

PHILIPPINE EXECUTIVE COMMISSION, PETITIONER, VS. NATALIO AEADILLA ET AL., CLAIMANTS. LORENZO ABADILLA, MOVANT AND APPELLEE; NICASIO FHANCIA ET AL., OPPOSITORS AND APPELLANTS.

G.R. No. 48182. December 31, 1942

Ponente: BOCOBO, J.

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BOCOBO, J.:

In cadastral proceedings No. 26 in the Province of Tayabas, a motion was on March 5, 1940, presented by Lorenzo Abadilla, appellee herein, before the Court of First Instance, praying for the cancellation of transfer certificate of title No. 14764 issued to Nicasio Francia and Calixtra Oabel, husband and wife (appellants herein), and the issuance of a new one to movant.

The parcel of land in question was originally registered in the name of Ciriaca Cabalsa, wife of Emeterio Cabriga, with certificate of title No. 22798. This piece of land was sold to appellants on June 27, 1929, but the sale was not registered till October 12, 1939, when transfer certificate of title No. 14764 was issued to appellants. In civil case No. 1593 against Cabalsa and Cabriga, the land was seized in a preliminary attachment on September 21, 1936, which attachment was noted on said certificate of title No. 22798. On November 24, 1937, the land was sold to Lorenzo Abadilla, appellee herein, for P75, by the sheriff in execution of the judgment in said civil case. (Exhibit A.) The final deed of sale was signed by the sheriff on October 14, 1939, in favor of Lorenzo Abadilla. (Exhibit B.) However, neither Exhibit A nor Exhibit B was recorded in the registry of deeds. The final deed of sale to appellee was executed three days after the registration of the sale to appellants, but the transfer certificate of title No. 14764 issued to appellants was expressly subjected to the preliminary attachment noted on the certificate of title No. 22798.

The Court of First Instance held that Lorenzo Abadilla had a better right, in view of the sheriff's sale to him, because said sale was the result of the preliminary attachment which had preference over the conveyance to appellants. The court, therefore, ordered that transfer certificate of title No. 14764 issued to Nicasio Francia and Calixtra Oabel be cancelled, and another issued to Lorenzo Abadilla. Francia and Oabel appeal from said order, maintaining that their only obligation is to satisfy the judgment in civil case No. 1593.

Inasmuch as the conveyance to appellants was expressly subjected to the preliminary attachment noted on the certificate of title No. 22798, said conveyance must perforce be likewise subject to the auction sale to appellee made in accordance with the lien. The preference enjoyed by the lien of attachment would be meaningless and illusory if preference should not, in like manner, be given to the auction sale. It was for this reason that in two cases this court held that the auction sale retroacts to the date of the lien of attachment. (*Hernandez vs. Katigbak*, 40 Off. Gaz., 7th Sup., pp. 135, 140; *Vargas vs. Tansioco*, 39 Off. Gaz. (No. 28], p. 651.)

Registration of the auction sale herein is not essential to its validity. Such registration is necessary under section 77 of Act No. 496 merely to bind third parties, but appellants are not third parties because the conveyance to them

was expressly made subject to the lien of attachment.

Therefore, we hold that the auction sale to appellee has preference over the transfer to appellants. However, appellants may exercise the right of redemption under section 464, paragraph (a) of Act No. 190, now Rule 39, section 25, paragraph (a) of the Rules of Court, and since the auction sale was not registered and appellants had no notice thereof, they are hereby allowed—for purposes of redemption—one year from such date as the auction sale may be registered.

Thus modified, the judgment appealed from is hereby affirmed, without special pronouncement as to costs. So ordered.

Yulo, C. J., Moron, Ozaeta, and Paras, JJ., concur.

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