

[ G.R. No. 3072. March 21, 1907 ]

**LIONG-WONG-SHIH, PLAINTIFF AND APPELLEE, VS. TOMAS SUNICO AND JAMES J. PETERSON, DEFENDANTS AND APPELLANTS.**

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

**JOHNSON, J.:**

This was an action brought by the plaintiff against the defendant to have declared null and void certain attachments issued in favor of the defendant by the Court of First Instance of the city of Manila, and levied upon certain property alleged to belong to the plaintiff.

The record discloses that some time prior to the 31st day of December, 1903, the defendant Tomas Sunico, as executor of the estate of Telesforo Chuidian, commenced an action in the Court of First Instance of the city of Manila to recover of Francisco Chuidian a certain sum of money due said estate.

On the 30th day of December, 1903, the plaintiff herein purchased of the said Francisco Chuidian the undivided one-half of a certain parcel of land situated at No. 58 Calle Santo Cristo, district of Binondo, in the city of Manila, paying therefor the sum of 23,000 pesos, entering into the possession of said property on the same day. On the same day Francisco Chuidian executed and delivered to the plaintiff herein, a bill of sale, executed before a notary public.

On the 31st day of December, 1903, at the petition of the said Tomas Sunico, the Court of First Instance of the city of Manila issued an order of attachment against the one-half of a certain piece of property, situated at No. 58 Calle Santo Cristo, in the district of Binondo, city of Manila, but for the reason that the said property was not then registered in the Registry of Property of the city of Manila, the attachment of the property could not be noted in the said registry.

On the 26th day of January, 1904, the judge of the Court of First Instance issued a second

order of attachment against the one-half of said property, which second order of attachment was duly noted in the Registry of Property of the city of Manila upon the 28th day of January, 1904. Each of said orders of attachment was levied by the sheriff of the city of Manila.

On the 19th day of June, 1905, the plaintiff herein filed a petition in the Court of First Instance of the city of Manila, setting forth substantially the foregoing facts and prayed that the court grant her the following remedy, among others:

First. That said attachment be declared to be null and void, and that the plaintiff be declared to be the owner of one-half of the said property, located as above described.

Second. That the court order the cancellation in the Registry of Property of the city of Manila of the annotation of said attachment.

Third. That the defendants be charged with the costs.

After hearing the evidence of the respective parties, the judge of the Court of First Instance of the city of Manila granted the petition of the plaintiff herein, and ordered that the attachment be dissolved and that the notation of such attachment in the Registry of Property of the city of Manila be annulled. From this decision the defendants appealed.

It is admitted in the petition of the plaintiff that at the time the said petition was presented, her title deeds executed by the said Francisco Chuidian had not been registered. Said petition also admits the fact that the title deeds of the said Francisco Chuidian had not been registered on the said 30th day of December, 1903, the day on which the plaintiff purchased said property. Said petition further admits that between the date on which the first attachment was issued against the said property (31st of December, 1903) and the date (26th of January, 1904) on which the second writ of attachment was issued against said property, the title deeds of the said Francisco Chuidian had been duly registered, but the record does not disclose whether the same was registered in the old or new registry, nor under the old or new law. This fact is important. Suppose that A, the owner of a tract of land whose title deeds are recorded under the old system, commences an action under the laws of the Philippine Commission to have the same registered under the Torrens system, and after the commencement of this action, and while the same is still pending, he sells the land to B; after this sale to B the Land Court registers the title to the land in the name of A; after this registry in the name of A, and after the sale to B, C, a creditor of A, levies an attachment against the land and has the same registered. Can B's title thus be defeated? We

do not pass upon this question now for the reason that the record is incomplete—it does not show in which registry the title of Francisco Chuidian was registered; whether under the registry provided for by the Mortgage Law or whether under the system of registration provided for by the Philippine Commission.

On the 6th day of November, 1902, the Philippine Commission passed an act providing for the adjudication and registration of title deeds to lands in the Philippine Islands. The general purpose of this act was to make all evidence of title to lands in the Philippine Islands a matter of record, to the end that all persons dealing or treating with respect of titles to lands might be enabled from the proper register of titles to ascertain the true status and ownership of liens, etc., respecting particular parcels or tracts of land. Section 50 of said Act No. 496, provides among other things:

“But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but *shall operate only as a contract between the parties*, and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land. \* \* \*”

This quoted provision of the said Act clearly indicates that when the title to lands is once registered, that subsequent conveyances, deeds, mortgages, etc., shall not operate to convey or affect the title of lands until the same is duly registered.

Section 51 provides that when such conveyances, deeds, mortgages, leases, liens, attachments, etc., are duly registered, such registration shall be notice to all persons from the time of such registering, filing, or entering.

The record, however, does not disclose whether the provisions of this Act apply to the lands in question for the reason that it does not show that at the time of the second attachment the land in question had been registered under said Act. If the same had not been registered at the time of the attachment, then the rights and relations of all the parties interested are governed by the provisions of the Mortgage Law.

