

AGAPITO BONZON, PLAINTIFF AND APPELLANT, VS. STANDARD OIL COMPANY OF NEW YORK AND LEONARDO OSORIO, AS SHERIFF, DEFENDANTS AND APPELLEES.

G.R. No. 8851. March 16, 1914

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment sustaining a demurrer to the original complaint filed in this action. The complaint alleges, in substance, that plaintiff purchased certain real-estate at an execution sale, paying therefor the sum of P2,170 to the defendant sheriff, who turned over the purchase price to the defendant company, the execution creditor, at whose instance the sale was had that there-after, plaintiff having gone into possession of the land was evicted therefrom in judicial proceedings, wherein the court found that the land in question was the property of certain third parties, and that neither the judgment debtor nor the purchaser at the execution sale had any title thereto. The prayer of the complaint is for judgment against the judgment creditor and the sheriff for the amount of the purchase price paid at the execution sale.

The principal contention of counsel for appellee is as follows:

"The only question presented by plaintiff is the interpretation to be placed upon section 470 of the Code of Civil Procedure. Unless this section gives him the remedy for which he contends, he has stated no cause of action, because the only other theory upon which he could possibly require a reimbursement of the price paid by him at the sheriff's sale is that of an implied warranty by the judgment creditor and the sheriff. The complaint shows no compliance, as to the Standard Oil Company, with article 1481 of the Civil Code.

"We must admit that section 470 of the Code of Civil Procedure leaves something to be desired in the way of clearness. Its English text, which of course must govern in case of any discrepancy between the English and the Spanish versions, is as follows:

"SEC 470. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at such official sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived shall have the same force and effect as would an original judgment of the date of the revival and no more.'

"It appears, as appellant says, that this section divides naturally into two parts: (1) Authorizing the recovery of the purchase price under certain conditions, and (2) authorizing the revival of the judgment in behalf of the purchaser in other circumstances. Plaintiff claims to be entitled to the remedy set out in the first part of the section. It is apparent, however, that plaintiff's eviction, as set up in his complaint, is not due to any of the

causes shown in this first part of section 470. So far as appears, 'the proceedings concerning the sale' were perfectly regular, and the complaint discloses no 'reversal or discharge of the judgment' upon whose execution plaintiff became a purchaser.

"The second part of section 470, applied by the judge of the trial court, seems, at first glance, not exactly applicable, because it provides for the case where the purchaser may 'fail to recover possession,' while in the present case the purchaser entered into possession and was subsequently dispossessed by others. We think, however, that the phrase 'fail to recover possession' was intended to meet such a case as this; otherwise section 470 would not meet a case like the present, although it was obviously intended to."

We agree with counsel for the appellee that the section of the Code in question leaves something to be desired in the way of clearness; and it may be admitted that it is only by a liberal construction of the language used in the statute that the sale of property under execution in which the judgment debtor has no title, can be held to be an "irregularity in the proceedings concerning the sale."

But we are of opinion, that the section of the Code of Civil Procedure under consideration, being remedial in its character, should be construed liberally so as to give a remedy as broad as that to be obtained by the corresponding suit in equity, which we think, would extend to a case where the sale of property under execution is held to be void on the ground that the judgment debtor had no title.

The supreme court of California, discussing the provisions of section 708 of the California Code of Civil Procedure in the case of *Merguire vs. O'Donnell* (139 Cal., 6), held as follows:

"We think a sale made by a sheriff on an order of the court and a void execution is 'irregular' in the extreme degree, and that a sale had on a void execution is void for the reason of 'irregularity in the proceedings concerning the sale.' Section 708 of the Code of Civil Procedure, being remedial in its character, should be liberally construed. (*Hitchcock vs. Caruthers*, 100 Cal., 100; *Cross vs. Zane*, 47 Cal., 602.) The section under consideration was intended to give a remedy by petition in the action which had culminated in the judgment sought to be revived. There was arid is a remedy by an independent suit in equity by which similar relief may be had as is given by the statute (*Scherr vs. Himmelman*, 53 Cal., 312); and this remedy as administered in equity extends to cases where the execution and sale under it are both held to be void (*Smith vs. Reed*, 62 Cal., 345); and, giving the section the liberal construction required, it is clear that the remedy intended to be given under it is as broad as that to be obtained in the corresponding action in equity. It is certainly necessary and consonant with the principles of equity that a party should have relief in cases where the execution and sale are void, as well as in those cases where there is an irregularity of such a character as to render the sale merely voidable. Indeed, it would seem that the requirements of equity were the same in both the supposed cases, and there is no good reason for applying the section to one of them and not to the other."

