

43 Phil. 540

[ G. R. No. 17709. June 20, 1922 ]

**FAUSTINO LICHAUCO, PLAINTIFF AND APPELLEE, VS. GREGORIO OLEGARIO AND DALMACIO OLEGARIO, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

In actions instituted in the Court of First Instance of Manila, cases Nos. 8883, 9213, and 9217, entitled Faustino Lichauco vs. Jose de Guzman et al., judgment was rendered in favor of the plaintiff and against the defendant Gregorio Olegario for the sum of P72,766.37.

This judgment having become final, a writ of execution was issued by virtue of which were attached and advertised for sale at public auction on the 3d of March, 1919, certain real properties of Gregorio Olegario described in the complaint herein and registered, with certificates of title Nos. 227, 313, 587, and 7781 issued by the registrar of deeds of the city of Manila.

At this auction the plaintiff bid, offering ten thousand pesos (P10,000) for these realties, and succeeded in having them sold to him as the highest bidder on the aforesaid date of March 3, 1919.

On that same day the defendant Gregorio Olegario sold to his cousin and brother-in-law Dalmacio Olegario, the other defendant in this case, his right of redemption over the aforesaid properties, executing the proper deed of sale, which was registered in the registry on the date of the conveyance. The plaintiff alleges that this sale is fictitious,—the result of a fraudulent conspiracy between the herein defendants.

Some days having elapsed, and the plaintiff's judgment hereinbefore alluded to not having been fully satisfied, the sheriff proceeded with the sale at public auction of the aforesaid right of redemption, whereat the plaintiff himself bid, and said right of redemption was sold to him for the sum of P1,000. They did not, however, succeed in having this sale recorded in

the registry owing to the fact that the sale executed by the execution debtor Gregorio Olegario in favor of Dalmacio Olegario was already recorded in the registry.

In view thereof, in order to remove this cloud on his title to the aforesaid estates, the plaintiff brought this action to have the court declare fraudulent and void the transfer made by Gregorio Olegario of said right of redemption, and order the cancellation of its registration, offering in that event to accept said right of redemption in full and complete satisfaction of the balance that by virtue of the final judgment in his favor remains outstanding against the execution debtor, Gregorio Olegario. This offer is renewed in this instance by the appellee in his brief (page 4).

The defendants answered with a general denial, and each sets up a special defense, that of Gregorio Olegario consisting in the allegation that he did in reality receive the sum of P500 as the price of the right of redemption above-mentioned, and that he was compelled to sell it for the purpose of paying his obligations and not for the purpose of defrauding the plaintiff. Dalmacio Olegario's special defense is that the said transfer of the right of redemption in his favor was real and true, executed in good faith and for value and sufficient consideration; and that the facts alleged in the complaint do not constitute a cause of action.

After trial, the court rendered judgment declaring the transfer in question rescinded, it being of the opinion that such a transfer comes within one of the cases enumerated in article 1297 of the Civil Code, the same having been executed by Gregorio Olegario against whom a judgment had been rendered, and that the presumption of fraud established in said article has not been overthrown by the evidence.

From this judgment the defendants have appealed to this court, setting out several points in support of their appeal.

For the purposes of this decision it is sufficient, in our opinion, to decide the following three questions: First, whether or not Gregorio Olegario, as an execution debtor, was authorized to sell said right of redemption; second, whether or not Faustino Lichauco, as an execution creditor and purchaser at the auction in question was entitled, after his judgment had thus been executed but not wholly satisfied, to have it executed again by levying upon the right of redemption over said properties; and third, whether or not under the circumstances of this case, Faustino Lichauco has the right to question the transfer made by Gregorio Olegario of said right of redemption in favor of Dalmacio Olegario.

As to whether or not Gregorio Olegario, as an execution debtor, was legally authorized to

sell his right of redemption, is a question already decided by this court in the affirmative in numerous decisions based on the precepts of sections 463 and 464, and other sections related thereto, of the Code of Civil Procedure.

In regard to the second question, an execution creditor and purchaser of the property at an auction held by virtue of his judgment is not entitled to have another execution issued upon the same judgment and levied upon the right of redemption, which has been reserved by the law to the execution debtor. To recognize such a right in the execution creditor and purchaser is in the last analysis tantamount to placing at his absolute disposal the property purchased by him. It would render practically nugatory this peculiar means secured by the law to the execution debtor of avoiding the sale of his property made at an auction under execution. We cannot make up our mind that the law permits a private individual to annul, at will, a right established for reasons of public policy.