Articles 2 and 5 of said Mortgage Law provide what instruments relating to land shall be recorded. The conveyance made by Francisco Chuidian to the plaintiff herein is included in the instruments mentioned in said article 2. Article 23<sup>[1]</sup> of said Mortgage Law provides:

“The instruments mentioned in articles 2 and 5 which are not duly recorded in the registry can not prejudice third persons.”

The record does disclose the fact that prior to the time of the filing of the petition by the plaintiff in this cause, she had presented a petition in the Court of Land Registration of the city, under Act No. 496 of the Philippine Commission, to have the said property duly registered, but it does not disclose whether said petition had been granted at the time of the granting of the said attachment.

The foregoing facts present the question, Whether the purchaser of land, who fails to have his title deeds recorded in the proper registry of property, can be relieved from attachment liens created or placed upon said property subsequent to his purchase of such property? In other words, for example, A purchases a piece of property of B upon the first day of a certain month. A fails to have his title deeds properly recorded. B's title is duly recorded. C being a creditor of B, on the second day of the same month, by proper proceedings, secures an attachment upon the property which the latter sold to A. Said attachment is duly noted in the Registry of Property.

Query: Is A entitled to have said attachment set aside and annulled? or can C, in the face of the fact that B has sold his property to A prior to the date of the attachment, enforce his attachment lien against the said property, granting that A had not, at the time of the said attachment, duly recorded his title deeds?

The effect of actual notice on the part of C of the sale of said property by B to A might affect his rights in the premises. We do not pass upon that question for the reason that in the present case there is no allegation that the defendant Tomas Sunico had any knowledge whatever, at the time said attachment was issued, of the sale by Francisco Chuidian to the plaintiff herein. The defendant, Tomas Sunico, in his answer alleges, however, that the sale by the said Chuidian to the plaintiff herein was fraudulent. The evidence not having been brought to this court we make no finding upon that question.

During the trial of the cause in the lower court, the plaintiff offered in evidence, and the court allowed the same to be admitted, the deed of Francisco Chuidian to the plaintiff. To the admission of this evidence the defendant duly excepted. Said objection was based upon the ground that said deed had not been recorded. An examination of the said document shows that the same had not been recorded. The appellant cites this ruling as one of the errors committed by the lower court.

It was the evident purpose of the Mortgage Law to require a record of all transfers of property, as well as a record of liens, attachments, etc., placed upon property, and to enforce this purpose of the law it is believed that no transfer of title was admissible as evidence unless the same had been recorded. However, for the reason that it is unnecessary to decide that question in this case, we refuse to pass upon it at this time, and for the additional reason that it is not now necessary to declare the effect which the rules of evidence established in the Code of Procedure in Civil Actions may have upon this former rule of evidence.

From the facts stated above we reach the following conclusions:

- (1) That Francisco Chuidian owed the estate of Telesforo Chuidian a certain sum of money;
- (2) That prior to the 31st day of December, 1903, Tomas Sunico, as executor of the estate of the said Telesforo Chuidian, had commenced an action in the Court of First Instance of the city of Manila to recover said indebtedness;
- (3) That upon the 26th day of January, 1904, the Court of First Instance of the city of Manila had issued an attachment against certain property which had theretofore belonged to the said Francisco Chuidian in the city of Manila, which attachment was duly levied upon such property and registered in the property registry of the city of Manila on the 28th day of January, 1904; but the record does not disclose in which registry, the new or the old;
- (4) That upon the 30th day of December, 1903, the said Francisco Chuidian, by means of a public document, had transferred his title to such property to the plaintiff herein;
- (5) That at the time said attachment was levied and registered, the deed of transfer from Francisco Chuidian to the plaintiff herein had not been recorded;
- (6) That neither the defendant, Tomas Sunico, as executor, nor the sheriff of the city of Manila had any knowledge with reference to the said transfer from Francisco Chuidian to the plaintiff; and

Whereas, in view of the provisions of the Mortgage Law and the Act of the Philippine Commission (Act No. 496) above quoted, that the vendee of real property shall not be protected from liens created against said property, against the vendor, between the time of the sale and the time of the creation of said liens, unless said transfer is duly recorded; and

Whereas the record brought to this court does not disclose in which record the title of

Francisco Chuidian was recorded, whether in the new or the old, or whether the sale of such land was made by Francisco Chuidian to the plaintiff herein before or after the application of the former to have his title recorded under the acts of the Commission: Therefore, the judgment of the lower court is hereby reversed, and the cause is hereby ordered to be returned to the lower court for a new trial in order that these facts may be made of record to the end that the rights of the parties may be adjusted under existing laws.

After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the record be remanded to the court from whence it came for proper action. So ordered.

*Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.*

*Mapa, J., concurs in the result.*

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<sup>[1]</sup> Article 32.

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