

IGNACIO ARROYO, ADMINISTRATOR OF THE INTESTATE ESTATE OF BLAS GERONA, DECEASED, PLAINTIFF AND APPELLEE, VS. SANTOS CAPADOCIA AND THE PROVINCIAL SHERIFF OF ANTIQUE, DEFENDANTS AN...

G.R. No. 4811. March 03, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

In the year 1904, Santos Capadocia brought an action against Celestino Montero for the recovery of P501, with legal interest thereon, due him since the year 1900.

As Celestino Montero was sentenced by the court of the justice of the peace of San Jose, Province of Antique, to pay the debt, the sheriff of Antique levied upon the property of Montero on the 5th of February, 1905, and sold it at public auction on the 5th of March following, and the property was adjudicated to the said Santos Capadocia.

The property levied upon and sold was (a) a wooden house and its lot situated in the town of San Pedro, a suburb of the municipality of San Jose; (b) a house of mixed materials and a lot in the barrio of Belison with an area of 1 hectare and 70 ares; (c) a parcel of rice-producing land in the barrio of Belison with an area of 50 ares; (d) another parcel of rice-producing land situated in the sitio of Lugutan, San Pedro, with an area of 1 hectare; (e) another parcel of rice-producing land situated in the sitio of Soong, San Pedro, with an area of 1 hectare; and a parcel of land located in the sitio of Casudlan, San Pedro, with an area of 5 hectares. A description showing the respective boundaries of the above-mentioned properties appears in the record.

On the 29th of January, 1907, there appeared Ignacio Arroyo, administrator of the intestate estate of Bias Gerona, claiming the property above referred to as belonging to the intestate estate, and demanded the recovery thereof from the possession of Santos Capadocia who held and continues to hold the same, together with P500, as indemnity for damages. As a second cause of action, he alleged that the sheriff of the Province of Antique levied upon the said property and sold it at public auction without regard to the formalities prescribed by the law, for which reason he prayed that the sale be declared null and void.

Capadocia interposed a demurrer, which was subsequently overruled by the Court of First Instance of Antique, by which the matter was heard, to which the defendant excepted, and when answering the complaint he pleaded a general denial. The sheriff, in addition to denying that portion of the complaint that referred to him, alleged as special defense that he had acted in conformity with the provisions of the law.

The case came up for trial and the plaintiff offered in evidence a copy of a public instrument, said to have been executed by Celestino Montero at San Jose de Buenavista on the 19th of July, 1902, before the clerk of the Court of First Instance and notary public ex officio in said province, Anacleto Villavert Jimenez, in order to prove the sale by Montero of the property in question to Bias Gerona, and also the testimony of witnesses to identify the same as the property that was attached and sold, and for other purposes; the defendant likewise offered both

documentary and oral evidence. The trial court entered judgment in the following terms:

- That the provisions of the law regarding the advertising and sale of the property levied upon had not been complied with, and in consequence thereof it was held that the auction sale made by the defendant sheriff was null and void; that therefore the defendant Santos Capadocia did not acquire the ownership of the said property.
- That, in view of the evidence, the said property pertains to the intestate estate of Bias Gerona, and said intestate estate owned the same before the attachment was made; it was therefore ordered that the plaintiff recover the possession and enjoyment of the property, and that the defendant Santos Capadocia pay the plaintiff P300 for the value of the house described in paragraph (a) of the complaint, which the former caused to be demolished, and P50 for the house described in paragraph (c)
- The claim presented by the plaintiff for 68 cavanos of paddy from the lands levied upon was dismissed for the reason that Celestino Montero or his heirs, who had the lease of said lands, owned the same, reserving, however, such right of action as he might have against the latter to obtain from them the grant of the lease.
- That the plaintiff was entitled to recover the fruits of said lands from the 19th of July, 1907, until the day the property is delivered, as well as the legal interest on the value of the houses claimed, from the date of the judgment, October 24, 1907, and to the payment of the costs.

Against the foregoing judgment the defendant Santos Capadocia has appealed, submitting to this court a bill of exceptions, and he has the right to have the evidence reviewed. The following errors have been assigned to said judgment:

- In having overruled the demurrer.
- In having admitted as evidence Exhibit A of the plaintiff.
- In having admitted the legal capacity of the plaintiff as representative of the intestate estate of Bias Gerona.
- In having affirmed that the appellant had enforced execution against property belonging to said intestate estate.
- In having declared that the property claimed in the complaint was owned by said intestate estate before it was levied upon.
- In having declared that neither the record of the auction sale nor the advertisement thereof appear in the proceedings in the court of the justice of the peace.
- In having established that it was the duty of the defendants to present evidence that the advertisement of the sale had been legally effected; and
- In having determined that P300 is the value of one of the houses, adjudging the appellant to pay said sum, as well as P50, the value of the other house, and the costs.

As to the first and third assignments of error, none has been committed in overruling the demurrer, for the same reasons contained in the decision of the court below; therefore, the exception thereto is hereby overruled.

The fourth assignment of error is of no importance; the intention was to state that there was no truth in the affirmation that the appellant had designated any property on which the sheriff might have brought an execution.

