, residents of Santo Domingo, Nueva Ecija. So ordered."

In support of her appeal, the appellant assigns the following alleged errors as committed by the court a quo in its decision in question, to wit:

"1. The court a quo erred in ordering the cancellation of transfer certificate of title No. 8211 and the issuance of another in lieu thereof, in the name of the herein appellees, the spouses Antonio del Rosario and Apolonia Galicia.

"2. The court a quo likewise erred in not sustaining the opposition of the appellant Emiliana Santos, based on the ground that said court has no jurisdiction to order the cancellation of transfer certificate of title No. 8211 and the issuance of another in lieu thereof in the name of the appellees, upon a simple motion as that filed in this case.

"3. The court a quo erred in denying the motion for new trial filed by the appellant."

On March 27, 1934, the Court of First Instance of Nueva Ecija, in civil case No. 4929 entitled Antonio del Rosario et al. vs. Casiano Cornejo, issued a writ of execution of judgment (Exhibit X) in favor of the above-named plaintiffs and against the therein defendant, said writ of execution having been noted at the back of original certificate of title No. 17379 covering lot No. 669, which had been issued in the name of the execution debtor Casiano Cornejo, after the corresponding attachment had been levied on said lot on the same date, March 27, 1934. The original certificate of title in question was free of all liens and incumbrances.

After the writ of execution in question had been filed and registered in the office of the register of deeds and noted at the back of original certificate of title No. 17379, in favor of the execution creditors Antonio del Rosario and Apolonia Galicia, an instrument (Exhibit 1), dated January 6, 1934, whereby said lot No. 669 was sold with pacto de retro by the registered owner thereof, Casiano Cornejo, to Emiliana Santos, was ratified before a notary public. Exactly one month after the registration of the writ of execution of judgment had been made, the deed of sale with pacto de retro in question (Exhibit 1) was filed and registered in the same office.

By virtue of the above-stated writ of execution, said lot No. 669 was sold at public auction on May 3, 1934, having been adjudicated to the execution creditors Antonio del Rosario and Apolonia Galicia, for being the highest bidders, for the sum of P600 (Exhibit A).

In said sale at public auction, the oppositor-appellant Emiliana Santos filed a third party claim of better right. In view of said claim, the execution creditors filed the corresponding bond in favor of the provincial sheriff of Nueva Ecija, pursuant to the provisions of section 451 of Act No. 190, as amended by Act No. 4108, in order that the sale might be carried out. Said bond was cancelled for failure of the third party claimant to bring the action required by the above-cited section to be brought for the enforcement of her claim within the period of 120 days from the date of the sale.

Inasmuch as the period of one year, within which the property sold at public auction by virtue of an ordinary execution may be redeemed, in accordance with the provisions of section 466 of Act No. 190, had elapsed, and none of the persons mentioned in section 464 of said Act had redeemed the lot sold, the provincial sheriff of Nueva Ecija, on May 3, 1935, issued the final deed of sale (Exhibit B), pursuant to said section 466.

When the execution creditors and purchasers, on the same date, May 3, 1935, presented the above-stated final deed of sale for registration in the office of the register of deeds of Nueva Ecija, it was discovered that original certificate of title No. 17379, covering lot No. 669, had already been cancelled, and that transfer certificate of title No. 8211, which was to be issued in lieu thereof in favor of Emiliana Santos, was already prepared. In view of such discovery said transfer certificate of title No. 8211 was never signed by the register of deeds. The writ of execution, issued in favor of the execution creditors Antonio del Rosario and Apolonia Galicia, appears noted at the back of said incomplete transfer certificate of title No. 8211.

On July 18, 1935, the above-named execution creditors filed a motion in the cadastral case under consideration, praying that the register of deeds of Nueva Ecija be ordered to cancel transfer certificate of title No. 8211 issued in the name of Emiliana Santos and to issue another in their favor in lieu thereof.

From the foregoing facts, it appears that when the deed of sale with pacto de retro, executed by Casiano Cornejo in favor of Emiliana Santos relative to lot No. 669 described in the original certificate of title No. 17379, was filed and registered in the office of the register of deeds of Nueva Ecija and noted at the back of the original certificate of title on April 27, 1934, the writ of execution, issued in favor of the petitioners and appellees Antonio del Rosario and Apolonia Galicia, was already filed and registered in said office and noted at the back of the same original certificate of title, from March 27, 1934, that is, a month prior thereto.

These facts are identical with those in the case of Worcester vs. Ocampo and Ocampo (34 Phil., 646), wherein, upon a judgment rendered in favor of the plaintiff Worcester, a writ of execution was issued by virtue of which the property of the defendant Martin Ocampo was attached and said attachment noted at the back of the original certificate of title issued in the name of said Martin Ocampo. Prior to the notation of the attachment in execution, the defendant Martin Ocampo had sold the attached property to his codefendant Gervasio Ocampo y Reyes, with pacto de retro but said sale had not been noted at the back of the certificate of title until after the notation of said attachment. The property was later sold at public auction, having been purchased by the plaintiff Worcester, who caused said sale to be noted, as it was in fact noted, at the back of the original certificate of title. As the right of redemption had not been exercised within the period fixed by law, the sheriff issued the final certificate of sale in favor of said Worcester, who sought the inscription of his title in accordance with the Torrens system. Gervasio Ocampo y Reyes opposed the petition, alleging as his ground the fact that he was the owner of the land by virtue of the sale with pacto de retro made in his favor. This court, in deciding said case, said:

"By virtue of the provisions of sections 50 and 51 of Act No. 496, that by reason of the fact that the said pacto

de retracto had not been recorded, filed or entered in the office of the register of deeds until after Worcester had secured his lien by attachment, that Gervasio Ocampo y Reyes acquired his right under said pacto de retracto subject to the rights of Worcester. The right of Gervasio Ocampo y Reyes being subject to the rights of Worcester, his right can not be enforced against the land until the rights of Worcester have been fully satisfied."

In this case, when Emiliana Santos acquired by purchase, with pacto de retro, Casiano Cornejo's rights of ownership over lot No. 669, of cadastral case No. 21, G. L. R. O. Record No. 399, described in original certificate of title No. 17379, which had been issued in favor of said Casiano Cornejo, said rights of ownership, by virtue of the notation of the attachment in execution in favor of the petitioners-appellees Antonio del Rosario and Apolonia Galicia, became subject to the preferred right which, by virtue of the judgment rendered in their favor and against Casiano Cornejo, said Antonio del Rosario and Apolonia Galicia had acquired over the proceeds of the sale of the lot in question at the public auction that had to be made in compliance with the writ of execution.

The record shows that transfer certificate of title No. 8211, which was to be issued in the name of Emiliana Santos, was not perfected, as the register of deeds of Nueva Ecija never signed it because the petitioners-appellees presented the final deed of sale of said lot, issued to them by the provincial sheriff of Nueva Ecija, and filed a petition for the cancellation of original certificate of title No. 17379, issued in favor of Casiano Cornejo, and the issuance of a transfer certificate of title in their favor. Therefore, there exists no legal and valid transfer certificate of title over lot No. 669 in favor of Emiliana Santos, to be cancelled.

For the foregoing considerations, the judgment appealed from is reversed in so far as it orders the cancellation of transfer certificate of title No. 8211, and it is affirmed in all other respects, with the costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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