

PERFECTO DY, JR., PETITIONER, VS. COURT OF APPEALS, GELAC TRADING INC., AND ANTONIO V. GONZALES, RESPONDENTS.

G.R. No. 92989. July 08, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari seeking the reversal of the March 23, 1990 decision of the Court of Appeals which ruled that the petitioner's purchase of a farm tractor was not validly consummated and ordered a complaint for its recovery dismissed.

The facts as established by the records are as follows:

The petitioner, Perfecto Dy and Wilfredo Dy are brothers. Sometime in 1979, Wilfredo Dy purchased a truck and a farm tractor through financing extended by Libra Finance and Investment Corporation (Libra). Both truck and tractor were mortgaged to Libra as security for the loan.

The petitioner wanted to buy the tractor from his brother so on August 20, 1979, he wrote a letter to Libra requesting that he be allowed to purchase from Wilfredo Dy the said tractor and assume the mortgage debt of the latter.

In a letter dated August 27, 1979, Libra thru its manager, Cipriano Ares approved the petitioner's request.

Thus, on September 4, 1979, Wilfredo Dy executed a deed of absolute sale in favor of the petitioner over the tractor in question.

At this time, the subject tractor was in the possession of Libra Finance due to Wilfredo Dy's failure to pay the amortizations.

Despite the offer of full payment by the petitioner to Libra for the tractor, the immediate release could not be effected because Wilfredo Dy had obtained financing not only for said tractor but also for a truck and Libra insisted on full payment for both.

The petitioner was able to convince his sister, Carol Dy-Seno, to purchase the truck so that full payment could be made for both. On November 22, 1979, a PNB check was issued in the amount of P22,000.00 in favor of Libra, thus settling in full the indebtedness of Wilfredo Dy with the financing firm. Payment having been effected through an out-of-town check, Libra insisted that it be cleared first before Libra could release the chattels in question.

Meanwhile, Civil Case No. R-16646 entitled "Gelac Trading, Inc. v. Wilfredo Dy", a collection case to recover the sum of P12,269.80 was pending in another court in Cebu.

On the strength of an alias writ of execution issued on December 27, 1979, the provincial sheriff was able to seize and levy on the tractor which was in the premises of Libra in Carmen, Cebu. The tractor was subsequently sold at

public auction where Gelac Trading was the lone bidder. Later, Gelac sold the tractor to one of its stockholders, Antonio Gonzales.

It was only when the check was cleared on January 17, 1980 that the petitioner learned about GELAC having already taken custody of the subject tractor. Consequently, the petitioner filed an action to recover the subject tractor against GELAC Trading with the Regional Trial Court of Cebu City.

On April 8, 1988, the RTC rendered judgment in favor of the petitioner. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, pronouncing that the plaintiff is the owner of the tractor, subject matter of this case, and directing the defendants Gelac Trading Corporation and Antonio Gonzales to return the same to the plaintiff herein; directing the defendants jointly and severally to pay to the plaintiff the amount of P1,541.00 as expenses for hiring a tractor; P50,000 for moral damages; P50,000 for exemplary damages; and to pay the cost." (Rollo, pp. 35-36)

On appeal, the Court of Appeals reversed the decision of the RTC and dismissed the complaint with costs against the petitioner. The Court of Appeals held that the tractor in question still belonged to Wilfredo Dy When it was seized and levied by the sheriff by virtue of the alias writ of execution issued in Civil Case No. R-16646.

The petitioner now comes to the Court raising the following questions:

A.

"WHETHER OR NOT THE HONORABLE COURT OF APPEALS MIS-APPREHENDED THE FACTS AND ERRED IN NOT AFFIRMING THE TRIAL COURT'S FINDING THAT OWNERSHIP OF THE FARM TRACTOR HAD ALREADY PASSED TO HEREIN PETITIONER WHEN SAID TRACTOR WAS LEVIED ON BY THE SHERIFF PURSUANT TO AN ALIAS WRIT OF EXECUTION ISSUED IN ANOTHER CASE IN FAVOR OF RESPONDENT GELAC TRADING INC."

