

ROMUALDO OSORIO AND MARIA DEL ROSARIO, PLAINTIFFS AND APPELLEES, VS. PEDRO CORTEZ AND MARIANO MANALO (AS SHERIFF OF THE PROVINCE OF LAGUNA) DEFENDANTS AND APPELLANTS.

G.R. No. 6328. January 09, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 20th day of May, 1908, the plaintiffs commenced the present action, in the Court of First Instance of the Province of Laguna, against the defendants, for the purpose of having declared null and void the sale of four parcels of land described in paragraph 2 of the complaint, which sale was made under a certain execution by the sheriff of the Province of Laguna, and to have the plaintiffs declared to be the owners of said parcels of land, and to recover damages and costs.

The defendant, Pedro Cortez, in his answer alleged that he was the owner of the said parcels of land, by virtue of having purchased the same at a public sale by the said sheriff; that Salvador Rosales and Andrea Virey were the owners of said parcels of land up to and including the time when the same were sold under execution by the sheriff of the Province of Laguna.

The defendant, Mariano Manalo, answered the said complaint by alleging, in substance, that he had sold the lands in question by virtue of an execution issued by the Court of First Instance of the Province of Laguna; that four days preceding the sale of said lands and after the execution had been levied, the plaintiff, Romualdo Osorio, notified him in writing that the lands in question belonged to him and requested that the same be not sold—that the attachment be raised; that, notwithstanding this written notice by the plaintiff that the lands in question belonged to him, the defendant, Pedro Cortez, insisted upon the sale of said lands, and executed and delivered to the defendant, Mariano Manalo, a bond in the sum of P500, to secure him (Mariano Manalo, as sheriff) against any loss which might result by virtue of the sale of said lands under said execution.

After hearing the evidence adduced during the trial of the cause, the Honorable Vicente Jocson, judge, rendered a decision in favor of the plaintiffs and against the defendants, the dispositive part of which is as follows :

"The court therefore declares null and void the attachment levied by the provincial sheriff, Mariano Manalo, on the lands in question, and likewise null and void the sale at public auction of the same lands to Pedro Cortes, and consequently declares said lands to be the exclusive property of Romualdo Osorio and his wife. The defendants are ordered to restore said lands to the plaintiffs and are further sentenced jointly and severally to pay to the plaintiffs the sum of P40 a year, counting from February 28, 1905, when the lands were attached and taken away from the plaintiffs, until the restoration of said property is effected. The defendant Pedro Cortes is further sentenced to pay the costs of this case."

From that decision the defendants appealed to this court and made the following assignments of error :

"I. The court erred in holding that the appellees were the owners of the lands in question at the time when they were attached by the sheriff and sold at public auction to the appellant, Pedro Cortes,

"II. The court erred in declaring null and void the sale and transfer made by the sheriff to the appellant, Pedro Cortes; as it also erred in ordering the appellants to restore the ownership and possession of the lands in question to the plaintiffs.

"III. The court erred in sentencing the defendants and appellants jointly and severally to pay to the plaintiffs, for products received, the sum of ₱40 a year, counting from February 28, 1905."

With reference to the first assignment of error, the lower court, in discussing the question raised by said assignment, said:

"The question raised by the defendants depends solely upon whether the lands now in question were actually sold on August 7, 1903, for there is no question as to their identity. Nor has any doubt been raised regarding the ownership of Salvador Rosales and Andrea Virey before said sale, since the defendants admit that the land in question belongs to the Rosales couple and maintain further that it continued to belong to this couple until it was attached, and they have by implication maintained by their reply that the sale made by the plaintiffs was a pretended one.

"The preponderance of the evidence at the trial has clearly demonstrated that Romualdo Osorio and his wife really bought the lands in question on the date stated in Exhibit B of the plaintiffs and that the signatures affixed by the deceased Salvador Rosales and his wife Andrea Virey to this exhibit, as well as to Exhibit 4 of the defendants, are genuine signatures of the vendors, whose signatures were not only recognized by Andrea Virey and other witnesses of the plaintiff, but this fact was also corroborated by the testimony of Catalino Sevilla, an attorney and witness on handwriting, called by the defendants, that the signatures which appear in the ratification of Exhibit B of the plaintiffs before the notary Sulpicio Trivino are the signatures of the deceased Salvador Rosales and Andrea Virey, after he had compared these signatures with other undisputed ones submitted by the defendant for his comparison.

