

MARIANO RIOSA, PLAINTIFF AND APPELLANT, VS. CLARO VERZOSA AND CIRIACO BULAN, DEFENDANTS AND APPELLEES.*G.R. No. 7726. November 06, 1913*

Ponente: JOHNSON, J.

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On the 25th of January, 1910, the plaintiff commenced an action against the defendants, the purpose of which was to secure an injunction against the defendants to prevent them from harvesting and destroying the growing hemp upon a certain parcel of land, more particularly described in the first paragraph of the complaint, and to recover damages in the sum of P500, for injuries already committed upon such land, and to require the defendants to deposit the hemp already harvested with the deputy sheriff of the pueblo of Malinao.

Upon the presentation of said petition, the Honorable Vicente Nepomuceno, judge, granted a temporary injunction in conformity with the prayer of the petition. The defendants were duly served with a summons and a copy of the petition, as well as with a copy of the injunction granted by the court. The defendants failed to appear and answer the complaint within the time prescribed by law and the rules of the court. By reason of the failure of the defendants to appear, the plaintiff, on the 21st of March, 1910, presented a motion asking that a judgment by default be rendered against them, which motion was granted on the 2d of April, 1910.

On the 15th of April, the defendants appeared by their attorney. The cause was duly brought to trial, by notice to all of the parties, on the 20th of April, 1910. After hearing the evidence, the Honorable Vicente Nepomuceno, judge, granted a permanent injunction against the defendants, restraining them from cultivating or harvesting the crops upon the said land or from doing anything thereon which would tend to injure its value, and also found that the defendants had caused damages to the plaintiff in the sum of P300.

It appears from the record that the attorney for the defendants was present in court during the trial of the cause, but by reason of the fact that the defendants had presented no answer, no defense whatever was made during the trial of the cause.

On the 21st of April, 1910, the defendants, by their attorney, presented a motion, asking that the judgment by default be set aside and that they be permitted to present their defense. It appears from the record that the present cause in the lower court was numbered 1206 and that there was pending in the lower court at the same time cause No. 1207, in which the present plaintiff was the plaintiff and the said Claro Verzosa was the defendant. The record does not fully disclose what the real purpose of cause No. 1207 was. It may be gathered, however, from some things which appear in the record, that cause No. 1207 related to a mortgage which Claro Verzosa had executed and delivered to the present plaintiff, upon the same parcel of land described in the first paragraph of the complaint.

Upon a consideration of the motion to have the judgment by default set aside, the Honorable Percy M. Moir, judge, after a consideration of the arguments of the respective parties, denied the same in the following language:

"The court does not consider the facts set out herein sufficient to warrant the setting aside of the judgment herein mentioned. It does seem to the court, from a study solely of the record, that the damages given are excessive, but the court does not consider that the defendant in this case has any right to ask the setting aside of a judgment which was rendered in his presence and in the presence of his attorneys. If the defendant had redeemed the land or should redeem the land in the time allowed by law, a motion then for relief from the judgment will be considered."

At this juncture, by reason of the ruling of Judge Moir upon the motion to dismiss, it becomes important to examine the particular facts, in order to fully understand Judge Moir's conclusions. The facts involved in the present case seem to be as follows:

Some time prior to the 1st day of December, 1909, a judgment was rendered against the defendant, Claro Verzosa, for the sum of P320.87. Upon said judgment an execution was issued and was levied upon the land described in the first paragraph of the complaint. Upon the 1st day of December, 1909, said land was sold at public auction, under said execution, and was purchased by the plaintiff. It appears that the plaintiff also held a mortgage upon said land, which was due on the 1st day of January, 1910. It will be remembered that the present action was commenced on the 25th of January, 1910. The record does not clearly disclose what action the plaintiff had taken to protect his interest in the land under his mortgage; The present action was brought to protect the plaintiff's interest in the land, by virtue of his purchase of the same under said execution on the 1st of December, 1909. It will be remembered that the law permits the owner of land which has been sold under an execution to redeem the same within a period of twelve months. The question then arises, in view of that right of the owner of the land, What interest has the purchaser of the land sold under execution in the same during said twelve months? What right has he to interfere with the owner in the management and control of such land? Is he entitled to the rents and profits during the twelve months? Can he eject the owner from the possession of the same? We believe that the weight of authority is to the effect that the purchaser of lands sold at public auction under a writ of execution only has an inchoate right in the property, subject to be defeated and terminated within a period of twelve months from the date of sale, by a redemption on the part of the owner. (Sections 464, 465, 468, and 469, Act No. 190.) We have already held, in the case of *De la Rosa vs. Santos* (10 Phil. Rep., 148), that the purchaser, where the land was in possession of the owner and not a tenant, was not entitled to recover the rents and profits of the land sold during the period within which the owner might redeem. By virtue of said section 469, where the land is in possession of a tenant, a different rule prevails. In the present case the property was in the possession of the owner, and the inchoate right of the purchaser was subject to be defeated at any moment during the period of redemption. The owner was entitled to remain in the possession of the land sold for the statutory term of twelve months, and she might at any time defeat the inchoate right obtained by the purchaser by proper redemption within that period. (Sections 463 and 464, Act No. 190; *De la Rosa vs. Santos*, supra; *In re Ceballos*, 12 Phil. Rep., 271.) There would seem, therefore, to be much reason in the conclusion of Judge Moir that he would consider the motion to set aside the judgment by default, if the defendant should redeem the land in question within the time allowed by law. Under the law it would seem to be difficult to fully understand the right of the plaintiff to interfere in the manner in which he has attempted to interfere with the owner of the land before the expiration of the twelve months within which the owner had a right to redeem the land.