It must be understood, however, that we do not decide here (for we deem it unnecessary to do so in order to dispose of this case) whether this legal redemption is, or is not, subject to a new execution issued upon another judgment different from that by virtue of which the property was sold, giving rise to said right of redemption. What we wish to declare is that a judgment by virtue of which a property is sold at public auction can have no further effect on such property.

This is the reason why, in case an execution levied upon real property is returned partially satisfied, the law does not authorize the issuance of another execution against the same realty already levied upon, but only permits, as a proceeding supplementary to execution, the examination of the execution debtor to find out whether he has some *other* property left (secs. 474-486, Code of Civil Procedure). The law would not speak of examination in such proceedings if it had in mind the right of redemption over the property sold under execution, for the existence and scope of said right is perfectly known in all cases, and requires no further examination. In these supplementary proceedings the law has undoubtedly in mind some other property of the execution debtor different from that already sold under execution by virtue of the said judgment.

We are aware that this rule is not expressly provided in our laws now in force; but, as seen, there is nothing therein to the contrary, and its implied recognition is apparent from the fact that our laws provide for the legal redemption in a general sense (art. 1521, and other articles related thereto, of the Civil Code), and this redemption is reserved to the judgment debtor in a special manner (secs. 463 and 464, *supra*, of the Code of Civil Procedure).

We adhere on this point to the doctrine laid down by the Supreme Court of Indiana in the case of Horn vs. Indianapolis National Bank ( 21 Am. St. Rep., 231, 241), wherein said high tribunal expresses itself as follows:

“If the sale from which the appellee seeks to redeem was made to satisfy its judgment, it has no statutory right to redeem, so that the pivotal question is, whether the sale was made on its own judgment. It will aid us in our investigation to ascertain the reason for the rule prohibiting a judgment creditor from redeeming from a sale made to satisfy a judgment in his own favor. The policy of the law is to make the property bring its full value, and to discourage persons from bidding less than the fair value of the property. It is also the intention of the law to do justice to interested parties, by securing the fair value of the property at one sale, and thus prevent the annoyance and expense of numerous sales; and numerous sales may follow where there are many successive redemptions. The law was not intended to enable a creditor to offer only part of the fair value of the property, and take the chance of a redemption; neither was it intended that the creditor should permit others to bid much less than the value of the property, and subsequently redeem from the sale. Nor was it intended that bidders should be discouraged by the uncertainty of acquiring title, and the probability that the owner of the judgment which the property was sold to satisfy might come in and redeem. These are strong reasons supporting the conclusion that a judgment creditor should not be permitted to redeem from a sale made to satisfy his own judgment, and the conclusion is supported by authority.”

We, therefore, find that the plaintiff, as a judgment creditor, was not, and is not, entitled, after an execution has been levied upon the real properties in question by virtue of the judgment in his favor, to have another execution levied upon the same properties by virtue of the same judgment to reach the right of redemption which the execution debtor and his privies retained over them.

We come now to the third point, to wit, whether or not the plaintiff herein has any right to question the transfer of said right of redemption, executed by Gregorio Olegario in favor of Dalmacio Olegario. If, under the circumstances of the case, the plaintiff was not, and is not, legally entitled to have an execution levied upon the said right of redemption by virtue of the aforesaid judgment, it follows that the alienation of the said right of redemption made by

Gregorio Olegario could not, and cannot, legally affect the plaintiff, nor, therefore, cause him any damage.

If such a transfer has not caused him any damage, it matters not to him whether the same was, or was not, fraudulently executed. This conclusion renders it unnecessary to determine whether the sale of this right of redemption made by Gregorio Olegario in favor of his codefendant is tainted or not with fraud or bad faith. Having decided the pertinent questions that have been raised in this appeal, we find: (a) That the defendant Gregorio Olegario had a perfect right to sell his right of redemption in question; (b) that the plaintiff was not, and is not, legally entitled, after an execution had been levied upon the real properties hereinbefore mentioned by virtue of the judgment in his favor, to have another execution levied again on the same properties to reach the right of redemption which the execution debtor retained over them; and (c) that the plaintiff has no right of action in this case.

The period for the exercise of the right of redemption in question having, as it has, been interrupted on account of these proceedings, it is but just that it should be completed to the limit fixed by the law. And said interruption having taken place on the 29th of September, 1919, the date of the filing of the complaint, we hereby order that said right of redemption continue in force for one year from the date of the notification of this decision to the parties, deducting from said time a time equal to that intervening between the 3d of March, 1919, when the plaintiff bought the real properties at the auction above mentioned, and the aforesaid 29th of September of said year, on which this action was commenced.

The judgment appealed from is reversed, without special finding as to costs. So ordered.

*Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ, concur.*