"However, weighing all the evidence together, I find that the signatures of the couple Salvador Rosales and Andrea Virey, affixed to Exhibit B of the plaintiffs, and those affixed to the ratification, Exhibit U of the defendants, were written by the same persons who figure therein and that therefore the sale made by the Rosales couple to the herein plaintiffs was perfectly legal and made on the date expressed in the document"

Upon an examination of the evidence brought to this court, we find that on the 7th day of August, 1903, Salvador Rosales and his wife, Andrea Virey, sold the four parcels of land under a pacto de retro, for the sum of ₱500, to the plaintiff, Romualdo Osorio. (See Exhibit B, Record, p. 16.) That on the 2d day of December, 1905, the said Salvador Rosales and Andrea Virey ratified said Exhibit B, confirming the sale of said land, before a notary public. (See Exhibit 4, Record, p. 17.)

It further appears from the record that some time before the 17th of June, 1905 (the exact date not appearing of record), the defendant, Pedro Cortez, had secured a judgment in the Court of First Instance of the Province of Laguna against the said Salvador Rosales for a certain sum of money, and that upon the 17th of June, 1905, by virtue of an execution issued upon said judgment, the defendant, Mariano Manalo, as deputy sheriff of the Province of Laguna, attached the parcels of land in question and advertised the same for sale on the 20th of July, 1905; that upon the 16th of July, 1905, four days before the sale of said lands took place, the plaintiff, Romualdo Osorio, gave the defendant, Mariano Manalo, written notice that the said parcels of land belonged to him and requested that said attachment be raised; that, notwithstanding said written request, given in accordance with the provisions of section 451 of Act No. 190, the defendant Pedro Cortez, insisted upon the sale of said lands, and on the 20th of July, 1905, executed and delivered to the sheriff, Mariano Manalo, a bond in the sum of ₱500, to

secure him (Mariano Manalo) against any loss resulting from the sale of said lands.

The principal ground upon which the appellants rely in their contention that the four parcels of land in question had not been sold to the plaintiff on the 7th of August, 1903, is that the said contract (Exhibit B) was a private document and was not sufficient, under the provisions of article 1280 of the Civil Code, to transfer the ownership of the said lands to the plaintiff. Paragraph 1 of said article 1280 provides that:

"Acts and contracts the object of which is the creation, transmission, modification or extinction of real rights on real property, must be executed by a public instrument." This court has held that the contracts, required by said article 1280 to be in writing, are nevertheless valid and produce legal effects between the parties, although they are not evidenced by a public document. (*Thunga Chui vs. Que Bentec*, 2 Phil. Rep., 561; *Couto Soriano vs. Cortes*, 8 Phil. Rep., 459; *Conlu vs. Araneta*, 15 Phil. Rep., 387.)

Our conclusions are, therefore, with reference to the first assignment of error above noted, that the four parcels of land in question were sold, under a pacto de retro, by Salvador Rosales and his wife Andrea Virey to Romualdo Osorio on the 7th of August, 1903 (Exhibit B); that on the 2d of December, 1905, said sale was ratified and confirmed by the same vendors (Exhibit 4); that at the time of the execution and sale of said parcels of land by the defendant (the sheriff), they belonged, not to Salvador Rosales and his wife, but to Romualdo Osorio, and that the defendant herein had due notice in writing (sec. 451 of Act No. 190) of that fact. The land sold under the execution at the time of the sale was not the land of Salvador Rosales and his wife, but the property of Romualdo Osorio.

