

VICENTE LOPEZ ET AL., PETITIONERS, VS. REMULADEZ F. VIJANDRE ET AL., RESPONDENTS.*G. R. No. 47551. April 25, 1941*

Ponente: MORAN, J.

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In security of the payment of a loan of P9,000, Ricardo S. Nilo executed on December 11, 1930, a mortgage in favor of Vicente Lopez, one of the petitioners herein, on the first failed to pay this loan and the interest thereon at its maturity and having contracted, in the meantime, an additional loan of P1,140 from the same mortgage creditor, the mortgage debtor renewed his obligation to pay the total indebtedness on December 11, 1938, and in security thereof executed on May 19, 1932, a new mortgage, now on the two parcels of land described in the complaint. In the meantime, an additional loan of P1,140 from the same mortgage creditor, the mortgage debtor renewed his obligation to pay the total indebtedness on December 11, 1938, and in security thereof executed on May 19, 1932, a new mortgage now on the two parcels of land described in the complaint. In the meantime, on Romualdo F. Vijandre, another creditor of Ricardo S. Nilo, instituted two separate civil actions of Ricardo S. Nilo, instituted two separate civil actions for the recovery of the sums of P10,000 and P5,557, and upon proper petition a preliminary writ of attachment was registered on November 11, 1932, upon all the properties of the mortgage debtor. Judgments were rendered in both cases against Ricardo S. Nilo and thereafter writs of execution were issued. The two parcels of land in question were levied upon on April 4, 1933, but before the date set for the sale of Vicente Lopez, as mortgage creditor, filed a third party claim asserting his mortgage credit and praying that the levy of attachment be set aside. This third-party claim notwithstanding, the two parcels of land were sold at public auction at which Romualdo F. Vijandre was the highest bidder. The corresponding certificate of sale was executed. However, the purchaser, Romualdo F. Vijandre, could not take possession of the property, Ricardo S. Nilo having executed on May 29, 1933, a deed of absolute sale of the two parcels in question in favor of Vicente Lopez in full discharge of the mortgage credit. Romualdo F. Vijandre thereupon instituted an action against Vicente Lopez, wherein judgment was rendered in favor of the latter. The judgment was reversed by the Court of Appeals.

On the basis of the foregoing facts, the legal question raised in this appeal is: Who has a better right to the property—Romualdo F. Vijandre who was the purchaser at a public auction, or Vicente Lopez, the purchaser at a private sale?

As elsewhere adverted to, the preliminary attachment on the properties in question was recorded on November 11, 1932, and the private sale in favor of Vicente Lopez was executed on May 29, 1933. The attachment lien has, therefore, priority to the private sale, which means that the purchaser took the property subject to such attachment lien and to all of its consequences, one of which is the subsequent sale on execution. (*Yambao et al. vs. Suy et al.*, 52 Phil., 237). The auction sale being merely an execution of the attachment lien, enjoys the same preference as the attachment lien enjoys over the private sale. (Cf. *Hernandez vs. De Salas*, G. R. No. 46840—Resolution). It thus follows that Romualdo F. Vijandre has a better right than Vicente Lopez over the properties in question.

It is, however, to be noted that prior to the attachment lien and the subsequent execution sale, the properties in question were validly mortgaged to Vicente Lopez. We are, therefore, in accord with the Court of Appeals in holding that the execution sale in favor of Romualdo F. Vijandre is subject to the rights of Vicente Lopez as mortgage creditor, whose right to a foreclosure thereof is reserved.

Judgment of the Court of Appeals is affirmed, with costs against petitioners.

Imperial, Diaz, Laurel, and Horrilleno, JJ., concur.

Judgment affirmed.

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