

44 Phil. 895

[ G. R. No. L-18010. June 21, 1922 ]

**BASILIO BORJA, PETITIONER AND APPELLEE, VS. P. W. ADDISON, ADELINA FERRER, VITALINA BELISARIO, EUGENIO BELISARIO, AND AURENO BELISARIO, OBJECTORS AND APPELLANT.**

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

### **OSTRAND, J.:**

This is an appela from a decision of the Court of First Instance of Pangasinan ordering the registration, under Act No. 496, of two parcels of land in the name of the petitioner Basilio Borja. The parcels are situated in the barrio of San Francisco, municipality of Umingan, Pangasinan, and contain a total of over 326 hectares.

At the trial of the case, a large number of opponents presented themselves but only two of them, P. W. Addison and Adelina Ferrer have appealed. The latter appears for herself and her three children, Vitalina, Eugenio, and Aureno.

The evidence establishes the following facts:

(1) That one Eulalio Belisario acquired the two parcels of land in question through informacion posesoria proceedings, instituted in accordance with the provisions of articles 19-21 of the Royal Decree of February 13, 1894, and recorded under the provisions of the Mortgage Law. The record of the proceedings show that Belisario occupied and began to cultivate the smaller parcel of land in 1880 and the larger one in 1882. According to the somewhat vagues testimony of the witness Francisco Ira, Belisario was married to Paula Ira when he took possession of the parcels which therefore probably were community property of the marriage, but this fact does not appear from the record of the informacion posesoria proceedings or from any other document presented in evidence.

(2) That on December 20, 1909, Eulalio Belisario conveyed the two parcels mentioned to one Jose Castillo, reserving the right to repurchase the lands for the sum of P550 within the

term of five months and two days from the date of the sale.

(3) That Paula Ira, the wife of Eulalio Belisario, died on February 13, 1913, leaving as her sole heir their son Maximo Belisario.

(4) That after the death of the said Paula Ira, Eulalio and Maximo Belisario occupied and administered the two parcels of land in common.

(5) That on August 25, 1913, and upon certain dates subsequent thereto, the lands in question were forfeited to confiscated by the Government for non-payment of taxes.

(6) That on July 5, 1916, in civil case No. 435 in the court of the justice of the peace of Dagupan, C. H. McClure vs. Maximo Belisario and Eulalio Belisario, an order of attachment was issued against lands described in certain land tax declarations of which tax Nos. 5437, 5348, and 5351 refer to parts of the land inscribed in the registry of deeds as finca No. 334, and of which tax No. 5352 refers to the land inscribed in the registry of deeds as finca No. 335.

(7) That on July 31, 1916, the aforesaid order and notice of attachment were served upon Maximo Belisario and Eulalio Belisario; and on August 5, 1916, the deputy provincial sheriff presented the said order and notice of attachment to the register of deeds for record, but no entries appear to have been made in the books of the registry.

(8) That on October 14, 1916, pursuant to a writ of execution issued upon final judgment in said civil case No. 435, the attached lands, as specified in paragraph (6) hereof, were sold to the judgment creditor C. H. McClure, represented by Peter W. Addison. The sale was not recorded in the registry of deeds.

(9) That on October 14, 1916, pursuant to a writ of execution issued upon final judgment of the court of the justice of the peace of Dagupan, civil case No. 450, C. H. McClure vs. Felix Belisario and Eulalio Belisario, the statutory right of redemption belonging to Eulalio Belisario, of the land sold under execution in said case No. 435, was sold by the sheriff at public auction to the judgment creditor C. H. McClure, represented by Peter W. Addison. No record of this sale appears to have been made in the registry of deeds.

(10) That on September 19, 1916, a writ of execution was issued upon the final judgment of the court of the justice of the peace of Dagupan, in civil case No. 454, C. H. McClure vs. Eulalio Belisario, pursuant to which, on November 14, 1916, levy was made upon the

undivided half of the two parcels of land in question, belonging to Eulalio Belasario and upon all right, title, and interest which he had or might have therein.

(11) That on December 13, 1916, in conformity with a decision of the Supreme Court of the Philippine Islands, in the case of Castillo vs. Belisario (35 Phil., 89), Jose Castillo executed in favor of Eulalio Belisario a deed of resale of the two parcels of land conveyed in the sale with right to repurchase mentioned in paragraph (2) hereof.

(12) That on January 11, 1917, an alias writ of execution was issued in the said civil case No. 454, mentioned in paragraph (10) hereof, pursuant to which on February 10, 1917, the judgment creditor C. H., McClure, represented by P. W. Addison, purchased at execution sale the undivided half of the two parcels of land in question, belonging to the said Eulalio Belisario, and all rights, title, interests, and ownership which the defendant in execution had or might have in and to both of said parcels of land in their entirety. This sale was duly presented for record in the registry of deeds on March 1, 1917, and recorded on the 14th of the same month.

