

ALDECOA & CO., IN LIQUIDATION, PETITIONER, VS. PASTOR NAVARRO, SHERIFF OF THE PROVINCE OF LEYTE, RESPONDENT.

G.R. No. 6367. September 28, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an original action commenced here for the purpose of prohibiting the defendant from taking possession of certain property, real and personal, described in the exhibits attached to the complaint, which had been sold under an execution by the defendant to the plaintiff, with the object of reselling the same.

It appears from the complaint that the plaintiff is una soeiedad mercantil regular colectiva in liquidation, and that the defendant is the provincial sheriff, duly appointed and qualified and acting as such during the time mentioned in the complaint, for the Province of Leyte, Philippine Islands.

From a preponderance of the evidence adduced during the trial of the cause the following facts seem to be proved:

That some time prior to the 12th of January, 1910, there was pending in the Court of First Instance of the city of Manila an action known as No. 6597 between Aldecoa & Co. in liquidation, the plaintiff herein, and one Pascual Veloso; that a judgment was rendered in said cause by said court against the latter and in favor of the former for the sum of P10,234.81; that on the 12th day of January, 1910, an execution was issued upon said judgment and put into the hands of the sheriff of the Province of Leyte for the purpose of levying said execution upon the property of said defendant Pascual Veloso; that the sheriff of Leyte in due course and, so far as the record shows, in conformity with the provisions of the law levied upon certain property of the said defendant Pascual Veloso and sold the same. Said property is particularly described in Exhibits A and B of the plaintiff attached to the complaint in the present cause. About 2 months after the sale of the said property a deputy of the defendant herein, who claimed to be acting under the. instructions of the defendant, attempted to and did retake from the possession of the plaintiff herein that portion of the property sold under said execution described in Exhibits A and B for the purpose of reselling the same. All of this was done against the protest of the plaintiff. No reason appears in the record why the defendant, through his deputy, desired to repossess himself of the property sold under said execution. There is nothing in the record which shows that the sale under said execution was irregular in any manner. As soon as possible after the defendant, through his deputy, had retaken possession of the said property, the plaintiff commenced the present action here for the purpose of prohibiting the defendant from reselling the same.

The defendant presented no order of the court, or authority of any kind or nature, at the time he retook possession of said property for the purpose of reselling the same, justifying his action. What the defendant did seems to have been absolutely unauthorized in any way. So far as the record shows the sale of said property under the execution was entirely regular. The sale seems to have been legal. There is no explanation in the record which justifies the action of the defendant. Even though the defendant had attempted to retake possession of the property, annulling the sale under the execution, by virtue of an order of the court which rendered the judgment and which issued the

said execution, his authority so to do would have been very doubtful. (Perez vs. Sweeney, 8 Phil. Rep., 157; Sarmiento vs. Villamor, 13 Phil. Rep., 112; Sections 461, 462 and 463 of Act No. 190.)

When personal property is sold under an execution, such sale conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied. The purchaser becomes the absolute owner of personal property sold under an execution at the time of the sale and delivery of the same. (Section 461 of Act 190; Perez vs. Sweeney, supra; Sarmiento vs. Villamor, supra.)

The purchaser of real property under an execution sold at public auction, is substituted to and acquires all the right, interest, title, and claim of the judgment debtor thereto, subject only to the right of redemption. (Section 463, Act No. 190.)

Under the provisions of section 465 of Act No. 190 the owner of real property sold under an execution may redeem the same from the purchaser at any time within 12 months after the sale on paying the purchaser the amount of his purchase, with one per cent per month interest thereon in addition up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate. Whether or not the purchaser of real property under an execution is entitled to the possession of the same at the time of the sale and before the expiration of the period for redemption has expired, especially when the original owner is in possession of the same, is a question which we are not called upon to decide in the present case. (De la Rosa vs. Revita Santos, 10 Phil. Rep., 148; In the matter of the estate of Ceballos, 12 Phil. Rep., 271, 273.)

Inasmuch, however, as the sheriff had delivered the possession of the property to the plaintiff immediately upon the sale, he certainly cannot be permitted to retake possession of the same in the manner attempted in the present case for the purpose of reselling it. It appears of record that the plaintiff had taken possession of the property with the permission of the defendant and had caused certain improvements to be made thereon at considerable cost to himself. The defendant in no way attempts to justify his action in retaking the possession of the property in question for the alleged purpose of reselling the same. No attempt is made to show that he was acting under an order of the court. The defendant does not attempt to show that there was any irregularity in the sale of the property in question.

Upon the presentation of the petition in the present case a preliminary injunction was issued prohibiting the defendant from selling the property in question until a final determination of the cause. The plaintiff in its petition prays that the preliminary injunction upon a final hearing of the cause should be made perpetual and that the defendant should be ordered to return the property to him.

After a full consideration of all of the facts contained in the record and the law applicable thereto, and without deciding the question whether or not the plaintiff in the present action is entitled to an order directing the defendant to return to him the property taken in the manner above described, it is hereby ordered and decreed that the temporary injunction heretofore granted should be made perpetual, prohibiting the defendant, his agents, representatives and attorneys from proceeding in any manner, directly or indirectly, in the resale of the property in question, leaving the plaintiff to his ordinary remedy in obtaining the possession of said property. It is so ordered, with costs against the defendant.

Arellano, C. J., Torres, Mapa, Carson, and Trent, JJ., concur.

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