

NORBERTO FORDAN, PLAINTIFF AND APPELLEE, VS. ANTONIO LUZON, DEFENDANT AND APPELLANT.

G.R. No. 45614. April 26, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present appeal has been taken by the defendant from the judgment of the Court of First Instance of Camarines Sur, the dispositive part of which is as follows:

"By virtue of the stipulation of facts above quoted, the court hereby renders judgment sentencing the defendant to pay the plaintiff the sum of P369.17 plus the costs."

In support of his appeal the appellant assigns the following errors alleged to have been committed by the court a quo in its aforesaid decision, to wit:

"1. The trial court erred in not holding that the facts alleged in the complaint do not constitute a cause of action.

"2. The court a quo erred in not holding that the cause of action of the plaintiff against the defendant is res adjudicata.

"3. The court a quo also erred in sentencing the defendant to pay to the plaintiff the sum of P369.17 and costs, instead of ordering the plaintiff to pay to the defendant the amount of P69.17.

"4. Lastly, the lower court erred in not granting the motion for reconsideration and new trial."

When the case was called for trial, the parties submitted to the court for its decision the following stipulation of facts:

"1. That the plaintiff and the defendant are both residents of the municipality of Nabua, Province of Camarines Sur, and both having the legal capacity to be parties to this action.

"2. That the plaintiff was the exclusive owner of a parcel of land in which he and his family resided and more particularly described as follows:

"A coconut land with a house and improvements thereon situated in the barrio of Tupas, municipality of Nabua, Province of Camarines Sur, Philippine Islands, with an area of 86 ares and 57 centares, bounded on the North, by Leoncio Peñaflor; on the East, by Agapita Fordan; on the South, by Alejandro Villaflor; and on the West, by Leoncio Peñaflor, assessed in the name of the plaintiff at P510 under tax No. 37379 superseding tax No. 31381—part 'C in the name of Simon Fordan, father of the plaintiff.

"3. That in connection with the execution issued in civil case No. 5042 before this Hon. Court for the recovery of a sum of money, in which the herein plaintiff was the defendant and the herein defendant was the plaintiff, the above described property was levied upon by the sheriff and sold at public auction, the defendant herein being the highest bidder and the corresponding document of absolute sale was executed in his favor on

February 3, 1933, for the amount of P493.73.

"4. That because of the refusal of this Court to order the sheriff to place the herein defendant in possession of the land above described, the said defendant brought civil case No. 5907 before this court against the herein plaintiff for the recovery of the said property.

"5. That the defense and prayer put up by the herein plaintiff in the said civil case No. 5907, as then defendant, read in part as follows:

""As special defense, defendant alleges:

" 'That the levy and sale by the Sheriff of the land subject of this complaint in the execution of the judgment in civil case No. 5042 of this court was illegal, same being contrary to the mandatory provisions of section 452 of the Code of Civil Procedure.

" 'Wherefore, it is respectfully prayed that this case be dismissed with costs against the plaintiff. It is also prayed that the legality of the sale of the land described in the complaint be determined in this case.'

"6. That after the trial of the said civil case No. 5907, the following decision was therein rendered:

" 'In his testimony at the trial defendant admitted that plaintiff has definitely acquired at public auction the land described in the complaint which was attached and sold as the property of the said defendant. He only alleged as a defense that the land is exempted from execution for the reason that its assessed value is only P147.91 and presented the corresponding tax receipt Exhibit 1.

" 'Upon examination of the Exhibit, it is seen on the back thereof that the land is valued at P150 and the improvements at P360, or a total of P510. Defendant wants to exclude the improvements which according to law, is not proper and, in conformity with Exhibit A, the property was adjudicated to plaintiff with its improvements.

" 'It has been established that plaintiff has never been able to take possession of the land after the execution of Exhibit A on account of the opposition of defendant, who has retained its possession up to the present. It has likewise been established that 2,800 coconuts are gathered from the land and that two thirds thereof correspond to the owner and have an average price of fifty centavos per 100. Exhibit A was executed on February 3, 1933.

" 'The defense alleged by defendant is overruled and the land in question with all its improvements is declared the property of the plaintiff. The possession thereof is hereby ordered delivered to the latter by defendant who is further sentenced to pay plaintiff P6.27, value of his participation in the products of the land for each year from February, 1933 up to the delivery of the land to the plaintiff, with costs. It is so ordered.

" 'Given at Naga, Camarines Sur, this day October 23, 1935."

(Sgd.) M. Rosaura
Judge

"7. What the appeal interposed by the plaintiff against the decision above quoted was declared abandoned and dismissing by the Supreme Court on February 28, 1936.