(13) That on January 19, 1917, Eulalio Belisario executed in favor of Basilio Borja a deed of sale of the two parcels of land in question for P7,500, reserving the right to repurchase the lands for the same price within the term of eighteen months from the date thereof.

(14) That on January 26, 1917, the said deed of sale with right to repurchase was presented for record in the registry of deeds, but inscription was refused and the deed was returned on February 5, 1917, with an official communication from the register of deeds to the effect that it was not subject to record, as the previous inscription in favor of Jose Castillo, mentioned in paragraph (2) hereof, had not been cancelled on the record.

(15) That on February 13, 1917, the deed of resale from Jose Castillo to Eulalio Belisario, mentioned in paragraph (11) hereof, was presented for record in the registry of deeds and was recorded on February 26, 1917.

(16) That on March 5, 1917, an alias writ of execution was issued in civil case No. 499 of the court the justice of the peace of Dagupan, C. H. McClure vs. Maximo Belisario and Eulalio Belisario, pursuant to which, levy was made upon all the remaining interests belonging to said defendants, in and to be the two parcels of land in question, as specified in paragraph (19) and that notice of said levy was duly presented for record and entered upon the day-book of the register of deeds on March 7, 1917.

(17) That on March 27, 1917, the deed of sale with right to repurchase executed by Eulalio Belisario in favor of Basilio Borja, mentioned in paragraph (13) hereof, was entered upon the day-book of the register of deeds for the first time, this entry being cancelled on April 4, 1917.

(18) That on March 30, 1917, Peter W. Addison purchased at the sheriff's sale under the execution in civil case No. 499, mentioned in paragraph (16) hereof, the undivided half of the two parcels of land in question, belonging to Maximo Belisario, and all the rights, title, interests and ownership which both of the defendants in execution, Maximo Belisario and Eulalio Belisario, had or might have in to both of the said parcels of land in their entirety.

(19) That in April 4, 1917, Peter W. Addison presented the certificate for the property and interests acquired at execution sale in civil case No. 499, for record in the registry of deeds, the document being recorded on April 18, 1917.

(20) That on November 12, 1917, in conformity with instructions received from the Judge of the Fourth Sala of the Court of First Instance of the City of Manila, the deed of sale with right to repurchase executed by Eulalio Belisario in favor of Basilio Borja and mentioned in paragraphs (13) and (18) hereof, was reinstated in the day-book and recorded in the registry of deeds.

(21) That on January 23, 1918, the attorney for Basilio Borja transmitted to the provincial sheriff of Pangasinan the sum of P230 for the redemption of the property and interests sold under execution in civil case No. 454, mentioned in paragraph (12) hereof.

(22) That on February 11, 1918, the attorney for Basilio Borja was informed by the said sheriff that the redemption mentioned in the preceding paragraph would be allowed only upon the condition that the right of redemption be exercised in the execution sales in civil cases Nos. 435, 499, and 450, mentioned in paragraphs (8), (9), and (18) hereof.

(23) That on February 16, 1918, the affidavit of C. H. McClure for the consolidacion de dominio in civil case No. 454 was presented for record in the registry of deeds, and inscribed in the registry on February 19, 1919.

(24) That on June 24, 1918, the provincial sheriff of Pangasinan signed finaldeeds of sale for the property and interest, mentioned in paragraphs (12) and (18) hereof, in favor of C. H. McClure and Peter W. Addison, the respective purchasers at execution sales in civil cases Nos. 454 and 499.

(25) That on June 25, 1918, possession was delivered by the provincial sheriff of Pangasinan to Peter W. Addison, in his own representation and that of C. H. McClure, of the two parcels of land question, sold under execution in civil cases Nos. 454 and 499.

(26) That on July 3, 1918, the affidavit of Peter W. Addison for the consolidacion de dominio in civil case No. 499 was entered upon the the day-book in the registry of deeds, and recorded in the registry on March 11, 1919.

(27) That on July 12, 1918, C. H. McClure executed a quit-claim deed to Peter W. Addison, for all right, title, and interest that he had in the two parcels of land in question.

(28) That on July 31, 1918, the deeds of sale executed by the provincial sheriff of Pangasinan, in favor of C. H. McClure in civil case No. 454, as mentioned in paragraph (25) hereof, and the quit-claim deed executed by C. H. McClure in favor of Peter W. Addison, as mentioned in the preceding paragraph, were entered on the day-book of the registry of deeds, and inscribed in the registry on March 10, 1919.