On the 11th of September, 1910, the defendants, having redeemed the land in the manner provided for by law, renewed their motion to have the judgment by default set aside. This motion was duly brought on for trial on the 17th of September, 1910, and Judge Moir thereupon set aside the judgment theretofore rendered by the Honorable Vicente Nepomuceno, in which he granted a permanent injunction and allowed damages against the defendants. Later the defendants presented an answer and the cause was duly brought to trial on its merits.

After hearing the evidence, the Honorable Percy M. Moir, judge, on the 3d of April, 1911, rendered a judgment in

which he held that the plaintiff was not entitled to the remedy prayed for in his petition, and dismissed the cause of action with costs against the defendants. From that judgment the plaintiff appealed and in this court made the following assignments of error:

"The Court of First Instance erred:

"1. In setting aside the judgment rendered in this case on September 17, 1910.

"2. In assuming jurisdiction to annul said judgment.

"3. In not allowing the plaintiff damages, after assuming jurisdiction."

The first and second assignments of error we think may properly be considered together. The appellee presents no brief.

In the first place Judge Percy M. Moir succeeded Vicente Nepomuceno as judge of the Court of First Instance of the Province of Albay and therefore had a right to do, in relation with the sentence in the present case, whatever the former judge might have done. It will be remembered that after Judge Nepomuceno rendered his judgment of the 20th of April, 1910, in which a permanent injunction was granted and damages allowed to the plaintiff, a motion by the defendants was made on the 21st of April, 1910, which prevented the judgment of the 20th of April, 1910, from becoming final until said motion had been finally disposed of. It will be noted also that the order of Judge Moir of the 9th of June, 1910, did not finally dispose of said motion. Said order gave the defendants the right to have the question presented in their motion considered again when they redeemed the land in question. Inasmuch, therefore, as the judge had left the motion of the defendants of the 21st of April undecided, the sentence of the 20th of April did not become final. On the 11th of September, 1910, the defendants having presented satisfactory proof that they had redeemed the land in question, again asked the court to consider their motion of the 21st of April.

On the 17th of September, 1910, Judge Moir, upon reconsideration of the motion (of the 21st of April, 1910) in relation with the proof presented on the 11th of September, 1910, by the defendants, entered an order declaring it without effect and nullifying the sentence of the 20th of April, 1910. To this ruling the plaintiff excepted and gave notice of his intention to appeal the cause to the Supreme Court, which notice of appeal was later withdrawn.

After certain proceedings, which we deem it unnecessary here to relate, the lower court on the 24th of September, 1910, as well as by an order of the 25th of February, 1911, modified said order of the 17th of September, 1910. The cause was thereafter tried upon its merits and Judge Moir rendered a sentence deciding that the plaintiff was without right in the premises against the defendants, with costs against the defendants, and final decision was rendered upon the 10th of April, 1911.

As was said above, Judge Moir had jurisdiction to make any order in the premises which the former judge might have made. An examination of the record shows that every order which was made after the sentence of the 20th of April, 1910, until final judgment was rendered on the 10th of April, 1911, was made at the special instance and request of either the plaintiff or the defendant. No objection was made to the jurisdiction of the court in the consideration of the questions presented to it. From a careful examination of all of the orders made by the lower court, the Honorable Percy M. Moir, they seem to be fully justified and we find no reason for modifying or reversing them.

With reference to the third assignment of error, it may be said:

- That the defendants were in possession of the land at the time it was sold at public sale under execution on the 1st of December, 1909, and continued in the possession of said land.

- The plaintiff, by virtue of the purchase under the execution sale, acquired no right, except a mere inchoate right in the land, until after the expiration of the period within which the defendants had a right to redeem.

- The defendants redeemed the land in accordance with the provisions of law within the legal period. It must follow, therefore, that the plaintiff was not entitled to the remedy prayed for in his petition and is, therefore, not entitled to damages resulting from the use and occupation by the defendants.

We find no reason in the record for reversing or modifying the conclusions of the lower court. The judgment of the lower court is, therefore, hereby affirmed with the costs of this instance.

Arellano, C. J., and Torres, J., concur.

Trent, J., concurs in the result.

CONCURRING

CARSON, J., with whom concurs MORELAND, J.,

I concur in the result. I deem it proper, however, in this connection, to direct attention to section 468 of the Code of Civil Procedure, which provides for the issuance of injunctions to prevent the commission of waste on property purchased at execution sales during the statutory period of redemption. It needs no argument to show that while under our rulings the judgment debtor who continues in possession of real estate during the redemption period is entitled to the rents and profits and may harvest the crops growing thereon during that period (*De la Rosa vs. Santos*, 10 Phil. Rep., 148), nevertheless he must exercise that right with due regard to the rights of the purchaser at the sheriff's sale, and until and unless he exercises his right of redemption, he may be restrained from committing acts of waste upon the land, and from permanently injuring the property thus left in his hands. Of course, the order for an injunction issued in such cases should always provide for its dissolution in the event that the judgment debtor exercises his right of redemption; and in cases wherein judgment is rendered against the judgment debtor in possession for waste actually committed, provision should always be made to secure his right to be relieved from the effect of such judgment in the event that he exercises his right to redeem the land within the time prescribed by law.

In the case at bar the judgment debtor exercised his right of redemption in due course, and the result of the proceedings in the court below, as also of the disposition of the case on this appeal is to deny to the purchaser at the sheriff's sale any damages for alleged waste, and to dissolve the injunction against the commission of waste issued prior to the redemption of the land by the judgment debtor. I therefore concur with the majority opinion in affirming the proceedings in the court below, and file this separate opinion merely to avoid the possibility that the general language of the majority opinion might be misconstrued as a holding by this court that a purchaser of real estate at an execution sale does not acquire such a right therein as to entitle him, in a proper case, to an injunction to prevent the commission of waste by the judgment debtor who remains in possession during the redemption period.

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