

LEOCAMO JOAQUIN, PLAINTIFF AND APPELLANT, VS. LAMBERTO AVELLANA, DEFENDANT AND APPELLEE.

G.R. No. 4585. September 08, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

A former appeal in this case is reported, in 6 Phil. Rep., 551. Reference is thereto made for a statement of facts. Upon the new trial the evidence was directed to the two points mentioned in the former opinion, namely, the rights which Tan Tongco had in the property when the plaintiff's attachment was levied and whether he had lost the rights which he then had.

It was proven that Tan Tongco and Agustina Brillo have been husband and wife for more than eighteen years; that when she made the contract of lease for the property in question with the defendant, and when she constructed the house, she was the wife of Tan Tongco. By the provisions of article 1407 of the Civil Code both the contract of lease and the house were presumptively the property of the conjugal partnership. (Alfonso vs. Natividad, 6 Phil. Rep., 240; Lim vs. Garcia, 7 Phil. Rep., 320; Leonardo vs. Santiago, 7 Phil. Rep., 401.)

To overcome the presumption established by said article 1407, the defendant introduced in evidence the permit given by the city authorities for the construction of the building. This was given to Agustina Brillo. It is very apparent that this in no way tends to prove that she constructed the building with her own money. The defendant also introduced in evidence a notarial act dated the 7th of November, 1902, wherein Agustina Brillo stated that she had leased the land from the defendant; that she had erected a house thereon with her own money; that the house and the land constituted two separate properties; and that this statement was made for the purpose of securing the inscription of the house as her property in the registry of property. The defendant proved that the house was so inscribed. The only thing in this notarial document which has any bearing upon the case is the statement contained therein that the wife constructed the house with her own money. This statement, made out of court by a person not a party to the action, can not under any circumstances prejudice the plaintiff. As to him it was incompetent evidence. The defendant should have called Agustina Brillo as witness to prove by her testimony at the trial that her money went into the construction of the house.

No evidence other than these documents was produced by the defendant, and it is very apparent that the presumption established by article 1407 was not overcome.

Both the leasehold interest and the house itself were therefore, when the plaintiff's attachment was levied, the property of the conjugal partnership and, as such property, it was liable for the debts of the husband. (Art 1408, Civil Code.)

Upon the second question, as to whether the rights of Tan Tongco and his wife in the lease of the property had ceased, the only evidence presented by the defendant was his own testimony that, when he bought the house of the receiver, he deducted from the price the rent then due. This is no evidence that the rights of the lessees had been terminated. It simply proved that they had paid the rent then owing by them.

The leasehold interest and the house being the property of the conjugal partnership at the time the plaintiff's attachment was levied, and being subject to the debts of the husband, it follows as a necessary consequence that the plaintiff, by the sale under execution on the 28th day of May, 1904, acquired all the interests of Tan Tongco and his wife in that property, subject to redemption as provided by law, and we so declare.

The plaintiff in his complaint asks for different kinds of relief, but the only relief to which we think he is entitled is the declaration which we have just made and the right to have his certificate of sale filed in the office of the registrar of deeds.

The Code of Procedure relating to the sale of real property on execution provides that when a sale is made, the officer must give the purchaser a certificate of sale. It then provides that "a duplicate of such certificate must be filed by the officer in the office of the registrar of land titles of the province." Without considering what the rule might be if the Mortgage Law had remained intact, it is very apparent that, by virtue of the provisions of this section 463, the purchaser is entitled to have his certificate filed in the office of the registrar of titles. It probably would be the duty of the registrar upon such filing to make a marginal note thereof upon the records relating to this property.

That part of the relief asked which relates to the cancellation of the deed made by the receiver in favor of the defendant can not be granted. The only document which the plaintiff has is this certificate of sale. By the provisions of section 465 of the code, the land was subject to redemption at any time within one year from the date of the sale, and this certificate itself so states. The law provides, in section 466 and other sections, that, after the time for redemption has expired and there has been no redemption, the officer shall execute a deed of the property. It is apparent from these provisions of the law that this certificate is merely provisional. If the land is redeemed, the purchaser receives his money and the certificate becomes of no value. If the land is not redeemed, the purchaser secures a deed from the sheriff, which constitutes his muniment of title. In this case there is no evidence to show whether the land has or has not been redeemed, and no evidence to show that any deed has ever been executed by the sheriff. It is apparent that in no event could the deed of the defendant be canceled if in fact he had redeemed the property from the sale.

The judgment of the court below is reversed, and the case remanded to that court with instructions to enter judgment in favor of the plaintiff and against the defendant, with costs, declaring that the plaintiff, by the sale under execution, acquired all the interests of Tan Tongco and his wife in the leasehold and the house in question, and that such leasehold interest at the time of the sale still existed, and declaring further that the plaintiff is entitled to have the certificate of sale filed in the office of the registrar of titles of the city of Manila. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ.,

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