B.

"WHETHER OR NOT THE HONORABLE COURT OF APPEALS EMBARKED ON MERE CONJECTURE AND SURMISE IN HOLDING THAT THE SALE OF THE AFORESAID TRACTOR TO PETITIONER WAS DONE IN FRAUD OF WILFREDO DY'S CREDITORS, THERE BEING NO EVIDENCE OF SUCH FRAUD AS FOUND BY THE TRIAL COURT,"

C.

"WHETHER OR NOT THE HONORABLE COURT OF APPEALS MIS-APPREHENDED THE FACTS AND ERRED IN NOT SUSTAINING THE FINDING OF THE TRIAL COURT THAT THE SALE OF THE TRACTOR BY RESPONDENT GELAC TRADING TO ITS CO-RESPONDENT ANTONIO V. GONZALES ON AUGUST 2, 1980 - AT WHICH TIME BOTH RESPONDENTS ALREADY KNEW OF THE FILING OF THE INSTANT CASE - WAS VIOLATIVE OF THE HUMAN RELATIONS PROVISIONS OF THE CIVIL CODE AND RENDERED THEM LIABLE FOR THE MORAL AND EXEMPLARY DAMAGES SLAPPED AGAINST THEM BY THE TRIAL COURT." (Rollo, p. 13)

The respondents claim that at the time of the execution of the deed of sale, no constructive delivery was effected since the consummation of the sale depended upon the clearance and encashment of the check which was issued in payment of the subject tractor.

In the case of *Servicewide Specialists Inc. v. Intermediate Appellate Court*, (174 SCRA 80 [1989]), we stated that:

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"The rule is settled that the chattel mortgagor continues to be the owner of the property, and therefore, has the power to alienate the same; however, he is obliged under pain of penal liability, to secure the written consent of the mortgagee. (Francisco, Vicente, Jr., Revised Rules of Court in the Philippines, (1972), Volume IV-B Part I, p. 525). Thus, the instruments of mortgage are binding, while they subsist, not only upon the parties executing them but also upon those who later, by purchase or otherwise, acquire the properties referred to therein.

"The absence of the written consent of the mortgagee to the sale of the mortgaged property in favor of a third person, therefore, affects not the validity of the sale but only the penal liability of the mortgagor under the Revised Penal Code and the binding effect of such sale on the mortgagee under the Deed of Chattel Mortgage."

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The mortgagor who gave the property as security under a chattel mortgage did not part with his ownership over the same. He had the right to sell it although he was under the obligation to secure the written consent of the mortgagee or he lays himself open to criminal prosecution under the provision of Article 319 par. 2 of the Revised Penal Code. And even if no consent was obtained from the mortgagee, the validity of the sale would still not be affected.

Thus, we see no reason why Wilfredo Dy, as the chattel mortgagor can not sell the subject tractor. There is no dispute that the consent of Libra Finance was obtained in the instant case. In a letter dated August 27, 1979, Libra allowed the petitioner to purchase the tractor and assume the mortgage debt of his brother. The sale between the brothers was therefore valid and binding as between them and to the mortgagee, as well.

Article 1496 of the Civil Code states that the ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501 or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. We agree with the petitioner that Articles 1498 and 1499 are applicable in the case at bar.

Article 1498 states:

"Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred."

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Article 1499 provides:

"Article 1499. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason. (1463a)"

In the instant case, actual delivery of the subject tractor could not be made. However, there was constructive delivery already upon the execution of the public instrument pursuant to Article 1498 and upon the consent or agreement of the parties when the thing sold cannot be immediately transferred to the possession of the vendee. (Art. 1499)

The respondent court avers that the vendor must first have control and possession of the thing before he could transfer ownership by constructive delivery. Here, it was Libra Finance which was in possession of the subject tractor due to Wilfredo's failure to pay the amortization as a preliminary step to foreclosure. As mortgagee, he has

the right of foreclosure upon default by the mortgagor in the performance of the conditions mentioned in the contract of mortgage. The law implies that the mortgagee is entitled to possess the mortgaged property because possession is necessary in order to enable him to have the property sold.

