

**EUSTAQUIO FULE, PETITIONER, VS. SALVADOR ABAD SANTOS,
JUDGE OF FIRST INSTANCE OF LAGUNA, AND ENRIQUE BAUTISTA,
RESPONDENTS.***G.R. No. 47432. June 17, 1941*

Ponente: MORAN, J.

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On March 8, 1940, respondent Enrique Bautista filed with the Court of First Instance of Laguna a petition alleging that in civil case No. 6708 he was finally adjudged the exclusive and absolute owner of a parcel of land which constitutes the subject of the present litigation; that a writ of possession having been issued in his favor, the provincial sheriff of Laguna was ordered on June 29 and August 24, 1939, and again on March 4, 1940, to deliver the land to him; and that petitioner Eustaquio Fule who was in actual possession of the land refused to surrender same to him. On the strength of these averments, he prayed that petitioner here be required to appear to explain his refusal to surrender the possession of the land and to show cause why he should not be punished for contempt for allegedly disobeying the writ of possession issued in respondent's favor. Petitioner, in his answer, denied any participation, direct or indirect, in the civil case aforementioned; that, for such reason, he cannot be bound by, as in fact he has no knowledge of, any writ of possession which might have issued to enforce the judgment therein against him and in favor of respondent Enrique Bautista; and that he was in actual possession of the land as absolute owner thereof since January 13, 1936. On March 20, 1940, the court issued an order denying respondent's prayer to hold Eustaquio Fule in contempt but ordering him to vacate the land "without prejudice to establishing his alleged right of ownership thereto in a proper action." This order is the subject of review in the present petition for certiorari.

Respondents admit that petitioner Eustaquio Fule was not made a party to the proceeding wherein respondent Enrique Bautista was adjudged owner of said property. Under this circumstance, petitioner cannot be bound by any judgment which might have been rendered therein in favor of respondent, and the order enforcing such judgment against him is in excess of jurisdiction. Judgments rendered in actions in personam are enforceable only between the parties and their successors in interest, but not against strangers thereto. (Sec. 306, par. 2, Act No. 190, now Rule 39, sec. 44 [6], Rules of Court.)

Respondents contend that the petitioner is a successor in interest to the parties plaintiff in civil case No. 6078 by title subsequent to the commencement of the action. The facts as stated by respondents themselves in connection with this point are as follows: On or about June 10, 1930, Felipe Suarez sold the property in question to Gregorio Atienza with the right of repurchase within ten years. On or about December 12, 1930, Gregorio Atienza sold the same property to respondent Enrique Bautista, also with the right of repurchase. On or about June 21, 1932, Gregorio Atienza brought an action against Enrique Bautista, registered as civil case No. 5060, for the annulment of their contract on the ground that it did not express the true agreement between the parties, said contract being alleged to be one of usurious loan. Judgment was rendered in said case, which on appeal to this Court was affirmed in toto, declaring the contract to be an equitable mortgage. Upon failure of Gregorio Atienza to pay the

mortgage debt, the property was sold at public auction on April 17, 1935 in favor of respondent Enrique Bautista. But before the sale, the mother and guardian ad litem of minors Rubin, Conrado and Ernesto Atienza filed a third-party claim on the ground that the property had been donated to them by Gregorio Atienza. The execution sale was carried out and the third-party claimants filed an action docketed as civil case No. 6708 against Enrique Bautista for the recovery of the property. And while this action was pending, on January 13, 1936, Felipe Suarez exercised his right of repurchase over the property from Gregorio Atienza, and on same date sold it to petitioner Eustaquio Fule. In civil case No. 6708, a judgment was rendered by the Court of Appeals giving the plaintiffs a period of six months within which to redeem the property from Enrique Bautista, which they never did.

Even upon these facts, we hold that the petitioner's predecessor in interest, Felipe Suarez, cannot be considered as successor in interest to the parties plaintiff in civil case No. 6078. In the first place, Felipe Suarez repurchased the property not from the minors Rubin, Conrado and Ernesto Atienza, who are plaintiffs in said civil case No. 6078, but from Gregorio Atienza, plaintiff in civil case No. 5060. In the second place, as such right of repurchase had existed since June 10, 1930, and that it was to subsist for a period of ten years, as agreed upon between Felipe Suarez and Gregorio Atienza, any contract which the latter, within such period of ten years, might have entered into with other persons in connection with said property would be subject to said right. And being anterior to either civil case No. 6050 instituted by Gregorio Atienza against Enrique Bautista, or to civil case No. 6078 instituted by the minors Rubin, Conrado and Ernesto against Enrique Bautista, and in no way connected with the matters therein litigated, said right of repurchase could in no substantial sense be affected by the outcome of these two civil cases. There can, therefore, be no reason why Suarez should be bound by the judgment rendered in either of them. That Felipe Suarez repurchased the property from Gregorio Atienza does not make him a mere successor in interest to the latter, in the sense that he acquired nothing but the rights of Gregorio Atienza which were litigated in the two civil cases. In fact, Felipe Suarez, by such repurchase, acquired nothing new to him but simply recovered his preexisting title transferred temporarily to Gregorio Atienza and which could not have been affected by the two civil cases. In other words, Felipe Suarez is not a successor in interest by title subsequent to the commencement of the action, his title being anterior to the institution of the civil cases.

The only way by which petitioner's right of repurchase could be interfered with, and nominally, in the two civil cases is that the person from whom it may be exercised may change according to the outcome of said cases, and in fact respondents contend that Felipe Suarez should have exercised his right of repurchase not from Gregorio Atienza, but from Enrique Bautista to whom the property was transferred in an execution sale. While this contention is not entirely groundless, we have, on the other hand, article 1510 Of the Civil Code which provides that "the vendor may bring his action against any possessor who holds under the vendee, even though in the second contract no mention should have been made of the conventional redemption, saving always the provisions of the Mortgage Law with respect to third persons." According to this provision, Felipe Suarez may of right repurchase from any possessor who holds under the vendee, and as the respondents themselves admit that "during all the time that elapsed from 1930 to 1936 Gregorio Atienza appeared to be in possession of this property," it is from him that Felipe Suarez could make his repurchase. We are not, however, deciding this point finally, for it may depend upon other facts and circumstances which cannot be elucidated in this petition, but we are merely pointing out its seriousness to suggest the necessity of final adjudication thereof in an independent action and not in an incident of a civil case to which petitioner was not a party.

Order of possession issued by the respondent court against petitioner is hereby reversed, with costs against respondents.

Avancena, C. J., Diaz, and Horrilleno, JJ., concur.

Laurel, J., concurs in the result.

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