The only argument presented by the defendants and appellants in support of their second assignment of error above noted is the argument presented in support of the first assignment of error. With reference to this second assignment of error, the lower court, in discussing the effect of the sale of the lands in question by the sheriff, said:

"Since, then, the herein plaintiffs are the absolute owners of the coconut lands attached, by virtue of the purchase they made from the Rosales couple, the attachment and sale at public auction by the provincial sheriff, Mariano Manalo, on petition of the plaintiff, Pedro Cortes, in the year 1905, are necessarily null and void and without legal effect; they are therefore liable for the losses suffered by the plaintiffs. According to evidence adduced by the defendant, Pedro Cortes, which appears in the testimony of Romualdo Vite, the coconut groves in question produce four thousand coconuts a year, worth from twelve to fifteen pesos a thousand, and the expenses amount to P3 a thousand. Reckoning only P13 as the value per thousand, we find that the lands in question produce P40 a year, net."

There would seem to be little necessity for saying more than has been said with reference to the conclusions of the lower court in relation to this second assignment of error, except for the fact that it has been suggested that a sheriff is not liable for the sale of property under an execution, when he acts in good faith; that his writ of execution is a sufficient warrant for him to protect him against loss; that the writ of execution is an order to sell the property and that he should not be held liable for the performance of his duty. The writ of execution, however, directed to the sheriff, always commands him to attach and /sell the property of the judgment debtor. If he attaches and sells property belonging to a third person he is not obeying the orders contained in the writ of execution. It is difficult to see or understand upon what theory the sheriff can claim good faith when, under an execution against the property of A, he attaches and sells, with due notice, the property of B. The lower court found, from the evidence, that the writ of execution was directed against the property of Salvador Rosales and his wife, Andrea Virey, and the proof shows conclusively that the sheriff levied upon and sold property belonging to Romualdo Osorio. The proof shows also that the sheriff had written notice, before the sale of the property took place, that the same did not belong to Salvador Rosales and his wife, but was the property of Romualdo Osorio.

The writ of execution can, under no theory, furnish protection against the liability of the sheriff when he does not comply with its orders. If the sheriff attaches and sells the property of a person other than the judgment debtor, his responsibility is the same as that of any other person who takes possession wrongfully of the property of another.

The case of *Waite vs. Peterson* (8 Phil. Rep., 449) was an action to recover the value of the property alleged to have been illegally attached and sold by the sheriff. In discussing the liability of the sheriff, this court said:

"If property of a person is taken by the sheriff upon an execution against another person, the sheriff is liable therefor in the absence of statute, as any private person would be. When one's property is wrongfully taken by another, the former has a right of action against the person who interfered with his property, either for the recovery of the property itself, or for damages for its taking, and he has his choice of these remedies."

The case of *Quesada vs. Artacho* (9 Phil. Rep., 104) was also an action against the sheriff to recover damages for an illegal sale of property under an execution. In that case this court, speaking through its Chief Justice, Arellano, said, with reference to the liability of the sheriff:

"The defendant (the sheriff) is not excusable under the theory that the official acts of the sheriff are of a mere ministerial nature for which he can not be held responsible so long as he adheres strictly to the terms of the order of the court or to the requests and indications of the party seeking the attachment and upon whom the sheriff believes he can thrust all responsibility as the real party concerned in the matter, for the reason that the supposition upon which such theory is based, in view of the present method of procedure, and the general principles of law, is a false one. Under the present procedure a judicial officer, when serving such process, has the same responsibility, with some exceptions, as any private individual who interferes with property or possession claimed by a third party who has neither been heard nor defeated in action, and who can in no manner whatever be dispossessed of what belongs to him, while he is in quiet and peaceful possession thereof."

The case of *Uy Piaoco vs. Osmeña* (9 Phil. Rep., 299) was also an action against the sheriff for an alleged illegal sale of property under an execution. In the decision in that cause, this court, speaking through Mr. Justice Torres, said:

"A third party who protests against the seizure of his property and files his claim in accordance with the law, is entitled to protection and to be restored to possession thereof.

"Where in spite of a claim made in accordance with the law the sheriff maintains the attachment and refuses to dissolve the same, he incurs the responsibility prescribed by law, because he thereby commits an act of dispossession, or an actual attempt against the right of ownership."

An execution is an order to the sheriff to attach and sell the property of the judgment debtor. If he sells the property of another person he is not obeying the order of the court. The sheriff has no authority to attach the property of any person except the property of the person named in the execution. If he does so the writ of attachment affords him no justification of the act; it is not in obedience to the mandate of the writ. (*Rhodes vs. Patterson*, 3 Cal., 469; *Van Pelt vs. Littler*, 14 Cal., 194; *State vs. Moore*, 19 Mo., 369; *Harris vs. Hansen*, 11 Maine, 241; *People vs. Schuyler*, 4 N. Y., 173; *State vs. Telon*, 69 N. C., 35.)

