

NELLIE LOUISE COOK, PLAINTIFF AND APPELLEE, VS. J. MCMICKING, SHERIFF OF MANILA, DEFENDANT AND APPELLANT. GUS JOHNSON AND AMPARO ESCALANTE DE JOHNSON, INTERVENERS AND APPELLANTS.

G.R. No. 8913. March 03, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila in favor of the plaintiff and against the appellants, continuing an injunction against the appellants restraining them from selling the property described in the complaint under an execution issued against Edward Cook.

On August 8, 1912, an injunction was granted by a judge of the Court of First Instance of the city of Manila restraining the sale of certain property levied upon under an execution issued upon a judgment rendered on April 30 by the Court of First Instance of the Province of Rizal in the case of Johnson et al. vs. Edward Cook.

The complaint alleges that the plaintiff is the wife of Edward Cook; that she is the absolute owner of a piece of land situated in the district of Paco, city of Manila, 913 square meters in area, and that the same is registered in her name under the Torrens Law by certificate No. 130; that on the 15th of June, 1912, a judgment was entered against Edward Cook, plaintiff's husband, for the sum of P10,000 in the Court of First Instance of the Province of Rizal; that by virtue of said judgment an execution was issued on the 10th of July of that year and levied upon the land described in the complaint as belonging to the plaintiff and that the same was advertised for sale on the 8th of August at 9 o'clock in the morning. After other allegations appropriate to an action of this kind, plaintiff prays for an injunction permanently prohibiting the defendants from selling the said land.

The Torrens title introduced in evidence by the plaintiff was obtained in June 1904 in the name of plaintiff's husband, Edward Cook. Later, and sometime in August of the same year, the husband, by an instrument in writing in the form and manner required by Act No. 496, transferred to the plaintiff the land in question. In 1911 the plaintiff's husband, Edward Cook, became indebted to Johnson, the plaintiff in the action referred to, in the sum of P10,000, the purchase price of certain lands. Judgment upon said indebtedness was procured in the year 1912 as aforesaid and a levy made upon the lands described in the complaint.

It is claimed by the appellants that the so-called transfer from plaintiff's husband to her was completely void under article 1458 of the Civil Code and that, therefore, the property still remains the property of Edward Cook and subject to levy under execution against him.

In our opinion the position taken by appellants is untenable. They are not in a position to challenge the validity of the transfer, if it may be called such. They bore absolutely no relation to the parties to the transfer at the time it occurred and had no rights or interests inchoate, present, remote, or otherwise, in the property in question at the time the transfer occurred. Although certain transfers from husband to wife or from wife to husband are prohibited

in the article referred to, such prohibition can be taken advantage of only by persons who bear such a relation to the parties making the transfer or to the property itself that such transfer interferes with their rights or interests. Unless such a relationship appears the transfer cannot be attacked.

So far as the record of this case demonstrates the property in question is owned by the plaintiff and is not subject to levy and sale under the execution in this case.

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

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

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