

**FRANCISCO PAPA, PLAINTIFF AND APPELLEE, VS. MARIANO MANALO ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 9182. January 28, 1915*

Ponente: TORRES, J.

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This is an appeal interposed through bill of exceptions by counsel for the defendants from the judgment of March 18, 1913, whereby the Honorable Herbert D. Gale, judge, held that the plaintiff, Francisco Papa, was entitled to redeem the eight parcels of land described in the judgment; that the defendants, Francisco Pio de Roda and his brothers, must accept the price of the said redemption and deliver possession of the said lands to the plaintiff; that the sale of the right of redemption, effected by the sheriff at public auction on December 28, 1911, was null and void and of no value; and ordered that the provincial sheriff of Cavite issue to the plaintiff Papa a certificate that the latter had taken back the said eight parcels of land by virtue of having acquired the right of redemption; that the clerk of the court deliver to the defendants the sum of P715.61, which should be paid by the bondsmen of the ex-sheriff, Remigio Santos, and which was then in possession of the said clerk; and that, at the same time such delivery was made, the said Papa should be given a certificate that he had redeemed the said lands; and that the defendants pay the costs.

On January 11, 1912, counsel for the plaintiff filed a written complaint in the Court of First Instance of Cavite, wherein he alleged that by reason of a final judgment rendered in civil case No. 396 of the said court, the then provincial sheriff, Remigio Santos, levied upon and sold at public auction, on January 24, 1911, certain real properties belonging to the spouses Abdon Ambat and Isabel Bebe and specifically described in the record of the said case, for the sum of P700; that, according to an instrument executed and ratified before a notary on March 10, 1911, the said spouses, Abdon Ambat and Isabel Bebe, sold and transferred the right of redemption over the said properties to the plaintiff, Francisco Papa, for the sum of P125, which they admitted having received; that, on March 31, 1911, the plaintiff Francisco Papa, exercising the right of redemption, paid to the sheriff Remigio Santos the sum of P700, the price obtained for the lands on their sale at auction, together with the legal interest thereon, which amounted to P15.61; that, after all this, the defendants Jose, Francisco and Mariano, all surnamed Pio de Roda, requested of the defendant sheriff, Mariano Manalo, the attachment and sale of the right of redemption acquired by the plaintiff, and, notwithstanding the claim of intervention presented by the redemptioner by virtue of the bond given by the defendants, the right of redemption was sold by the sheriff, on December 28, 1911, for the sum of P300; that, in spite of the repeated demands made by the plaintiff, the defendant sheriff refused to execute an instrument to set aside as of no force and effect the sale made on January 24, 1911, and to convey to the plaintiff the properties sold by reason of the right of redemption which he had lawfully acquired; and that the plaintiff had to expend the sum of P1,300 for the protection of his rights. Wherefore judgment was asked for plaintiff and against the defendants annulling the sale of the lands in question and the attachment placed thereon; that the sheriff be ordered to execute a public instrument canceling the sale made on January 24, 1911, and reselling to the plaintiff Papa the properties sold on that date; and that the defendants be sentenced to pay to the plaintiff the sum of P1,300, as damages, and the costs of the suit.

The demurrer interposed by the defendants to the preceding complaint having been overruled, they excepted and filed an answer in which they admitted paragraphs 1, 2, 5, and 7 of the said complaint and denied the rest generally and specifically and, as a special defense, set forth that the plaintiff lacked personality to bring this action and to exercise the right of redemption; that the conveyance of the right of redemption, made by the spouses Abdon Ambat and Isabel Bebe to the plaintiff, was fictitious and fraudulent, since it was effected on credit during the period of the execution of the judgment rendered in favor of the defendants against the spouses Abdon Ambat and Isabel Bebe, and furthermore because the plaintiff knew that these latter were insolvent, for neither the said spouses nor the plaintiff at any time deposited the price of the redemption, nor had the defendants any knowledge of such deposit alleged to have been made by the plaintiff; and that the expenses specified in paragraph 8 of the complaint, even granting that they were actually incurred, were illegal; and they therefore prayed that they be absolved from the complaint ; that the deed of sale executed by the spouses Abdon Ambat and Isabel Bebe in favor of the plaintiff on March 10, 1911, and certified before a notary public, be declared null and void with regard to the defendants; and that the plaintiff be sentenced to pay the costs.

After trial of the case and examination of the evidence adduced by both parties, the court rendered the decision aforementioned, to which the defendants excepted and moved in writing for a reopening of the case and a new trial. This motion was denied, an exception was taken by the appellants and, upon presentation, the proper bill of exceptions was approved and transmitted to the clerk of this court.

The questions herein raised consist of whether the judgment debtors enjoy a preferred right over the creditor to redeem the real properties sold at public auction and whether the judgment debtors are entitled to sell to a third person the right of redemption therein.

Section 464 of the Code of Civil Procedure, in determining who may redeem, provides as follows:

"Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

"1. The judgment debtor, or his successor in interest in the whole or any part of the property;

"2. A creditor having a lien by attachment, judgment, or mortgage on the property sold, or on some part thereof, subsequent to that on which the property was sold.

"Persons mentioned in the second subdivision of this section are termed redemptioners."