A sheriff who sells property not belonging to the defendant named in the writ of attachment under which he acts, is liable to the true owner for whatever damages may result, although the sale was made without taking actual possession of the property. Neither can the sheriff escape liability because he sold only the right, title and interest of the judgment debtor. (*Curtner vs. Lynden*, 128 Cal., 35; *Rankin vs. Ekel*, 64 Cal., 446; *Terrail vs. Tinney*, 20 La. Ann., 444; *Shumway vs. Rutter*, 8 Pickering (Mass.), 443; *Scudder vs. Anderson*, 34 Mich., 122; *Kline vs. McCandless*, 139 Pa. St., 223.)

Where the owner of property levied upon, under a writ of execution against another person, notifies the sheriff of his ownership and forbids the sale, this is tantamount to a demand for the property and renders the sheriff liable if he subsequently sells it. (Vaughn vs. Algaier, 27 Mo. App., 523.) Also where a claimant of property levied upon has taken the proper steps under the statute to protect his rights, until a trial thereof can be had, a sheriff who refuses to recognize such rights and sells in violation thereof, is liable. (Houx vs. Shaw, 18 Mo. App., 45.)

If a sheriff takes the property of a third person, not the judgment debtor, he (the sheriff) is entitled to no indulgence. The sheriff having misapplied his process, whether by mistake or design, will make no difference. He stands in the position of every trespasser and is liable to an action the instant the trespass is committed. The circumstance that the property was in the possession of the execution debtor at the date of the judgment, amounts to nothing, except such possession may tend to prove fraud. (Boulware vs. Craddock, 30 Cal., 190; Vose vs. Stickney, 8 Minn., 51; Dodge vs. Chandler, 9 Minn., 87; Rankin vs. Ekel, 64 Cal., 446.)

The owner, whose property has been taken under a writ of attachment, to which he was not a party, has his choice of remedies. He may sue in trespass for damages or for the recovery of the property. (Yardborough vs. Harper, 32 Miss., 112; Gimble vs. Acklex, 12 Iowa, 27.)

In the case of Forsythe vs. Ellis (4 J. J. Marshall (Ky.), 298), the chief justice, speaking for the court upon the question of the liability of a sheriff, for levying an execution upon a person not named therein, said:

"The reason why a sheriff is responsible to the owner is a very comprehensive one and applies to all persons who take the property of others without any authority. An execution against the goods of A gives no authority to the sheriff to take the goods of B.

"So long as the officer confines his acts to the authority of the process, he is not responsible, but all acts which are not justified by the writ are, of course, without authority of law. The inevitable consequence, therefore, of the principle that no man shall attach the property of another without the permission of the owner, or sanction of the law, is that no plea of exemption or station, however exalted or sacred, can exonerate a trespasser. This principle is conservative of property. Without its integrity and universality, private rights would be insecure and the law would be unequal and tyrannical. The sovereign power of the State, with its eminent domain, can not take from the humblest citizen a particle of his property for public use, without allowing him just compensation.

"If an execution against one man would excuse the sheriff for taking and selling the property of another, every citizen would be at his mercy and none could call his estate his own. As the execution gives the sheriff no authority, he has none, and therefore his sale neither devises nor confers any rights. The owner of the property, therefore, sold by the sheriff without authority, may recover from the sheriff its value in an action for trespass."

