

DEAN C. WORCESTER, PLAINTIFF AND APPELLEE, VS. MARTIN OCAMPO AND GERVASIO OCAMPO Y REYES, DEFENDANTS AND APPELLANTS.

G.R. No. 8452. August 02, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an appeal from an order made by the Honorables Charles H. Smith and Norberto Romualdez, then judges of the Court of Land Registration, directing the cancellation of certain duplicates of certificates of title issued under the Torrens system and directing the registration of a certain deed executed by the sheriff of the city of Manila to the plaintiff herein. Said order was made upon the 2d day of September, 1912.

Said order was based upon the facts contained in a certain communication from Joaquin Jaramillo, then register of deeds, asking the judges of the Court of Land Registration for instructions concerning the registration of a deed issued by the sheriff of the city of Manila to Dean C. Worcester.

The facts upon which the present appeal is based are not disputed and are best stated by the said communication itself. Said communication is as follows:

"By virtue of an execution issued out of the Court of First Instance of Manila under date of January 26, 1910, in case No. 6930, entitled Dean C. Worcester vs. Martin Ocampo, all the right, title and interest of the latter in two parcels of land registered in his name under certificates of title Nos. 924 and 965, book 4 of the registry, were levied upon for the purpose of satisfying a judgment of \$60,000, a notice of the levy in said case having been entered upon the back of said certificates of title on the same date, to wit: January 26, 1910. By a document of prior date to said attachment, to wit, January 11, 1909, the two parcels mentioned were sold con pacto de retracto by Martin Ocampo to Gervasio Ocampo y Reyes, for the period of four years from said date, the vendor being allowed the right to continue occupying the said properties by paying an annual rental of P150. This document was endorsed on the back of said certificates of title on February 1, 1910. By another writ of execution, issued on March 26, 1910, in the same case No. 6930, all the right, title and interest of the defendant, Martin Ocampo, in the two properties which had been levied upon, were sold at public auction and Dean C. Worcester, as the highest bidder, purchased the same, subject to the right of redemption which the law allows to judgment debtors; this sale was also noted on the back of said certificates of title on April 11, 1910.

"The period of redemption having expired without the judgment debtor having exercised his right, the sheriff of Manila executed in favor of the purchaser, Worcester, an absolute deed of sale of all the right, title and interest of Martin Ocampo in the two parcels above mentioned, which had been sold at public auction. By virtue of this document Kincaid and Hartigan, as attorneys for Worcester, now seek the inscription of his right in and to the said properties, so acquired by him at public auction, which inscription, if made, will necessarily require the cancellation of those certificates and the issuance of new ones in favor of Dean C. Worcester.

"Moreover, the said parcels having been sold con pacto de retracto to Gervasio Ocampo y Reyes, as above set forth, the undersigned is at a loss how to proceed to register the absolute deed of sale executed by the Sheriff of

Manila in favor of Dean C. Worcester.

"Wherefore, he asks the assistance of this court in deciding the same. It is also desired to call the attention of the court to the fact that the duplicates of the certificates of title of said parcels have not been presented in this office and that the civil status of Worcester does not appear in the deed.

"Very respectfully,

(Sgd.) "Joaquin Jaramillo,

"Register of Deeds, Manila, P.I."

The decision of the judges of the Court of Land Registration was based solely upon the facts stated in said communication. The only other proof submitted to said judges was some proof relating to the civil status of Dean C. Worcester.

After a full hearing accorded to all of the interested parties and a consideration of the facts and the law relating thereto, the Honorable Charles H. Smith and the Honorable Norberto Romualdez, judges of the Court of Land Registration, rendered a decision, the important parts of which are as follows:

"The question presented here is whether or not an absolute deed of sale executed by the sheriff of Manila to Dean C. Worcester should be registered in his name. The deed was made pursuant to a sale at public auction by virtue of a writ of execution issued on two parcels of real estate registered in the name of Martin Ocampo under certificates of title Nos. 924 and 965, book 4 of the registry, and issued under the provisions of Act No. 496.

"The writ of execution was issued by the Court of First Instance of Manila, on January 26, 1910, in case No. 6930, entitled Dean C. Worcester vs. Martin Ocampo, the notice of the levy made by virtue of said order of execution having been endorsed on the said certificates of title on the same date, to wit, January 26, 1910.

"The doubt which is the cause of the present consulta arises from the fact that the parcels of land above mentioned were sold on January 11, 1909, by Martin Ocampo to Gervasio Ocampo y Reyes, con pacto de retracto, the said document of sale not having been registered until the 1st of February, 1910.

"The questions seem clear to us. Treating of property registered under the Torrens system, as in the present case, and under Act No. 496, the deed of sale con pacto de retracto executed by Martin Ocampo in favor of Gervasio Ocampo produced no effect whatsoever as a deed of such transfer (nor was it an encumbrance on the property, but only constituted a contract between the parties and as authority for the register of deeds to make the corresponding inscription), except from the moment of its filing or registration, that is to say, from the first day of February, 1910. As on a date prior to the first day of February, 1910, to wit, January 26 of said year, the final levy on said properties in favor of Dean C. Worcester, had already been noted which notice produced all the effects prescribed in section 51 of Act No. 496, it being the final levy, by virtue of which the public auction was conducted and the sheriff having executed the deed of sale in favor of Worcester, it is evident that the said levy and sale made by the sheriff takes precedence over the deed of sale con pacto de retracto executed by Martin Ocampo in favor of Gervasio Ocampo y Reyes.

