

BINALBAGAN ESTATE, INC., PLAINTIFF, VS. VALERIANO M. GATUSLAO ET AL., DEFENDANTS. VALERIANO M. GATUSLAO, DEFENDANT-APPELLANT, A. P. SEVA, DEFENDANT APPELLEE.

G.R. No. 48560, February 26, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

To whom do the pending fruits of property sold by the sheriff to satisfy a mortgage thereon belong—to the purchaser, or to the former owner? That is the question litigated between appellant Valeriano M. Gatuslao and appellee A. P. Seva in this action of interpleader which involves the sum of P8,376.20, representing the proceeds of the sale of 1,251 piculs of sugar, which in turn represented the rents on the Hacienda San Jose for the agricultural year 1938- 1939.

The said hacienda, otherwise known as lot No. 2075-A of the Himamaylan (Occidental Negros) cadastre, was sold by the sheriff on October 14, 1938, to appellant Valeriano M. Gatuslao for the sum of P73,715.19 to satisfy a mortgage which included said lot, among others, in virtue of a judgment of foreclosure against the mortgagor, Estate of Rafael Jocson, deceased, and in favor of the mortgagee, Segundo Monteblanco. The sale was confirmed by the Court on December 9, 1938.

Of the mortgage credit of P100,989.21 excluding interest, the sum of P44,182.67 had been adjudicated by the court in the foreclosure suit to Attorney A. P. Seva as his fees for services rendered therein on behalf of the mortgagee. Out of the proceeds of the sale of all the mortgaged property, only the sum of P4,266 was applied to the payment of Mr. Seva's judgment.

When the Hacienda San Jose was sold by the sheriff to Gatuslao on October 14, 1938, it had a standing crop of sugar cane belonging to the lessees of said hacienda, out of the sugar from which the said lessees had to pay to the owner of the hacienda a certain portion as rent, which was subsequently determined to amount to 1,251 piculs. The rents, payable in sugar, became due and demandable after the milling of the sugar cane, which commenced a few days after October 14, 1938. Among the claimants of the said 1,251 piculs of sugar were Gatuslao and Seva, the former as purchaser and the latter as mortgage creditor of the previous owner.

In view of the conflicting claims the Binalbagan Estate, Inc., instituted this action to compel the different claimants to litigate their rights. During the pendency of the action in the court below, the court authorized the sale of the sugar by the sheriff and the subsequent delivery by the latter of the proceeds of the sale to the appellee A. P. Seva, who filed a supersedeas bond and who obligated himself to deliver the amount (P8,376.20), with legal interest thereon, to the herein appellant should the latter prevail in this appeal (p. 163, bill of exceptions).

The trial court adjudicated the said amount to Seva on the ground that under article 1877 of the Civil Code and the decision of this Court in *Afable vs. Belando* (55 Phil., 64), the rents in question were included in the mortgage. We are of the opinion that the trial court has misapplied the article as well as the decision above cited. Article 1877 reads as follows:

"Art. 1877.—A mortgage includes all natural accessions, improvements, growing fruits, and rents not collected when the obligation falls due, and the amount of any indemnities paid or due the owner by the insurers of the mortgaged property or by virtue of the exercise of the power of eminent domain, with the declarations, amplifications, and limitations established by law, whether the estate continues in the possession of the person who mortgaged it or whether it passes into the hands of a third person."

It is not disputed that the rents in question consisting of a portion of the sugar to be realized from the standing crop of sugar cane formed part of the mortgage, to satisfy which the mortgaged property was sold by the sheriff. As pending fruits of the property sold, they were included in the sale in the absence of any agreement to the contrary. That is so provided in article 1468, which reads as follows;

"Art. 1468.—The vendor must deliver the thing sold in its condition at the time the contract was perfected. "All the fruits shall belong to the vendee from the day on which the contract was perfected."

The vendor in this case was the mortgagor as well as the mortgagee, who acted thru the sheriff.

Under section 257 of Act No. 190,[1] the sale operated to divest the rights of Seva and to vest them in the purchaser, Gatuslao. It is indeed apparent that a mortgage creditor cannot sell the mortgaged property in satisfaction of his mortgage and still claim a lien on or any right whatsoever to the property sold. In common parlance, one cannot eat one's cake and have it too.

The case of *Afable vs. Belando*, supra, is not applicable to the facts of this case, which are different. In that case the controversy was not between the purchaser of mortgaged property and the mortgagee, but between the mortgagee and an unsecured creditor of the mortgagor who attached the rents collected by the receiver of the mortgaged property during the pendency of the foreclosure suit. Obviously, under article 1877 of the Civil Code the mortgage creditor had a better right to said rents.

Appellant became the owner of the Hacienda San Jose on October 14, 1938, when its sale to him was perfected in accordance with article 1450 of the Civil Code. The Court's confirmation of the sale retroacted to that date. Under article 1468 appellant also became the owner of the pending civil fruits of said property. It is immaterial under the law that said fruits had grown, ripened, or accumulated before the sale took place. They were still an accessory, which followed the principal. (See article 353.)

The judgment appealed from is reversed and the appellee A. P. Seva is ordered to pay to the appellant Valeriano M. Gatuslao the sum of P8,376.20 with interest thereon at the rate of six per cent per annum from December 4, 1939, with costs. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

[1] "Sec. 257.—Sale of the Mortgaged Property.—When the defendant, after being directed to do so, as provided in the last preceding section, failed to pay the principal, interest, and costs at the time directed in the order, the court shall order the property to be sold in the manner and under the regulations that govern sales of real estate under execution; but such sale shall not affect the rights of persons holding prior incumbrances upon the same estate or a part thereof. The sale, when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser. Should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law."

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