In accordance, then, with the provisions of this section, it is undeniable that the judgment debtors have a preferred right over the judgment creditors to redeem, within the period fixed in section 465, their properties which were attached and sold for the payment of their debt; and, upon this premise, it is also undeniable that such judgment debtors are entitled to sell and transfer to a third person the right of redemption in the property sold at public auction, the vendee subrogating himself in place of the debtors in the enjoyment of the said right of redemption and in place of the debtors. For this reason the purchaser of the properties sold at public auction cannot refuse to recognize or allow the redemption or to accept the price therefor, with interest, and the other sums which, in accordance with law, the redemptioner must pay.

Although the purchaser at the auction is the only person who has a right to receive the price of the thing redeemed, the redemptioner may, however, deposit it in the hands of the sheriff for its delivery to such purchaser, especially in the case where the latter refuses to receive it, or when for any reason it may be feared that the period for redemption may lapse without its being shown in an authentic manner that the redemptioner has in due course of time complied with his duty to pay the price of the sale and interest thereon.

The ex-provincial sheriff of Cavite, Remigio Santos, testified that he advertised the sale of the said right of

redemption, on petition of the judgment creditor, now the defendant Francisco Pio de Roda, even after having received the amount deposited by the redemptioner (Exhibit A), and that he sold the said right of redemption at public auction in view of the fact that the judgment creditors, the De Roda brothers, had given bond to answer for any damages that might result therefrom (Exhibit B of Case No. 3967) ; that, when Francisco Papa had paid the price of the redemption, to wit, P715.61, he issued to him a receipt for the said amount, but did not deliver to him a certificate of resale of the attached lands; and that the judgment creditor Francisco Pio de Roda and his attorney Antero Soriano refused to accept the price of the redemption, which witness still has in his possession. Francisco Pio de Roda, however, denied the statements made by the sheriff, Santos, and asserted that the latter had never notified him that the P715.61 had been deposited with the sheriff for the redemption of the lands which the witness had purchased at the first execution sale, nor that he had offered witness the said amount; and that, as the proceeds from the first execution sale were insufficient to cover the amount specified in the judgment, on March 14, 1911, he requested the sheriff to proceed with the attachment of two more parcels of land belonging to the judgment debtors, Ambat and Bebe, as well as of the right of redemption which these latter had in the eight parcels of land already sold, the said two parcels being worth P1,000 at the time of the first auction sale.

The plaintiff Francisco Papa testified in rebuttal that, upon making payment of the said sum of P715.61, he requested the sheriff, Santos, to deliver the same to the judgment creditor, Francisco Pio de Roda, and to deliver to the witness an instrument of conveyance of the lands in question ; and that he had expended in these transactions between P200 and P250.

The sheriff, Santos, stated that when Francisco Pio de Roda and his attorney Antero Soriano were in his office he notified them personally that he had in his possession the price of the repurchase and was ready to turn it over to them, but they refused to accept it.

Inasmuch as the defendants have admitted the facts alleged in the complaint, it is unquestionable that the defendant sheriff Mariano Manalo, the successor in office of Remigio Santos, did, on the strength of a bond of P4,000 given by the judgment creditors, and notwithstanding the claim of intervention duly presented by Francisco Papa, attach the right of redemption conveyed to the latter by the spouses Ambat and Bebe, which right was sold and improperly adjudicated at public auction on December 28, 1911, to the judgment creditor, Francisco Pio de Roda, for the sum of P300, it being then the property of the plaintiff Papa, who lawfully acquired it from the former owners of the lands.

The allegation that the conveyance of the right of redemption to the herein plaintiff was fraudulent, is not proven by the evidence, for the said conveyance of the right to redeem the aforementioned eight parcels of land was effected on March 10, 1911, and the sum of P700, the price of the sale, plus P15.61 interest, was deposited with the sheriff Remigio Santos on the 31st of the same month. The record shows that Pio de Roda refused to accept said deposit for the reason that on the 14th of that month a supplementary writ of execution had been asked for to cover the unpaid balance of the judgment which the De Roda brothers had obtained against the said spouses Ambat and Bebe.

Neither is there any proof that the said conveyance was made on credit, for the instrument of sale or of transfer of the right of redemption, a document which was made an integral part of the complaint, was not impugned or assailed as false by the defendant and shows that payment was made of the price of the said sale, and the contract does not disclose the least evidence of deceit or bad faith.

Aside from the foregoing considerations, although five documents, exhibited by the defendant and admitted in evidence by the court, were presented and identified at the trial, and were made an integral part of the bill of exceptions, they were not attached to the record forwarded to this court. It is therefore impossible to examine and

review the evidence introduced in the trial court with respect to the right and claim of the appellants, even though they have asked for a reopening of the case and a new trial. Consequently, in conformity with established precedents, the findings of fact and of law in the judgment appealed from must be accepted, for if it is desired that this court review the evidence introduced by the parties at the hearing of the case in first instance, it is indispensable that the appellant see that all of it, both parol and documentary, taken and exhibited during the trial, be attached to the record and forwarded to the clerk of this court. It is not permissible, for the purpose of the review, to bring up only a part of the evidence and fail to submit the rest. (*Tambunting vs. De Vera*, 28 Phil. Rep., 445.)

For the foregoing reasons the judgment appealed from should be, as it is hereby, affirmed, with the costs against the appellants. So ordered.

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

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