Upon like principles we think that where a sheriff, by virtue of the authority conferred upon him by the issuance of an execution to sell the property of the judgment debtor, undertakes to sell and does sell property or an interest in property to which the judgment debtor is in no wise entitled, there is certainly a grave irregularity in the procedure had under color of the authority conferred by the execution, and it would seem that in the absence of some sufficient reason to the contrary, such an irregularity may fairly be held to be an "irregularity in the proceedings concerning the sale."

No sound reason suggests itself for restricting the meaning of the language of the statute so as to exclude there from cases such as that under consideration. While the doctrine of caveat emptor, relied upon by counsel for appellee, has its legitimate force and effect in precluding any idea of a warranty by plaintiff or defendant in execution or by the sheriff, it has no application in a case where a purchaser acquires no title to the property sold, as distinguished from a case wherein there is only a partial failure of title; and it has been universally held that in case of failure of title a bona fide purchaser is entitled to recover the purchase price from the officer, if the funds

are still in his hands, or from the judgment debtor. True it is that in some jurisdictions in the United States purchasers at execution sales where the debtor had no title to the property sold have no cause of action against the judgment creditors, but in others, "by judicial construction or express statutory enactment," a bona fide purchaser is given a cause of action against the execution creditors as well as the judgment debtor in case of failure of title. See text and cases cited under heading "Rights and remedies on failure of title." (17 Cyc, 1319.) And we think that such was the intention of the legislator in enacting the section under consideration.

In this jurisdiction (even in the absence of the statute), under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of land sold as the property of the judgment debtor after it has been made to appear that the judgment debtor had no title to the land and that the purchaser had failed to secure title thereto, and we find no difficulty therefore in accepting a liberal construction of the statute which arrives at the same equitable result.

The judgment in favor of the Standard Oil Company, and the execution issued thereon, gave to that company merely the right to have the property of the judgment debtor sold in satisfaction of the judgment. It did not and could not give the company the right to have the judgment satisfied out of the property of any other person. By the tortious act of the sheriff, certain property was sold to which the judgment debtor had no title whatever; and the proceedings concerning the sale having been found to be void and the purchaser having been evicted from the property, it is clear that the company had no right under its judgment to the proceeds of the sale, and that the sale having been held to have been void, the purchaser at the sale is equitably entitled to the return of the purchase price. This is precisely the result which we hold the remedial provisions of the section under consideration were intended to secure, and it is the result which naturally and properly follows from a liberal construction of its terms.

We think that it will help to clear up the uncertainty as to the meaning of the different provisions of the statute if it be kept in mind that the remedy provided in cases where "the property sold was not subject to execution and sale" was evidently intended to include cases wherein exempted property of the judgment debtor is sold under execution, and does not refer to cases wherein property of third persons is tortiously seized and sold, the case of *Hitchcock vs. Caruthers* (100 Cal., 100), cited in appellee's brief, to the contrary notwithstanding. We think that the reasoning on which that decision should have been based is that set forth in the later case of *Merguire vs. O'Donnell*, above cited.

The plaintiff's right to recovery from the judgment creditor not being predicated on the theory of an express or implied warranty of title, defendant's contentions based on the provisions of article 1481 of the code need not be considered at this time. If defendant was not given an opportunity to be heard in the eviction proceedings, it would seem that he can avail himself in the pending action of any defense which if set up in the former action would have relieved him from liability to reimburse the purchaser.

Let judgment be entered reversing the order of the court below sustaining the demurrer to the complaint, and directing that the record be returned to the court below for further proceedings in accordance with law and the principles herein set forth.

Arellano, C. J., Trent and Araullo, JJ., concur.

Moreland, J., concurs in the result.

Judgment reversed; case remanded.

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