

LUCIO BUZON, PLAINTIFF AND APPELLEE, VS. MAXIMO LICAUCO ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4966. March 27, 1909*

Ponente: CARSON, J.

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On the 15th day of December, 1904, a certificate of title to the parcel of land described in the complaint was issued in pursuance of a decree of the Court of Land Registration to one Rafael Herrera. Thereafter Maximo Licauco, one of the defendants in these proceedings, instituted an action against Herrera in the Court of First Instance of Manila, and obtained an order of attachment against the property of Herrera, which was levied on this land on the 1st day of October, 1907, by filing and registering a copy of the order in the office of the register of deeds. On the 10th of March, 1908, Licauco undertook to subject the property thus attached to execution on the judgment in his favor in the action wherein the order of attachment was issued; and together with his codefendant in these proceedings, Jose" McMicking, ex officio sheriff of Manila, took the necessary steps looking to the sale at public auction of the above-mentioned parcel of land, for the purpose of recovering therefrom the amount of that judgment. Thereupon Lucio Buzon, the plaintiff in the case at bar, claiming to be the true owner of the land in question, instituted these proceedings for the purpose of enjoining Licauco and the sheriff of Manila from proceeding with the execution sale.

It appears that on the 6th day of September, 1907, Herrera executed a deed of sale of the land in question to Lucio Buzon, which, on the same day, was duly acknowledged before a notary public, but was not presented to the register of deeds until the 4th day of October, 1907, when Buzon secured from the office of the register of deeds of the city of Manila a certificate of transfer and title to the land in question, which certificate contains, in the memorandum of incumbrances affecting the property described therein, an annotation of the order of attachment filed and registered by Licauco in the office of the register of deeds, on the 1st day of October, 1907.

Licauco, the defendant in the case at bar, insisted that this alleged sale to Buzon was a simulated and not a genuine sale; that the right of ownership never passed by virtue thereof from Herrera, the original owner; that the certificate of title held by Buzon was obtained by fraud; and that, for this reason, as well as because of the fact that he had duly filed and recorded his order of attachment four days prior to the issuance of Buzon's certificate of transfer and title, this certificate should not be permitted to defeat his right to subject the property in question to execution.

The trial court held that Buzon was entitled to the injunction prayed for, and that Licauco's remedy for the alleged infringement of his rights resulting from the alleged fraudulent or simulated sale, was in the Court of Land Registration, because in the opinion of the trial judge, Buzon's certificate of title, issued on October 4, 1907, "was duly issued by the register of deeds of Manila pursuant to a decree of the Court of Land Registration," and under section 38 of Act No. 496, such a decree "shall bind the land and quiet title thereto," and be "conclusive upon and against all persons * * *" subject, however, "to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review

within one year after entry of the decree." It is very clear, that the trial court erred in thus relying upon the provisions of section 38 of Act No. 496, since Buzon's certificate of transfer and title shows on its face that it is not the original title to the land in question, issued by the register of deeds, in pursuance of a decree of the Court of Land Registration, having been issued by the register of deeds under the provisions of section 57 of Act No. 496, upon presentation to him of the deed of conveyance from Herrera, to whom the original certificate of title had been issued in pursuance of a decree of the Court of Land Registration on the 15th day of December, 1904.

Upon motion for a new trial, the court reexamined the merits of plaintiff's contention regardless of the point discussed in its original decision, and in overruling the motion arrived at "the same result;" holding that the evidence failed to establish defendant's allegations that the conveyance to plaintiff of the land in controversy was fraudulent as to the defendant Licauco, and that the deed of conveyance to Buzon, executed on September 6, 1907, "though unrecorded takes priority over the subsequent attachment of execution against the same property, levied on October 1, 1907," notwithstanding the fact that the order of attachment was filed and recorded in the office of the register of deeds four days prior to the issuance of the certificate of title to Buzon, and the further fact that the levy of attachment was duly annotated in the "memorandum of incumbrances" affecting the property described therein, which appears on the back of the certificate. This ruling appears to be based upon the doctrine laid down by this court in various cases wherein we have held that the levy of an attachment or of an execution against a judgment debtor upon real estate which stands in his name in the old registries of property, created by virtue of the provisions of the Spanish Mortgage Law (Ley Hipotecaria), is void where it appears that prior to the levy of the attachment or execution, the property has been conveyed to a third party by an unrecorded deed; and that such levies of attachment or execution do not give the judgment creditor any preference over existing claims against the property that have not been recorded; the provisions contained in the statutes of many of the States of America, whereby an unrecorded deed is declared to be of no effect as to a subsequent recorded attachment or as to judgment creditors, not being found in the laws of the Philippine Islands applicable to transactions affecting lands not registered under the Land Registration Act; and the provisions of article 1473 of the Civil Code, which give preference to that one of two deeds which is first recorded, not extending to attachments or executions. (See *Fabian vs. Smith, Bell & Co.*, 8 Phil. Rep., 496; *Boncan vs. Smith, Bell & Co.*, 9 Phil. Rep., 109.)

But it is to be observed that in none of these cases had the property been registered under the provisions of Act No. 496, known as "The Land Registration Act," nor were the levies of attachment made, as in this case, under the provisions of that Act touching "attachments and other liens." And while an unrecorded deed of conveyance executed by the owner of land not registered under the provisions of the Land Registration Act conveys the title and ownership to the purchaser as of the date of its execution, so that a subsequent levy of an attachment or execution by a judgment creditor of the vendor is void and of no effect, the same rule can not be applied where the land has been registered under that Act, because, by its terms, an unrecorded deed of conveyance does not convey or affect the land until and unless the transaction is duly registered.

Section 50 of that Act expressly provides that-

"No deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties, and as evidence of authority to the clerk or register of deeds to make registration"- the act of registration being "the operative act to convey and affect the land." Section 51 provides that-

"Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument or entry, affecting registered land, which would, under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates, shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering."

And section 59 provides that-

"If at the time of any transfer there appear upon the registration book incumbrances or claims adverse to the title of the registered one, they shall be stated in the new certificate or certificates, except so far as they may be simultaneously released or discharged."

Under these express provisions of the Land Registration Act, it is clear that the deed of sale of Herrera to Buzon did not take effect as a conveyance, or bind the land, until the 4th day of October, 1907, and that the levy of Licauco's attachment against the land by the filing and recording of the order of attachment in the office of the register of deeds on the 1st day of October was not affected thereby.

Buzon, on the back of whose certificate of transfer and title appears a memorandum of the levy of attachment, had both actual and constructive notice of the fact that the attachment had been levied upon the land purchased by him, before he became the owner, and clearly he is not entitled to an injunction to restrain Licauco from subjecting this land to execution, in accordance with the provisions of the Land Registration Act touching "attachments and other liens."

The judgment of the trial court is reversed, and the injunction granted therein is dissolved, with the costs in the Court of First Instance in favor of the defendants, but without costs to either party in this instance.

Arellano, C. J., Mapa, Johnson, and Willard, JJ., concur.

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