

JULIO ALAGAR, PLAINTIFF AND APPELLEE, VS. FRANCISCO PIO DE RODA, MARIANO PIO DE RODA, AND MARIANO MANALO, DEFENDANTS AND APPELLANTS.*G.R. No. 9058. December 29, 1914*

Ponente: JOHNSON, J.

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It appears from the record that some time before the commencement of the present action, the defendant, Francisco Pio de Roda, commenced an action in the Court of First Instance of the Province of Cavite, against Abdon Ambat and Isabel Bebe, for the purpose of recovering a sum of money due from the defendants to the plaintiff. Said action was known as cause No. 396. In said action a judgment was rendered in favor of the plaintiff and against the defendants. The defendants appealed to the Supreme Court, where the judgment of the lower court was affirmed, and the cause was remanded to the lower court for execution.

On the 4th day of April, 1911, an execution was issued upon said judgment and the property of Abdon Ambat and Isabel Bebe was attached. The plaintiff now claims that said execution included a portion or parcel of land particularly described in paragraph 3 of the present complaint, which belonged to him. The plaintiff alleges that he gave the sheriff notice of the fact that said parcel of land so attached belonged to him. Said notice was given in writing.

The plaintiff also gave a bond to the sheriff, in order to have the attachment released upon said property. Notwithstanding said notice and said bond, the sheriff, in the month of December, 1911, sold the said parcel of land to the said Francisco Pio de Roda and Mariano Pio de Roda.

The defendants allege as a defense that said parcel of land, at the time of said attachment, actually belonged to Abdon Ambat and Isabel Bebe, and did not belong to the plaintiff.

Upon the issue thus presented, the lower court found that the preponderance of the evidence showed that the plaintiff was the owner of the land attached, and declared null and void the said sale and ordered the defendants to return the possession of said property to the plaintiff and also entered judgment against Francisco Pio de Roda and Mariano Pio de Roda, jointly and severally, for the sum of P160, for the use and occupation of said land, and to pay the costs. From that judgment the defendants appealed to this court. In this court the appellant alleges that the lower court committed the following errors:

"1. The lower court erred in finding that Abdon Ambat and Isabel Bebe never had any right, interest or share in the land in question.

"2. The lower court erred in finding that the appellee was proven to have been in possession of the land in question, peacefully, as the owner thereof, for a period of more than 30 years prior to the attachment, and in not holding that the said possession only dated from the year 1906 in which the appellants sought to bring an action against the spouses Ambat and Bebe, and that the said possession was simulated and was for the purpose of defrauding the appellants.

"3. The lower court erred in decreeing that the sale of the land in dispute by the sheriff to the appellants at public auction was null and void.

"4. The lower court erred in ordering the appellants to pay to the appellee the sum of P160 as damages.

"5. Finally, the lower court erred in not absolving the appellants from the complaint, in not raising the preliminary attachment issued in this action, and in not ordering the appellee to pay to the appellants the sum of P80 as damages and the costs of the suit."

The first and second assignments of error may be discussed together, inasmuch as they each relate to the ownership of the land in question. The lower court found that the plaintiff was the owner of said parcel of land; that the plaintiff had been in possession of the same for a period of thirty years and that he had inherited the same from his parents. An examination of the record brought to this court, in our opinion shows by a large preponderance of the evidence, that that finding of the lower court is fully sustained.

With reference to the third assignment of error the facts show that the clerk of the Court of First Instance of the Province of Cavite issued the said writ of execution on the 4th day of April, 1911; that the said writ ordered the sheriff to attach the specific property involved in this litigation; that the sheriff attached said property on the 7th day of June, 1911; that the property under said attachment was sold on the 28th day of December, 1911.

Section 445 of the Code of Procedure in Civil Actions provides: "The execution may be made returnable at any time not less than ten nor more than sixty days after its receipt by the governor or his deputy, to the clerk of the court rendering the judgment."

The lower court held that, inasmuch as the attachment was not made until after the expiration of the sixty days within which the writ should have been returned, the attachment was null and void. Said provisions were copied, almost word for word, from section 683 of the Code of Civil Procedure of the State of California. Said section (445) fixes the life of the writ of execution. The sheriff had no authority to make any attachments after the return day of said writ. If he had been unable to attach the property during the lifetime of the writ, it should have been returned and an alias writ issued. It was the duty of the sheriff to return the writ within the time fixed by law. It is the duty of an officer to whom a writ of execution is issued, to make return thereon on or before the time fixed by law, to the proper court or officer, whether it has been executed or not. (*Clingman vs. Barrett*, 6 Humphs. (Tenh.), 20; *Billgery vs. Ferguson*, 30 La. An., 84.)

The attachment may be made at any time up to and including the very last day of the writ, but can not be made thereafter, without the issuance of an alias writ. After the property has been attached legally, within the lifetime of the writ, the property may be held by the sheriff and sold thereafter. The sale by the sheriff under a valid attachment after the return day of the execution, is valid, provided that the attachment was made during the lifetime of the writ. (*Freeman on Executions*, section 160; *Southern California Lumber Co. vs. Ocean Beach Hotel Co.*, 94 Cal., 217; 28 Am. St. Rep., 115.)

It would appear from the record that at the time the attachment was made, the life of the writ under which it was made had expired. The sheriff had no authority to make an attachment after the expiration of 60 days from the issuance of said writ. The sheriff should have secured an alias writ of attachment. We do not decide, however, at the present time, that the sale should be set aside for the reasons indicated. We find, however, that the record contains another reason which is sufficient to justify the setting aside of the sale and ordering the property returned to the plaintiff. That reason is that the property did not belong to the judgment debtors at the time of the sale, but to the plaintiff. The sheriff was without authority to sell the land of the plaintiff to pay the debts of another. For that reason the sale was illegal and void and the plaintiff is entitled to the possession of his property.

With reference to the fourth assignment of error, the defendants allege that they are possessors, in good faith, by virtue of the public sale made by the sheriff and should therefore be relieved from the payment of any sum whatever for the use and occupation of the property in question.

The record shows that the parcel of land in question had been attached at the special instance and request of the defendants ; that even after the plaintiff had notified the sheriff in writing that the land belonged to him, and had furnished a bond to the sheriff for the purpose of having said judgment discharged, the defendants insisted upon the sale of the same. The defendants had ample notice that the property was claimed by the plaintiff. Yet, notwithstanding that fact, they insisted upon the sale under said execution. Under these circumstances, we do not believe that they can be considered as possessors in good faith.

Having in view the foregoing conclusions, with reference to each of the assignments of error, we find no justification for reversing or modifying the decision of the lower court upon the statements made by the appellant in the fifth assignment of error.

After a careful examination of the record, with reference to the specific assignments of error, we find no good reason for modifying the judgment of the lower court. The same is therefore hereby affirmed, with costs. So ordered.

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

Carson, Moreland, and Trent, JJ., concur in the result.

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