In the case of Lammon vs. Feusier (111 U. S., 17), Mr. Justice Gray, speaking for the Supreme Court of the United States, said:

"The marshal (the officer corresponding to the sheriff) in serving a writ of attachment on mesne process, which directs him to take the property of a particular person, acts officially. His official duty is to take the property of that person, and of that person only; and to take only such property of his as is subject to be attached, and not property exempt by law from attachment. A neglect to take the attachable property of that person, and a taking, upon the writ, of the property of another person or of property exempt from attachment, are equally breaches of his official duty. The taking of the attachable property of the person named in the writ is rightful; the taking of the property of another person is wrongful; * * *

"A person other than the defendant named in the writ, whose property is wrongfully taken, may, indeed, sue the marshal (sheriff), like any other wrongdoer, in an action for trespass, to recover damages for the wrongful taking; and neither the official character of the marshal (sheriff), nor the writ of attachment, affords him any

defense to such action. (Day vs. Gallup, 2 Wall, (U. S.), 97; Buck vs. Colbath, 3 Wall. (U. S), 334)." (Williams vs. U. S., 1 Howard (U. S.), 290; Watkins vs. U. S., 9 Wallace (U. S.), 759; Sharpe vs. Doyle, 102 U. S., 686; Matthews vs. Densmore, 109 U. S., 216.)

In the case of Hibbard vs. Thrasher (65 111., 479), the supreme court, in discussing the liability of an officer levying upon property not the property of the execution debtor, said:

"An officer seizes property at his peril, and if he errs he must take the consequences. (Foltz vs. Stevens, 54 111., 180.)

"* * * * *

"It is absurd to suppose that the claimant can not have his action against the officer for taking his property and depriving him of the use of it. (Abbey vs. Searles, 4 Ohio State, 598.)"

In the case of Dunham vs. Wyckoff (20 Am. Dec, 695) the court said:

"Both upon principle and authority, it is easy to show that an officer, taking the goods of a person not the debtor in the execution, is liable as a trespasser. A command to arrest the person, or seize the goods of A, is no authority against the person or goods of B. If the officer having an execution against A undertakes to execute it upon goods in the possession of B, he assumes upon himself the responsibility of showing that such goods are the property of A. And if he fails to do this, he is a trespasser, and is obliged to return the goods to B. (Thompson vs. Button, 14 Johns. (N. Y.), 87.)"

The case of Commonwealth vs. Kennard (8 Pickering (Mass.), 132) was an action to recover goods wrongfully attached. In deciding the case, the supreme court of Massachusetts said:

"The officer must judge, at his peril, in regard to the person against whom he is commanded to act This is said to be hard, but it is a hardship resulting from the voluntary assumption of a hazardous office, and considering that in all cases of doubt the officer may require indemnity before he executes his precept, the hardship is imaginary."

In the case of Duperron vs. Van Wickle (4 Robinson (La.), 59; 39 Am. Dec, 509) it was held that the sheriff must, at his peril, avoid seizing under execution any other property than that of the defendant. It is not enough that he presumes, even on strong grounds, that the property is the defendant's. He must know that the property is the property of the person named in the writ of execution. (Jamison vs. Hendricks, 18 Am. Dec., 131.)

In the case of Aliens vs. Crary (10 Wendell (N. Y.), 349; 25 Am. Dec., 566), the court said:

"A sheriff is a trespasser who levies upon goods and chattels which are not the property of the defendant named in the execution."

In the case of Bruen vs. Ogden (11 N. J., 370; 20 Am. Dec, 593), the court said:

"But if an officer having an execution against A undertakes to execute it upon the goods in the possession of B, he assumes upon himself the responsibility of showing that such goods are the property of A, And if he fails so to do, he is a trespasser."

Cases to the same effect as the foregoing might be cited ad libitum.

It is admitted that the defendants in the present case had due notice in writing before the sale under execution took place. No question is raised in the present case with reference to that provision of section 451 of Act No. 190, requiring a written notice by the person claiming the property attached under the writ of attachment against another.

It having been established that the property attached and sold was the property of Romualdo Osorio and not the property of the judgment debtor, he, the plaintiff, is entitled to have said sale declared null and void and to have a return of his property. To permit a person to be deprived of his property in the manner in which the plaintiff was deprived of his property in the present action, without a right to have the sale declared null and void and the property returned to him, would constitute one of the most flagrant cases of depriving a man of his property, without due process of law, which could possibly come to the attention of the courts. The lower court committed no error in declaring said sale of the parcels of land in question null and void and ordering a return of the same to the plaintiff herein. The judgment of the lower court is, therefore, hereby affirmed with costs.

Torres, Mapa, and Moreland, JJ., concur.

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