

## VICENTE REYES, PLAINTIFF AND APPELLANT, VS. JOSE GREY ET AL., DEFENDANTS AND APPELLEES.

*G.R. No. 6969. December 20, 1911*

Ponente: TRENT, J.

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### TRENT, J.:

Judgment having been rendered by the Court of First Instance of the city of Manila, the Hon. Charles S. Lobingier presiding<sup>1</sup>, dismissing the complaint in this case upon its merits, the plaintiff appealed.

The only question raised by this appeal is purely one of law.

Remedios Grey, wife of the plaintiff, died intestate in 1905 without ascendants or descendants, leaving a surviving husband and one sister and three brothers. Under the law, the sisters and brothers are called to inherit all of the estate of the deceased, subject only to the right of the surviving husband, the plaintiff, to a usufructuary interest in one-half thereof.

Administration proceedings in the estate of the deceased wife were not taken out until June 15, 1907, when Jose Grey, one of the defendants, was appointed administrator. In these administration proceedings, the Court of First Instance of this city issued a decree on December 3, 1910, declaring that each one of the defendants in the case at bar was entitled to one-fourth part of the estate of the deceased Remedios Grey, subject to the plaintiff's (Vicente Reyes') right to the usufruct.

Prior to the appointment of the administrator for the estate of the deceased Remedios Grey, and as the result of certain judicial proceedings had against her surviving husband (the plaintiff in the case at bar), his usufructuary interest in the estate of his deceased wife was sold under execution and deeds issued therefor to the purchaser, the defendant Jose Grey. Such deeds still subsist in full force and effect, no steps ever having been taken either to annul or set them aside or to redeem the interest of the plaintiff thus sold.

The plaintiff, as surviving husband of the deceased Remedios Grey, now sues the sister and brothers of his deceased wife, claiming of them the payment of his usufructuary interest in the property of the deceased, basing his claim upon two grounds: first, that the execution sale and the sheriff's deeds executed pursuant thereto did not divest him of his usufructuary interest in the property and that the defendants still remain charged with its payment; and second, the defendants having failed to appeal from the order of the probate court dated December 3, 1910, which order was issued some three years after an attempt was made to sell under execution the plaintiff's usufructuary interest, and that order having become final, it settled the plaintiff's right to a usufructuary interest, and the defendants can not now deny this fact.

Counsel for the plaintiff now insists that a usufructuary interest in real property is not such an interest or right as can be sold under execution. With this contention we can not agree. Section 450 of the Code of Civil Procedure provides as follows:

"Sec. 450. Property liable to execution. - All goods, chattels, moneys, and other property, both real and

personal, or any interest therein of the judgment debtor, not exempt by Jaw, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts, credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment."

The term "property" as here applied to lands comprehends every species of title, inchoate or complete; legal or equitable. This statute authorizes the sale under execution of every kind of property, and every interest in property which is, or may be, the subject of private ownership and transfer. It deals with equitable rights and interests as it deals with legal, without anywhere expressly recognizing or making any distinction between them.

Article 480 of the Civil Code reads:

"The usufructuary may personally enjoy the thing in usufruct, lease it to another person, or alienate his right to the usufruct, even for a good consideration; \* \* \*."

If the usufructuary right is one which may be leased or sold, it must logically and necessarily follow that such a right is an "interest" in real property within the meaning of section 450 of the Code of Civil Procedure, above quoted. It was the plaintiff's usufructuary right in real property which was sold under execution. This right was conferred upon him at the death of his wife by operation of law, and by virtue of such a right he was entitled to receive all the natural, industrial, and civil fruits of said real property in usufruct. He was entitled to hold the actual, material possession of such property during his lifetime, and was obligated only to preserve its form and substance. In other words, he was entitled, subject to this restriction, to use the property as his own. He was the real owner of this interest, and article 480, supra, conferred upon him the right to enjoy the possession of the property or lease it to another or to sell such interest outright. We think the real test, as to whether or not property can be attached and sold upon execution is does the judgment debtor hold such a beneficial interest in such property that he can sell or otherwise dispose of it for value? If he does, then the property is subject to execution and payment of his debts. The right of usufruct is such an interest, and when the sheriff sold the plaintiff's usufructuary right by virtue of an execution, he had no further interest in said property.

The plaintiff's second contention that the defendants, by failing to appeal from the order of the court in the administration proceedings dated December 3, 1910, wherein the right of plaintiff to a usufructuary interest in the property was recognized, have lost their right to refuse such payment to him at this time, is not well founded. The plaintiff had no interest in this property at the time the probate court issued this order. The order only set out the fact that under the law the plaintiff was entitled to a usufructuary interest in one-half of the estate of his deceased wife. It was not a finding that in the meantime the plaintiff had not sold, leased, or otherwise disposed of or lost such right of participation. This order, merely fixed the legal status of the plaintiff and did not have the effect of canceling or annulling the sale made by the sheriff. Again, the plaintiff instituted the action in the case at bar on June 1, 1910, several months prior to the order of December 3, 1910. The right to recover was traversed by the defendants on July 1 of that same year, and the question was pending and undetermined at the time the probate court issued its order.

The validity of the execution sale was not an issue in those administration proceedings, and the order of December 3d cannot, under any circumstances, be held to affect the validity of such a sale.

The judgment appealed from is therefore affirmed, with costs against the appellant.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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