As to the second assignment of error, which is of more importance in connection with this question, the record shows that Exhibit A is a copy of the instrument of sale issued by the notary public before whom the same was executed, and by whom it was certified in accordance with the provisions of the Spanish notarial law followed at the time by the contracting parties and the notary. As required by said legislation, the original instrument was

drawn up by the notary in his protocol, and a true copy of the same was issued by him to the interested parties.

The said exhibit A was offered in evidence, whereupon the representative of the appellant objected because it was not the original instrument; but as it was admitted by the court below, he limited himself to the following cross-examination :

"Q. Is the original of this document on file at your office? - A. I have now forwarded it to the keeper of the archives in Manila.

"Q. And formerly did you only issue a copy of the original instrument? - A. Yes, sir.

"Q. For what reason did you keep the original instrument? - A. To comply with the notarial law in force at the time."

He said that the original had been forwarded to the custodian of the archives of the Philippine Islands on the 1st of March, 1904.

"Q. Have you any record in your office regarding the remittance of the original of this document? - A. Yes, sir; I have an inventory which was sent to me by the chief of the division of archives.

"Q. Can you produce the record of the remittance of the original of said document? - A. Yes, sir, as soon as the court orders it.

"The Court. If it is only an inventory it is all right, go and get it. (This the witness did.)

"Witness. Here is the inventory and receipt from the custodian of archives wherein he acknowledges receipt of the documents sent in the protocols.

"Q. That is all."

With regard to the sixth and seventh assignments of error, not having before us case 133, with reference to which the court below has stated that neither in the record of the sale nor in the advertisement of the same had the provisions of the law been complied with, nothing can be established in this decision as a ground for affirming the first of the findings in the judgment, in so far as the sale made by the defendant sheriff is thereby held to be null and void. Therefore the said finding is hereby revoked.

The fifth assignment of error is directed against the second finding in the judgment, whereby the claim for the recovery of possession is granted by virtue of the evidence offered at the trial. With the exception of two points the trial court has not committed the error attributed to it. It has rendered its decision upon the evidence and, judging by the preponderance of that offered by the plaintiff, it has held that the property now claimed was owned by the intestate estate of Bias Gerona when the same was attached by virtue of the order of execution issued in favor of the appellant in an action brought against the original owner thereof, Celestino Montero, who sold it to Bias Gerona prior to said execution, after which he died intestate. This preponderance of evidence arose, in the opinion of the judge, because of Exhibit A and the testimony of the witnesses who identified the property.

Against such preponderance of evidence thus considered, we find in the proceedings in general nothing to destroy it, nor in so considering it has the court below violated any law. Therefore, the second finding in the judgment must be affirmed, with the exception of two points which are outside the scope of the finding.

In the complaint, the right of ownership of Bias Gerona is set forth in paragraph (c) to:

"One house of strong materials with a wooden floor, nipa sides, and cogon roof, erected on the said lot of Belison (b), being 6 brazas frontage and 5 deep, which house and lot are assessed at \$150 Mexican currency."

In the letter (a) another house is described as a wooden house with its corresponding lot within the suburb of San Pedro with the boundaries as described therein.

Hence, claim is made for two houses, and as they no longer exist, the trial court orders the defendant to pay P300 as the value of the house described in paragraph (a), and P50 as that of the one described in paragraph (c).

In the first place, the second finding in the judgment can not be affirmed, in so far as it declares that the intestate estate of Bias Gerona is the owner of all the property claimed, for the reason that it does not own the house mentioned in paragraph (c). The real proof of said ownership adduced by the plaintiff is the public instrument marked as "Exhibit A," and in no manner does it appear therein that said house, which was erected on the lot in Belison (b), was ever sold by Montero to Gerona. Therefore, whether the building was destroyed or not, the plaintiff has nothing to do with a house of which he does not seem to be or ever to have been the owner, and this disposes of the indemnity of P50 that the court below awarded him by the second finding.

In the second place, even admitting that Gerona and his intestate estate owned the house described in paragraph (a), and that if it existed, the judgment, in so far as it orders the same to be restored to the owner, would be in accordance with the law, yet as it has been shown at the trial that the loss of the house was not due to the fault of the possessor, Capadocia, but to superior force exercised by the municipal authorities of San Jose, Antique, proven in the proceedings by the testimony of said municipal president and by that of another witness, neither of whom have been discredited, the possessor in good faith can not be held liable for the value of the house.

Therefore, that portion of the second finding which orders that the defendant Santos Capadocia shall pay to the plaintiff P300 as the value of the house described in paragraph (a) of the complaint, and P50 for the house described in paragraph (c), can not lawfully be affirmed.

For the reasons above set forth, the judgment appealed from is affirmed in so far as it orders "that the plaintiff, as owner of the property claimed, shall recover the possession and enjoyment of the same," in so far as it "adjudicates to the said plaintiff the products that the said lands may have yielded from the 19th of July, 1907, until the date of their delivery," and in so far as it "orders the defendants to pay the costs of the proceedings." With costs of this instance against the appellant. So ordered.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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