

GUTIERREZ HERMANOS, PLAINTIFF AND APPELLANT, VS. NARCISO ALEGRE AND CRISTOBAL MARCOS, DEFENDANTS AND APPELLANTS.

G.R. No. 8976. December 02, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Sorsogon, on the 2d day of May, 1911.

It appears from the record that on the 16th day of September, 1909, the plaintiff commenced an action against Cristobal Marcos and later obtained a judgment against him in the Court of First Instance of the Province of Sorsogon, in the sum of P19,117.26. In the month of March, 1910, an execution was issued upon said judgment against the property of Cristobal Marcos. Under said execution the real and personal property of the said Marcos was attached. Before the sale of said property so attached, the defendant, Narciso Alegre, presented a claim to the sheriff, alleging that he was the owner of the cattle which had been attached. By virtue of the claim of Narciso Alegre the said cattle were released from the attachment and turned over to him. The other property attached belonging to the said Marcos was sold at public sale and the sheriff received for the same the sum of P5,373, leaving a balance unsatisfied on said judgment of P13,744.26.

In the present action the plaintiff alleges that the cattle which had been excluded from the said attachment had been sold by Cristobal Marcos to Narciso Alegre for the purpose of defrauding his creditors; that the sale was a simulated one. The plaintiff prays that the court find that said cattle belonged to Cristobal Marcos; that the alleged sale from Marcos to Alegre was fraudulent, and that said cattle be subjected to said execution and sold; and further, that if any of the cattle which had been attached under said execution could not be found, a judgment be rendered against the defendants, jointly and severally, for their value.

To the petition of the plaintiff the defendants demurred, which, upon consideration, was overruled.

The defendants answered by a general and special defense. In the special defense the defendants alleged that the sale of the cattle in question by Cristobal Marcos to Narciso Alegre was a bona fide sale, made for a valuable consideration, and that at the time of said sale Cristobal Marcos was solvent. Narciso Alegre further alleged that, by reason of the illegal and unlawful attachment of said cattle, he had been prejudiced and damaged in the sum of P3,000, and prayed judgment for that amount.

After hearing the evidence, the Honorable Francisco Santamaria, judge, rendered a judgment, in which he absolved the defendants from the complaint and decreed that the plaintiff should pay to the defendant, Narciso Alegre, the sum of P1,800, or return to him the cattle which were lost by reason of said execution, and to pay the costs. From that judgment the plaintiff appealed to this court and made a number of assignments of error.

The important and principal questions presented by the appellant is whether or not the sale of the cattle in question by Cristobal Marcos to Narciso Alegre was a valid and bonafide sale and whether or not at me time of

the sale Cristobal Marcos was solvent. Upon each of said questions the lower court found in favor of the defendants. There is much conflict in the evidence adduced during the trial of the cause. There is much proof supporting the conclusions of fact of the lower court. The lower court, however, overlooked some "facts which have an important bearing upon the issues presented. While the defendants alleged in their answer that the sale of the cattle by Cristobal Marcos to Narciso Alegre took place in 1908, the record shows that the actual transfer of the cattle was made on the 18th of August, 1909, The record further shows that they were not marked or branded until June, 1911, long after said judgment and execution in the first case, and not until more than a month after the present action was commenced to set aside said sale. The record shows that the action against Cristobal Marcos was commenced on the 16th of September, 1909; that a judgment was rendered against him and an execution issued upon the same in the month of March, 1910. Section 22 of Act No. 1147, enacted May 3, 1904, provides that, "No transfer of large cattle shall be valid unless registered, and a certificate of transfer secured as herein provided."

In the case of Ramos vs. Hijos de I. de la Rama (15 Phil. Rep., 554), we held, in discussing said quoted provisions of Act No. 1147, that: "Unless the record of such transaction is so registered and the certificate obtained, the ownership of the cattle does not pass and they may still be attached as the property of the vendor."

In view of the fact, therefore, that at the time of the execution the cattle were not registered, even granting for the purposes of the argument that the sale was not simulated, it was not valid and the title did not pass from Cristobal Marcos to Narciso Alegre, and therefore the plaintiff had a right to have the cattle sold under his execution, as of the property of the defendant Cristobal Marcos. The ownership of the cattle, at the time of the attachment, had not passed from Marcos to Alegre, even granting that the sale was not fraudulent. Alegre, at the time of the attachment, had not become the owner of said cattle. Alegre was not, therefore, entitled to have the cattle released from said attachment and returned to him. Just what effect the release of the cattle in question from the attachment by the sheriff upon the claim of Alegre, had upon the rights of the respective parties to this action, we do not now discuss. That question has not been presented by either party. We express no opinion upon that question.

In addition to the foregoing there are many facts in the record which indicate that the sale of the cattle by Cristobal Marcos to Narciso Alegre was a simulated sale, in addition to the fact that the transfer of the same did not take place until long after the alleged sale was made. For instance, the books of the respective parties contain no minute or memorandum of the transaction until long after the alleged sale had been perfected, according to the claim of the defense. The record also shows that the sale was made at a price considerably less than the market value of the cattle. We do not, however, deem it necessary to discuss in detail the other facts which seem to point strongly to the fact that the sale was simulated, for the reason that the above quoted provision of Act No. 1147 makes the sale invalid. The title not having passed at the time of the attach merit, the vendee (Alegre) was not entitled to have the cattle released from said attachment and returned to him. The plaintiff had a right to have the cattle sold under his execution.

In view of the foregoing, the judgment of the lower court must be reversed and it is hereby ordered and decreed that a judgment be entered declaring:

First. That Cristobal Marcos was the owner of the cattle in question at the time of the attachment;

Second. That said cattle be subjected to said execution;

Third. That in case any of the cattle attached under said execution can not now be subjected to said execution, by reason of the unlawful acts of the defendants, that a judgment be rendered against them, after a proper hearing, for their value.

Without any finding as to costs, it is so ordered.

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

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