"Sections 50 and 51 of Act No. 496, provide:

" 'SEC. 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act

to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies.

" 'SEC. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering.'

"Our Supreme Court has decided cases analogous to the present to the same effect, as can be seen in the cases of *Liong Wong Shih vs. Sunico* (8 Phil. Rep., 91); *Tabigue vs. Green* (11 Phil. Rep., 102); and *Buzon vs. Licauco* (13 Phil. Rep., 354).

"As to the statement of the register of deeds touching on the fact that the duplicates of the certificates of title referred to had not been presented in his office and that the civil status of Worcester did not appear in the deed, it was shown on the hearing of this case that the said duplicate certificates are in the possession of Martin Ocampo and that Dean C. Worcester is married to Nanon L. Worcester, as shown by the testimony of Kincaid, who was a witness in the case.

"Wherefore, in view of the foregoing it is decreed:

"1. That Martin Ocampo deliver up to the office of the register of deeds of Manila the duplicates of the certificates of title Nos. 924 and 965, book 4 of the registry referring to certain other properties inscribed in his name, and he is hereby ordered so to do.

"2. That the register of deeds of Manila cancel the certificates of title mentioned in the preceding paragraph and register the absolute deed of sale executed by the sheriff of Manila in favor of Dean C. Worcester, entering the corresponding certificates and duplicate certificates thereof.

"3. That notice of this decision, by the mailing of a certified copy of same, be given to the Attorney-General of the Philippine Islands, the register of deeds of the city of Manila, Kincaid, Hartigan & Lahesa, Dean C. Worcester, Vicente Ilustre, Martin Ocampo, and Gervasio Ocampo y Reyes. So ordered."

From the decision of the said judges the attorney for the said Gervasio Ocampo y Reyes appealed to this court and made the following assignment of error:

"In ordering the cancellation of the certificates of title issued to Martin Ocampo, bearing the corresponding indorsement of the sale with pacto de retro to the appellant Gervasio Ocampo y Reyes and ordering the registration of the absolute deed of sale executed by the sheriff of Manila in favor of Dean C. Worcester and the entry of the corresponding certificates and duplicate certificates in the name of the latter."

Under said assignment of error the appellant contends, that the only right which the plaintiff purchased was the right of repurchase of the said Martin Ocampo; in other words, the contention of the appellant is that, in view of the fact that Martin Ocampo had sold the parcels of land in question to Gervasio Ocampo y Reyes, under a pacto de retracto, the only interest which he had remaining in the land was the right to repurchase the same within the period mentioned in said contract and that therefore the only interest which was sold by the sheriff was the right to repurchase, that being the only right which Martin Ocampo had in the parcels of land in question at the time of the sheriff's sale. In that contention the appellant has overlooked the provisions of sections 50 and 51 of Act No. 496. He has overlooked the fact that the said contract of conditional sale by Martin Ocampo to him was not registered or noted in the registry until several days after the attachment upon the judgment in favor of Worcester had been made and had been noted in the registry of property.

Said section 50 (Act No. 496) provides that:

"An owner of registered land may convey, mortgage * * * or otherwise deal with the same as fully as if it had not been registered * * *. But no deed, mortgage, * * * or other voluntary instrument, except a will, purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk of register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, etc."

Section 51 of said Act (496) provides that:

"Every conveyance, mortgage, * * * attachment, order, * * * or entry affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds, * * * be notice to all persons from the time of such registering, filing, or entering."

If, then, every conveyance or attachment when recorded, filed, or entered in the office of the register of deeds, shall be notice to all persons from the time of such registering, filing or entering, then Gervasio Ocampo y Reyes cannot plead ignorance of the existence of the rights acquired by Worcester under his attachment which was duly recorded in the office of the register of deeds several days before there was any attempt to record or file or register the pacto de retracto.

Said section 50 clearly provides that when registered land is conveyed, mortgaged, leased, or otherwise dealt with, such conveyance, mortgage, etc., shall not affect or convey the land until such conveyance, mortgage, etc., is recorded or filed or entered in the office of the register of deeds. From said provision it is clear then, that by reason of the fact that the said pacto de retracto was not recorded, filed, or entered in the office of the register of deeds until after the plaintiff had secured his lien by attachment, that Gervasio Ocampo y Reyes acquired his right subject to the rights of the plaintiff herein. His right being subject to the rights of the plaintiff, it cannot be enforced against the land until after the rights of the plaintiff have been fully satisfied. No claim is made by the appellant that there were any rights left in said parcel of land over and above the rights of the plaintiff.

And, moreover, this is not the first time the question which we are discussing has been presented to this court. Analogous questions were presented in the cases of *Liong-Wong-Shih vs. Sunico* and *Peterson* (8 Phil. Rep., 91); *Tabigue vs. Green* (11 Phil. Rep., 102); *Buzon vs. Licauco* (13 Phil. Rep., 354).

After a careful examination of the facts and of the law applicable thereto, we are of the opinion that no error was committed by the lower court in its judgment and order. Therefore the same is hereby affirmed with costs. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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