(29) That on January 21, 1919, the Director of Lands authorized Peter W. Addison to repurchase the lands in question, which had been forfeited to and confiscated by the Government, as mentioned in paragraph (5) hereof. This repurchase was made under the last proviso of section 19 of Act No. 1791 and was not purchased with the formalities required for the sale of public lands by Act No. 926.

(30) That on June 4, 1919, the provincial treasurer of Pangasinan issued a certificate of repurchase to Peter W. Addison, for the confiscated lands mentioned in the preceding paragraph, pursuant to which the said lands were reassessed for taxation in his name.

(31) That on March 12, 1919, Eulalio Belisario not having exercised his right of repurchase reserved in the sale to Basilip Borja mentioned in paragraph (13) hereof, the affidavit of Basilio Borja for the consolidacion de minio was presented for record in the registry of deeds and recorded in the registry on the same date.

(32) That Maximo Belisario left a widow, the opponent Adelina Ferrer and three minor children, Vitalina, Eugenio, and Aureno Belisario as his only heirs.

(33) That in the executions and sales thereunder, in which C. H. McClure appears as the judgment creditor, he was represented by the opponent Peter W. Addison, who prepared and had charge of the publication of the notices of the various sales and that in none of the

sales was the notice published more than twice in a newspaper.

The claims of the opponent-appellant Addison have been very fully and ably argued by his counsel but may, we think, be disposed of in comparatively few words. Ad will be seen from the foregoing statement of facts, he rests his title (1) on the sales under the executions issued in cases Nos. 435, 450, 454, and 499 of the court of the justice of the peace of Dagupan with priority of inscription of the last two sales in the registry of deeds, and (2) on a purchase from the Director of Lands after the land in question had been forfeited to the Government for non-payment of taxes under Act No. 1791.

The sheriff's sales under the execution mentioned are fatally defective for want of sufficient publication of the notices of sale. Section 454 of the Code of Civil Procedure reads in part as follows:

“SEC. 454. Before the sale of property on execution, notice thereof must be given, as follows:

“1. In case of perishable property, by posting written notice of the time and place of the sale in three public places of the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

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“3. In cases of real property, by posting a similar notice particularly describing the property, for twenty days in three public places of the municipality or city where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week, for the same period, in some newspaper published or having general circulation in the province, if there be one. If there are newspaper published in the province in both the Spanish and English languages, then a like publication for a like period shall be made in one newspaper published in the Spanish language, and in one published in the English language; Provided, however, That such publication in a newspaper will not be required when the assessed valuation of the property does not exceed four hundred pesos;

“4. \* \* \* \* \*

Examining the record, we find that in cases Nos. 435 and 450 the sales took place on October 14, 1916; the notice first published gave the date of the sale as October 15th, but upon discovering that October 15th was a Sunday, the date was changed to October 14th. The correct notice was published twice in a local newspaper, the first publication was made on October 7th and the second and last on October 14th, the date of the sale itself. The newspaper is a weekly periodical published every Saturday afternoon.

In case No. 454 there were only two publications of the notice in a newspaper, the first publication being made only fourteen days before the date of the sale. In case No. 499, there were also only two publications, the first of which was made thirteen days before the sale. In cases Nos. 435 and 450 the hours advertised were from 9.00 in the morning until 4.30 in the afternoon. In all of the cases the notices of the sale were prepared by the judgment creditor or his agent, who also took charge of the publication of such notices.

In the case of *Campomanes vs. Bartolome and Germann & Co.* (38 Phil., 808), this Court held that if a sheriff sells without the notice prescribed by the Code of Civil Procedure induced thereto by the judgment creditor and the purchases at the sale is the judgment creditor, the sale is absolutely void and no title passes. This must now be regarded as the settled doctrine in this jurisdiction whatever the rule may be elsewhere.

It appears affirmatively from the evidence in the present case that there is a newspaper published in the province where the sale in question took place and that the assessed valuation of the property disposed of at each sale exceeded P400. Comparing the requirements of section 454, *supra*, with what was actually done, it is self-evident that notices of the sales mentioned were not given as prescribed by the statute and taking into consideration that in connection with these sales the appellant Addison was either the judgment creditor or else occupied a position analogous to that of a judgment creditor, the sales must be held invalid.

The conveyance or reconveyance of the land from the Director of Lands is equally invalid. The provisions of Act No. 1791 pertinent to the purchase or repurchase of land confiscated for non-payment of taxes are found in section 19 of the Act and read:

“\* \* \* In case such redemption be not made within the time above specified the Government of the Philippine Islands shall have an absolute, indefeasible title to

said real property. Upon the expiration of the said ninety days, if redemption be not made, the provincial treasurer shall immediately notify the Director of Lands of the forfeiture and furnish him with a description of the property, and said Director of Lands shall have full control and custody thereof to lease or sell the same or any portion thereof in the same manner as other public lands are leased or sold: Provided, That the original owner, or his legal representative, shall have the right to repurchase the entire amount of his said real property, at any time before a sale or contract of sale has been made by the Director of Lands to a third party, by paying therefor the whole sum due thereon at the time of ejectment together with a penalty of ten per centum \* \* \*."

