

ISAAC BORCELIS, PLAINTIFF AND APPELLEE, VS. VICENTE GOLINGCO ET AL., DEFENDANTS. VICENTE GOLINGCO, APPELLANT.*G.R. No. 7353. August 26, 1914*

Ponente: ARELLANO, C.J.

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On September 21, 1908, Mariano Riosa secured judgment from the justice of the peace of Tabaco, Albay, against Pedro' Floriano for the sum of P590.68. Execution was thereupon levied upon two parcels of land of Floriano's, the situation, area, and boundaries whereof are taken for granted here, as no question regarding their identity was raised in the suit. When the sale of these two parcels at public auction had been advertised, Vicente Golingco appeared before the sheriff as an intervener, objecting to it unless his mortgage on them were recognized; but the execution creditor Riosa gave a bond and the sale at public auction was carried out on December 24, 1908, the two parcels of land being adjudicated to the bidder Isaac Borcelis for the price of P500. The year allowed by the law for redemption passed, and on March 3, 1910, the certificate of final sale was issued to Isaac Borcelis and inscribed in the property registry of Albay.

On October 22, 1908, Vicente Golingco secured a judgment from the Court of First Instance of Albay against the same Pedro Floriano for P500. Execution was issued on April 18, 1910, upon the two parcels of land above stated, when they were already inscribed in the property registry in the name of Isaac Borcelis. Their sale at public auction was advertised for the following 27th of May and Borcelis on the 20th of the same month interposed as intervenes claiming that said lands were his and objecting to their sale; but the execution creditor Golingco furnished an execution bond by means of his bondsmen Severino Bon and Tomas Burce, so the deputy of the sheriff Domingo Samson, named Alejandro Brusola, carried out the sale at public auction on May 27, 1910, the highest bidder for the two parcels being the execution creditor himself, Vicente Golingco.

Hence the present complaint of Isaac Borcelis against the execution creditor Vicente Golingco, the sheriff Domingo Samson, his deputy Alejandro Brusola, and the bondsmen of the execution creditor for the sheriff, Severino Bon and Tomas Burce, wherein it is prayed: (1) That the sale of the two parcels of land described in the complaint be declared null and void; (2) that the plaintiff's ownership thereto be declared and that consequently restitution of possession of said parcels to him be ordered; and (3) that a finding as to indemnity for damages be made in plaintiff's favor for the sum of P1,000 and that the bondsmen Severino Bon and Tomas Burce be sentenced jointly and severally to pay same.

After trial, the Court of First Instance of Albay rendered judgment in favor of the plaintiff Isaac Borcelis to the effect that he recover the lands described in the amended complaint, as they now appear described in the judgment itself, and decreed that said plaintiff recover from the defendant Vicente Golingco and his two bondsmen Severino Bon and Tomas Burce the sum of P55, Philippine currency, as indemnity and costs incurred by reason of this action. The complaint with respect to the sheriff and his deputy was dismissed.

The defendant Golingco appealed, his being the only appeal pending here.

It is alleged that the trial court erred: (1) In deciding that Golingco did not have a legal mortgage; (2) in deciding that when Isaac Borcelis bought the lands in question, whether for himself or another, he did not buy them with the incumbrance of the mortgage; (3) in deciding that when the lands were sold the second time to satisfy Golingco's judgment they did not belong to Pedro Floriano, the debtor.

The first error assigned has no existence, for it is certain that Golingco did not have a legal mortgage on the two parcels under consideration. The document executed by Pedro Floriano is a purely private one, drawn up in a native dialect, and says nothing more than the following: "That for his security for the said sum I have given a guaranty of three documents for all the abaca, two in my name and the other from my father Mariano Floriano, and they are located in the place called Tagbacong of the jurisdiction of Tabaco, etc." Merely documents, and not lands, were given as security, nor does it appear in the instrument of debt what were the pieces of realty to which the mortgage documents referred; but more decisively, with reference to the mortgage, in addition to the requisites required in article 1857 of the Civil Code, it is indispensable "in order that the mortgage be validly constituted" that the document constituting it be inscribed in the property registry (Civil Code, art. 1875) ; and the document that Golingco calls a mortgage is not inscribed in the property registry, nor can it be, because it is a private one.

Neither has the second error assigned any existence, because Isaac Borcelis did not purchase the lands in question with the incumbrance of the mortgage claimed, for it did not exist and no incumbrance on his inscribed title was recorded.

And finally, the third error assigned has no existence, because it is in every way plain and evident that when on May 27, 1910, the two parcels of land in question were sold at public auction by the execution of Golingco's judgment, they no longer belonged to Pedro Floriano, but to Isaac Borcelis, as they had from December 24, 1908, although pending subject to possible legal redemption which expired on the same date in 1909, it left standing a final and absolute title of purchase and sale of the lands acquired at public auction, which effectively transferred the ownership and property rights in the thing purchased.

The sale made by the sheriff to Vicente Golingco is annulled and the judgment appealed from is affirmed, with the costs of this instance against the appellant.

Torres, Johnson, Carson, Moreland, and Araullo, JJ., concur.

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