

**JOSE VELASCO, PLAINTIFF AND APPELLANT, VS.
ROSENBERG & S, INCORPORATED, DEFENDANT AND APPELLEE.***G. R. No. 9921. October 26, 1915*

Ponente: JOHNSON, J.

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The present action was commenced in the Court of First Instance of the city of Manila, on the 14th of July, 1913. Its purpose was to recover of the defendant corporation the possession of a certain parcel of land, together with the buildings thereon more particularly described in the third paragraph of the complaint, together with the sum of P500, for each and every month from the 1st of July, 1912, until the same is delivered to the plaintiff. The plaintiff further petitioned for the appointment of a receiver to take charge of and conserve the property in litigation during the pendency of the action.

In accordance with the prayer of the petition a receiver was appointed on the 14th of July, 1913. The receiver took possession of the property.

The defendant set up a general and special defense. In his general defense he denied that the plaintiff is entitled to the possession of the property in question. The defendant further alleged that the receiver not only took possession of the property described in the third paragraph of the complaint, but other property as well. The defendant further alleged that the plaintiff, through its receiver, fraudulently used the name of Rosenberg, and did solicit and obtain business from the public by the use of such name, to the damage of the defendant in the sum of P20,000. The defendant further alleged that he had been damaged by the appointment of the receiver in the sum of P5,000, together with other damages which the defendant claims to have received from the action of the plaintiff, and prayed for a judgment against the plaintiff in the sum of P29,350.

Upon the issue thus presented the cause was brought on for trial and after hearing the evidence, the honorable A. S. Crossfield, judge, found that during the time the plaintiff occupied the property in question, through its receiver, and used the trade name of the defendant, the latter was damaged in the sum of P500. The court further found that the receiver took possession of certain personal property, including twenty garbage cans, thirty-four feed boxes, and other property of a similar character, and retained the same to the damage of the defendant in the sum of P350, and rendered the following judgment: (First) that the plaintiff was entitled to the possession of the parcel of land, together with the buildings thereon, particularly described in said paragraph three; (second) that a judgment be rendered in favor of the defendant and against the plaintiff in the sum of P850.

From that judgment the plaintiff appealed to this court and made the following assignments of error: (first) the court erred in holding that while the plaintiff was the owner of the property from July 1, 1912, that he was not entitled to recover for its subsequent use and occupation; (second) the court erred in holding that the defendant corporation was lawfully occupying the premises; (third) the plaintiff being the owner of the property and entitled to its possession, the court erred in holding that because the plaintiff, in connection with the receiver, continued the livery business therein-before conducted by the defendant, that the defendant was entitled to damages therefor;

(fourth) the court erred in failing to allow the plaintiff payment for the use of the personal property and for payment for the property sold and converted by the defendant after July 1, 1912; (fifth) the court erred in holding that the defendant was entitled to the sum of P350 for the property mentioned in paragraph six of its cross-complaint.

In our judgment, the first, second, third, and fourth assignments of error may be discussed together. They involve but two questions: (first) the right of the purchaser at an execution sale to the rents and profits of the property sold when the execution debtor is in possession of the same at the time of the sale, during the period of redemption, or for a period of one year thereafter; and (second) the right of the defendant to recover of the plaintiff damages resulting from a continuance of the business sold under execution, by a receiver duly appointed by the court.

With reference to the first question, it may be said that that question has already been discussed and decided by this court in the case of *De la Rosa vs. Revita Santos* (10 Phil. Rep., 148). The facts in that case are very analogous to the facts in the present case, so far as the right of the purchaser is concerned to collect rent for the property during the period of redemption when the execution debtor is in possession of the property. In that case the court held: "That, inasmuch as, under the law, the rents received by the purchaser during the period allowed for redemption must be applied on account of the redemption price, the judgment debtor in possession of such property should not be required to pay rent, inasmuch as he would thereby simply be paying rent to himself." (*Aldecoa & Co. vs. Navarro*, 23 Phil. Rep., 203, 206; *Riosa vs. Verzosa and Bulan*, 26 Phil. Rep., 86, 89; sees. 464, 465, 468, and 469 of Act No. 190.)

With reference to the damage caused to the defendant by the receiver in continuing in the business, it may be said that inasmuch as the receiver did continue to run the business and inasmuch as he was an officer of the court, appointed thereby for the purpose of conserving the property we have a right to assume that he was authorized so to do. There is nothing in the record to the contrary. That being true, the question of damages arising from his running the business should have been settled in his final accounting to the court. There is nothing in the record in the present case which justifies that part of the judgment of the lower court. Therefore that part of the judgment of the lower court in favor of the defendant and against the plaintiff for the sum of P500 must be revoked.

With reference to that part of the judgment of the lower court relating to the P350, it may be said that there is nothing in the record which shows that said garbage cans and other property, horse feed, etc., was not a part of the property turned over to the receiver. If it were, then the receiver should have rendered an account for the same in his final report to the court. If in such final accounting the receiver had not properly reported the same or accounted therefor, an objection might properly have then been made to the accounting of the receiver and he held responsible therefor in case of loss through negligence or by bad administration of the property given into his care. There is nothing in the record which shows that the property had not been properly accounted for. There is nothing in the record which shows that said property had been negligently lost, and therefore nothing in the record which justifies a judgment against the plaintiff and in favor of the defendant for its value. Therefore that part of the judgment of the lower court must also be revoked.

With the above modifications the judgment of the lower court is hereby affirmed, and without any finding as to costs, it is so ordered.

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

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