The appellant Addison repurchased under the final proviso of the section quoted and was allowed to do so as the section quoted and was allowed to do so as the successor in interest of the original owner under the execution sales above discussed. As we have seen, he acquired no rights under these sales, was therefore not the successor of the original owner and could only have obtained a valid conveyance of such titles as the Government might have by following the procedure prescribed by the Public Land Act for the sale of public lands. He is entitled to reimbursement for the money paid for the redemption of the land, with interest, but has acquired no title through the redemption.

The question of the priority of the record of the sheriff's sales over that of the sale from Belisario to Borja is extensively argued in the briefs, but from our point of view is of no importance; void sheriff's or execution sales cannot be validated through inscription in the Mortgage Law registry.

The opposition of Adelina Ferrer must also be overruled. She maintains that the land in question was community property of the marriage of Eulalio Belisario and Paula Ira: that upon the death of Paula Ira in 1913, Maximo Belisario, the only son and heir of the spouses, entered into the joint administration of the property with his father; that this joint administration was equivalent to the formation of a new community of property between father and son and that it succeeded and extinguished the preexisting community of property between the spouses; that the special rights of the surviving husband as liquidator of the community property of the marriage thereupon also terminated; that, therefore, surviving husband had no right to sell or otherwise disposed of more than his own undivided share of such community property and that, consequently, the right of Maximo Belisario as the sole heir of his mother to one-half of the community property was unaffected by the sale

made by his father to the petitioner Borja.

This court held in the cases of Nable Jose vs. Nable Jose (41 Phil., 713) and Manuel and Laxamana vs. Losano (41 Phil., 855), that “in the absence of fraud and collusion, sales or mortgages of community debts and that the vendor has authority to dispose of the property thus administered by him and held in his name. \* \* \*” Though this rule is, perhaps, not in harmony with the views of various commentators upon the Civil Code, it is in the main supported by a line of decisions of the supreme court of Spain and until the pertinent provisions of the Civil Code are amended, will probably not be greatly modified by future decisions of this court.

There is no reason in law why the heirs of the deceased wife may nor form a partnership with the surviving husband for the management and control of the community property of the marriage and conceivably such a partnership, or rather community of property, between the heirs and the surviving husband might be formed without a written agreement. But, in the absence of the formalities prescribed by the Code of Commerce or by articles 1667 and 1668 of the Civil Code, knowledge of the existence of the new partnership or community of property must, at least, be brought home to third persons dealing with the surviving husband in regard to community real property in order to bind them by the community agreement.

In the present case the land was recorded in the real property register in the name of Eulalio Belisario and there is not a scintilla of evidence to show that the petitioner herein, Basilio Borja, had any notice of the fact that Maximo Belisario participated in the administration of the property or claimed any rights of ownership therein. The case, therefore, falls squarely within the rule laid down in the cases above cited and the deed from Eulalio Belisario to Basilio Borja must be held to have conveyed to the latter the whole fee of the land in question.

The decision appealed from is affirmed without costs. The registration of the land will be made subject to the lien of P. W. Addison for the sums of money expended for the redemption of the land from the forfeiture for non-payment of taxes. So ordered.

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

RESOLUTION UPON MOTION FOR RECONSIDERATION

September 9, 1922.

OSTRAND, J.:

The appellant in a motion for reconsideration asks that the court make an express pronouncement upon the question of law and fact involved in the sale of the lands indispute made by Eulalio Belisario to Basilio Borja with special reference to the effect thereupon of the provisions of a article 1297 of the effect thereupon of the provisions of article 1297 of the Civil Code, inasmuch as when the sale the appellant was a judgment creditor of the vendor and the sale therefore would be presumed fraudulent.

It may be observed that such sales are not void and that until set aside in a rescissory action they are legally effective, convey title, and cannot be attacked collaterally upon the aforementioned ground in a land registration proceeding. In justice to the appellant it may, however, be advisable to expressly reserve such right of a rescissory action as he may have and to have the reservation noted upon the certificate of title.

It is therefore ordered that the decision herein rendered, and promulgated on June 21, 1922, be amended by inserting immediately after the penultimate paragraph of said section, the following paragraph:

“Let it be noted in the final decree that the title is subject to the reservation of such right of action as P. W. Addison may have to set aside the sale made by Eulalio Belisario to Basilio Borja on January 19, 1917, of the land herein described, provided such action is commenced within the period prescribed by section 49 of the Code of Civil Procedure.”

As so amended, the decision mentioned will stand as the final judgment of this court.

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