"8. That by virtue of the foregoing, the judgment was executed with the costs amounting to P69.17 unpaid, and the property and possession of the land above described definitely passed into the hands of the herein defendant, who refused and still refuses to reimburse to the herein plaintiff the amount P300 which, according to law, is the value of the property exempt from execution and the reimbursement of which is sought in this action.

"Wherefore, it is respectfully prayed that only the facts herein set forth and agreed upon by the parties be taken into consideration in the decision to be rendered in this case."

The first question to be decided in the present appeal is that raised by the third assignment of alleged error, namely, whether or not the court a quo erred in not holding that the facts alleged in the complaint do not constitute a cause of action.

It is alleged in the complaint that the plaintiff Norberto Fordan was the exclusive owner of the land in question as his homestead in which he and his family resided; that in civil case No. 5042 of the same Court of First Instance of Camarines Sur. for the recovery of a sum of money, wherein the herein plaintiff Norberto Fordan was the defendant and the herein defendant Antonino Luzon was the plaintiff, a judgment was rendered in favor of the latter; that a writ of execution was therein issued, the same having been served by the provincial sheriff of Camarines Sur; that the aforesaid homestead was sold at public auction, the herein defendant as judgment creditor being the highest bidder; that the corresponding deed of sale for the sum of P493.73 was issued on February 3, 1933; that by virtue of said sale, the ownership and possession of the said homestead passed to the defendant; that the latter has refused and still refuses to reimburse the plaintiff the sum P300 which, according to law, is the value of the property exempt from execution; and that said homestead is the sole dwelling place and the only means of support of the plaintiff and his family, inasmuch as he does not own any other property.

In the case of *Cabuhad vs. Ansay and Keodica* (42 Phil., 170, 175,) this court said:

"The conclusion to which we are thus led is that, supposing the individual interest of Esteban Cabuhad in the property in question to be of a value in excess of P150, said interest is liable to be taken in execution, so far as it is in excess of said value. (13 R. C. L., 617; 21 Cyc, 491 *Vanstory v. Thornton*, 34 Am. St. Rep., 483, 505; *White v. Spencer*, 129 Am. St. Rep., 547, 560; *Lean v. Givens*, 106 Am. St. Rep., 79.) This means in the concrete case that, if the property in question brought at the execution sale more than P150, the purchaser at that sale acquired the interest of Esteban Cabuhad therein, subject to the obligation to pay to said Cabuhad the sum of P150, this being the amount exempt to him by law. * * *"

According to the doctrine above-cited, the property of the defendant in the former case and the plaintiff in the present case, Norberto Fordan, being exempt from execution up to the sum of P300 in accordance with section 452, case 1, of Act No. 190, as amended by Act No. 3862, the plaintiff in the first case and the defendant herein, Antonio Luzon, who outbade the others for said homestead at the execution sale with the sum of P493.73, should have reimbursed the therein defendant and herein plaintiff, Norberto Fordan, the sum of P300, and not having done so, said Norberto Fordan has a right and cause of action to bring this suit as he did; and, consequently, the court a quo did not commit the first error allegedly committed in its appealed decision.

As to the second assignment of alleged error, that is, whether the plaintiff's cause of action constitutes *res adjudicata*, it should be said that although in civil case No. 5042 above-mentioned and in the present case No. 6321 the parties are the same, the subject matter or things in litigation are different, for while the former case was for the collection of a debt, the present case is for the reimbursement of a certain sum of money exempt from execution; and the causes of action are likewise different, being in the first case the refusal of the therein defendant and the herein plaintiff to pay his debt and in the present case being the refusal of the herein defendant and the therein plaintiff to reimburse a certain sum of money exempt from execution.

The requisites established in the case of *Aquino vs. Director of Lands* (39 Phil., 850), for there to be *res adjudicata*, namely, (a) identity of parties; (b) identity of things; and (c) identity of questions involved, not being present, *res adjudicata* does not exist.

Hence, the second assignment of alleged error is also without merit.

As to the third assignment that the court a quo erred in sentencing the defendant to pay the plaintiff the sum of P369.17 and the costs, instead of ordering the plaintiff to pay the defendant the sum of P69.17, if, as we have

above-stated, relying upon the law and jurisprudence, the herein plaintiff Norberto Fordan has a right to have exempt from execution the sum of P300, the amount for which his homestead is exempt from execution, the lower court did not commit the third error it is alleged to have committed.

Wherefore, finding no error in the judgment appealed from, the same is affirmed in all its parts, without special pronouncement as to costs. So ordered.

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

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