

43 Phil. 572

[G. R. No. 18105. June 22, 1922]

**RUFINO PABICO, PLAINTIFF AND APPELLANT, VS. ONG PAUCO, DEFENDANT
AND APPELLEE.**

D E C I S I O N

OSTRAND, J.:

This is an action of forcible entry and detainer, the plaintiff alleging that the defendant on December 4, 1918, wrongfully deprived him of a parcel of land of the area of about four hectares and a half and situated in the municipality of Talisay, Ambos Camarines. The defendant in his answer alleges that he was lawfully placed in possession of the land by the provincial sheriff after having purchased it at a sheriff's sale under an execution.

The case was submitted to the trial court for decision upon the following stipulation's of fact:

1. The parties agree that the land in question is correctly described in the complaint;
2. That the plaintiff possessed said land from February, 1908, until December 14, 1918;
3. That the defendant herein was the plaintiff and plaintiff in execution in a civil case in the court of the justice of the peace of Talisay, entitled Chino Ong Pauco vs. Josefa V. Chaves, and. that by virtue of a writ of execution issued in said case the sheriff levied on the land in question, selling it by public auction on June 18, 1914;
4. That on June 29, 1918, the same sheriff who conducted the sale executed a deed of sale of said land in favor of the plaintiff in execution and highest bidder, the Chino Ong Pauco;

5. That on October 23, 1918, the provincial sheriff went on the land in question and gave physical possession of it to said plaintiff in execution and purchaser, Ong Pauco;
6. That at all times during the above mentioned proceedings under the execution the plaintiff was in possession of the land and was not the judgment debtor;
7. That the annual rental of the land is P25.

Upon the facts stated the trial court rendered judgment in favor of the defendant holding that it had not been shown that the defendant obtained possession of the land by force, intimidation, threats, or stealth and that therefore no action for forcible entry and detainer would lie; that the defendant's possession resulted from a sale under execution and until the proceedings thereunder have been annulled and set aside by a court of competent jurisdiction, the defendant's possession must be regarded as legal. From this judgment the plaintiff appeals.

The judgment of the court below is manifestly erroneous. The sheriff's action in placing the defendant, as the purchaser at the execution sale, in possession of the land was absolutely without warrant of law, was null and void *ab initio*, and not merely voidable, and no special action for setting the proceedings aside are therefore required. In executing a judgment the duties of the sheriff are merely ministerial; he simply carries out the orders of the court. If the writ of execution or other order of the court does not command or direct him to deliver the possession of real property to a certain person, he has no authority whatever to do so and in undertaking to eject the party in possession and deliver such possession to some one else, he becomes a mere trespasser. In such case, the person to whom possession is delivered is also a trespasser and the fact that he has been aided by another trespasser can constitute no defense.

In regard to the defendant's contention that the stipulations of fact do not show that his entry was effected by force, intimidation, threat, strategy, or stealth, it is sufficient to quote the language of this court in the case of *Mediran vs. Villanueva* (37 Phil., 752) :

“In order to constitute the use of ‘force,’ as contemplated in this provision, the trespasser does not have to institute a state of war. Nor is it even necessary that he should use violence against the person of the party in possession.

The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary. Under the statute entering upon the premises by strategy or stealth is equally as obnoxious as entering by force. The foundation of the action is really the forcible exclusion of the original possessor by a person who has entered without right. The words ‘by force, intimidation, threat, strategy or stealth’ include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession, therefrom. If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.”

It may be well here to call attention to the fact that the practice of sheriffs to deliver the possession to the purchaser of lands at sales under execution is evidently due to an error in the official translation of the first paragraph of section 463 of the Code of Civil Procedure. The English text reads:

“Upon a sale of real property, the purchaser shall be substituted to, and acquire, all the right, interest, title, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing: * * *.”

The official Spanish translation reads:

“Verificada la venta de bienes raices, *sera el comprador puesto en posesion de ellos y adquirira todo derecho, interes, titulo y accion que el ejecutado tuviere sobre los mismos, salvo el derecho de retracto, como se provee mas adelante.*

El funcionario librara al comprador un certificado de venta que contendra: * * *.”

The translation should read:

“Verificada la venta de bienes raices, el *comprador se subroga* y adquiere todo derecho, interes, titulo y accion que el ejecutado tuviere sobre los mismos, salvo el derecho de retracto, como se provee mas adelante. El funcionario librara al comprador un certificado de venta que contendra: * * *.”

Purchasers at execution sales should bear in mind that the rule of *caveat emptor* applies to such sales. The sheriff does not warrant the title to real property sold by him as sheriff and it is not incumbent on him to place the purchaser in possession of such property, nor, as we have seen, has he the power to do so without an order from a court of competent jurisdiction.

The judgment appealed from is reversed and it is ordered that the defendant deliver to the plaintiff the possession of the land described in the complaint and that he pay said plaintiff damages in the sum of P25 for each and every year from the 14th day of December, 1918, until the possession of the land is delivered to said plaintiff.

The defendant shall also pay the costs of both instances. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.