

RAYMUNDO VABGAS, PETITIONER, VS. NIEVES TANCIOCO AND EAFANEL P. GUERRERO, RESPONDENTS.*G.R. No. 45899. April 12, 1939*

Ponente: DIAZ, J.

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The present certiorari proceedings were instituted by Raymundo Vargas against the spouses Nieves Tancioco and Rafael P. Guerrero to test the legality and validity of the decision rendered by the Court of Appeals in case G. R. No. 44795, on October 30s 1937.

The petitioner alleges that the Court of Appeals, in rendering said decision, disregarded the doctrine laid down in the cases of Laxamana vs. Carlos (57 Phil., 722); Lanci vs. Yangco (52 Phil., 563); Tufexis vs. Olaguera and Municipal Council of Guinobatan (32 Phil., 654); Buencamino vs. Bantug and De Dios Ocampo (58 Phil., 521); and others.

What is sought to be determined is: which should enjoy preference and priority—the writ of attachment obtained by the respondent Nieves Tancioco on October 24, 1933 upon the land in litigation, which was subsequently sold at public auction on December 6, 1933 to satisfy a judgment credit awarded her against Sua Tico, or the transfer and conveyance by Sua Tico of said land to petitioner on August 3, 1933.

In view of the fact that the attachment appears clearly to have been noted in the register of deeds while the alleged conveyance or transfer was not, the Court of Appeals, in deciding the appeal taken from the judgment of the Court of First Instance of Occidental Negros which held that the petitioner had a prior and therefore preferred and superior right, held, on the contrary, that the attachment and the right which the respondent Nieves Tancioco later acquired as purchaser at the public auction were superior and preferred. Against this decision of the Court of Appeals the present petition for certiorari was filed for the purpose already stated at the beginning of this decision.

The facts of the case as found proven by the Court of Appeals are as follows: the land in question was covered by certificate of title No. 17088 issued by the register of deeds of Occidental Negros on July 26, 1923 in the name of Sua Tico; the title is clear from encumbrance except the attachment levied on the land preliminary to its public sale in compliance with a judicial order issued in accordance with legal formalities. As we are dealing with a land registered in accordance with the requisites of Act No. 496, the following provisions of sections 50 and 51 thereof are perfectly applicable to this case:

"Sec. 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forma of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies.

"SEC. 51. Every, conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would ' under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering."

It should be stated in passing that the Court of Appeals also found proven the fact that one day before the land in question was sold at public auction, the petitioner filed a third-party claim with the provincial sheriff of Occidental Negros alleging that he is the exclusive owner of the property, but when the respondent Nieves Tancio filed the necessary bond, the sheriff proceeded with the sale of the land, with the result aforementioned.

The question before us is much like the one we decided in the case of *William H. Anderson & Co. vs. Garcia* on July 27, 1937 (35 Off. Gaz., pp. 2847 to 2849), where, after determining the distinction and the points of similarity between the case of *Laxamana vs. Carlos*, supra, and that of *Land vs. Yangco*, supra, we held that a purchaser in good faith of realty at a public auction acquires a good title as against all the transferees thereof whose right is not recorded in the register of deeds at the time of the sale. The cited case of *Tufexis vs. Olaguera* and *Municipal Council of Guinobatan*, supra, is not applicable because, unlike the case at bar, it did not have to do with land or realty. The other cited case of *Buencamino vs. Bantug and De Dies Ocampo*, supra, is likewise not applicable because of its different facts from those at bar. In that case the action was to restrain the sheriff from selling at public auction a certain land by virtue of a writ of execution obtain 3d by his codefendant, and the sale did not take place; but in the present case there was precisely a sale, and one year thereafter a deed of absolute sale was issued in favor of the respondent Nieves Tancio, in accordance with the provisions of section 466 of Act No. 190. On the date of the auction sale there was no other sale recorded in the register of deeds in favor of anybody, and the certificate of title of Sua Tico, No. 17088, was then entirely free from encumbrance with the exception of the aforementioned attachment, levied by judicial order preliminary to the sale at public auction, at the instance of the respondent Nieves Tancio who obtained a judgment in her favor in a case against Sua Tico.

There can be no doubt that the sale in question was a necessary sequel to the attachment, for this was effected precisely to carry out the sale. Wherefore, in point of priority, the purchase made by the respondent Nieves Tancio at the public auction was prior and superior to that made by the petitioner. This is so because, dealing as we do with a land registered in accordance with the provisions of Act No. 496, the registration is what gives validity to the conveyance or encumbrance thereof. (Sec. 50, Act No. 496.)

The contention of the petitioner that the respondent was not a purchaser in good faith because when she bought the land in question at the public auction she knew that it was no longer the property of Sua Tico for it had already been sold to him, as stated in his third-party claim filed one day before the sale, is without merit, this point having been tacitly considered and settled in the foregoing paragraphs. When said respondent obtained the writ of attachment and had it registered, she did not have the least idea that the land which she was attaching had already been sold months before by Sua Tico. The reason is obvious: it was because, unlike the attachment, the alleged sale was never registered.

The decision of the Court of Appeals, the reversal of which is sought in the present certiorari proceedings, being in accordance with the law, should be affirmed and the remedy sought denied, for the reasons above stated.

Wherefore, we affirm the said decision and deny the certiorari, with costs against the petitioner. So ordered.

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

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