While it is true that Wilfredo Dy was not in actual possession and control of the subject tractor, his right of ownership was not divested from him upon his default. Neither could it be said that Libra was the owner of the subject tractor because the mortgagee can not become the owner of or convert and appropriate to himself the property mortgaged. (Article 2088, Civil Code) Said property continues to belong to the mortgagor. The only remedy given to the mortgagee is to have said property sold at public auction and the proceeds of the sale applied to the payment of the obligation secured by the mortgage. (See *Martinez v. PNB*, 93 Phil. 765, 767 [1953]) There is no showing that Libra Finance has already foreclosed the mortgage and that it was the new owner of the subject tractor. Undeniably, Libra gave its consent to the sale of the subject tractor to the petitioner. It was aware of the transfer of rights to the petitioner.

Where a third person purchases the mortgaged property, he automatically steps into the shoes of the original mortgagor. (See *Industrial Finance Corp. v. Apostol*, 177 SCRA 521 [1989]). His right of ownership shall be subject to the mortgage of the thing sold to him. In the case at bar, the petitioner was fully aware of the existing mortgage of the subject tractor to Libra. In fact, when he was obtaining Libra's consent to the sale, he volunteered to assume the remaining balance of the mortgage debt of Wilfredo Dy which Libra undeniably agreed to.

The payment of the check was actually intended to extinguish the mortgage obligation so that the tractor could be released to the petitioner. It was never intended nor could it be considered as payment of the purchase price because the relationship between Libra and the petitioner is not one of sale but still a mortgage. The clearing or encashment of the check which produced the effect of payment determined the full payment of the money obligation and the release of the chattel mortgage. It was not determinative of the consummation of the sale. The transaction between the brothers is distinct and apart from the transaction between Libra and the petitioner. The contention, therefore, that the consummation of the sale depended upon the encashment of the check is untenable.

The sale of the subject tractor was consummated upon the execution of the public instrument on September 4, 1979. At this time constructive delivery was already effected. Hence, the subject tractor was no longer owned by Wilfredo Dy when it was levied upon by the sheriff in December, 1979. Well settled is the rule that only properties unquestionably owned by the judgment debtor and which are not exempt by law from execution should be levied upon or sought to be levied upon. For the power of the court in the execution of its judgment extends only over properties belonging to the judgment debtor. (*Consolidated Bank and Trust Corp. v. Court of Appeals*, G.R. No. 78771, January 23, 1991).

The respondents further claim that at that time the sheriff levied on the tractor and took legal custody thereof no one ever protested or filed a third party claim.

It is inconsequential whether a third party claim has been filed or not by the petitioner during the time the sheriff levied on the subject tractor. A person other than the judgment debtor who claims ownership or right over levied properties is not precluded, however, from taking other legal remedies to prosecute his claim. (*Consolidated Bank and Trust Corp. v. Court of Appeals*, *supra*) This is precisely what the petitioner did when he filed the action for replevin with the RTC.

Anent the second and third issues raised, the Court accords great respect and weight to the findings of fact of the trial court. There is no sufficient evidence to show that the sale of the tractor was in fraud of Wilfredo and creditors. While it is true that Wilfredo and Perfecto are brothers, this fact alone does not give rise to the presumption that the sale was fraudulent. Relationship is not a badge of fraud (*Goquiolay v. Sycip*, 9 SCRA 663

[1963]). Moreover, fraud can not be presumed; it must be established by clear convincing evidence.

We agree with the trial court's findings that the actuations of GELAC Trading were indeed violative of the provisions on human relations. As found by the trial court, GELAC knew very well of the transfer of the property to the petitioners on July 14, 1980 when it received summons based on the complaint for replevin filed with the RTC by the petitioner. Notwithstanding said summons, it continued to sell the subject tractor to one of its stockholders on August 2, 1980.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals promulgated on March 23, 1990 is SET ASIDE and the decision of the Regional Trial Court dated April 8, 1988 is REINSTATED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, and Bidin, JJ., concur.

Davide, Jr., J., no part, used to be counsel for petitioner.

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