

[G.R. No. 2486. October 30, 1906]

**LEOCADIO JOAQUIN, PLAINTIFF AND APPELLANT, VS. LAMBERTO AVELLANO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

On the 8th of December, 1902, the plaintiff commenced an action against Tan Tongco to recover the sum of 2,000 pesos. On the 11th of December a writ of attachment was duly issued in that action and on that day was duly levied upon the property described in the complaint in this action, which was a leasehold interest of Tan Tongco in a tract of land situated in Calle Lemery, in Tondo, in the city of Manila, and the building standing upon the said land. On the 15th day of December, 1902, the said writ of attachment and levy were duly annotated in the Registry of Property. On the 26th of February, 1903, final judgment was duly entered in said action in favor of the plaintiff and against the defendant, Tan Tongco, for the recovery of 2,000 pesos and interest at 6 per cent from the 2d day of September, 1902. A writ of execution was duly issued upon said judgment on the 23d of April, 1904, and by virtue of that execution the property attached, to wit, the right, title, and interest which Tan Tongco had in the property attached on the 12th day of December, 1902, or which he had acquired subsequent to that date, was sold by the sheriff on the 28th of May, 1904, to the plaintiff. On the 14th day of July, 1904, the plaintiff presented to the registrar of property a certificate of the aforesaid sale, which the registrar on the 20th of July refused to inscribe, basing his refusal so far as the house was concerned upon the fact that it had been sold to the defendant and said sale had been inscribed in the Registry of Property.

The facts relating to the sale of the house to the defendant are as, follows: On the 19th of December, 1902, one of the judges of the Court of First Instance appointed a receiver of all the property of Tan Tongco. This order appointing the receiver was afterwards held void by

this court in the case of Blanco vs. Ambler^[1] (2 Off. Gaz., 492). The receiver, acting under orders of the court, sold the house in question to the defendant on the 5th day of December, 1903. The defendant is, and has been for many years, the owner of the land.

The plaintiff brought this action, asking that the sale made by the receiver to the defendant be declared void and that the registry of the said sale be canceled and that his certificate of sale be recorded in the Registry of Property, and for1 other relief. Judgment was entered for the defendant and the plaintiff has brought the case here by bill of exceptions.

Whether the sale made by the receiver was void or valid, whatever rights the defendant acquired thereunder he acquired subject to the attachment obtained by the plaintiff prior to the appointment of the receiver. The plaintiff pursued the steps marked out by the law for the purpose of enforcing his judgment by sale upon an execution issued under the final judgment rendered in his favor in that action, and we think that the sale passed to him whatever interest Tan Tongco had in the property at the time the attachment was levied and that the interest acquired by the defendant, if he did acquire any, by virtue of the receiver's sale, were subject to the rights of the plaintiff. The court below found as a fact that the defendant had some time before leased the land in question to Agustina Brillo. This finding is supported by the evidence, but he also found that she had lost all her interest in the property acquired by virtue of that contract or lease prior to the levy of the judgment aforesaid and that the defendant had taken possession of the land prior to such attachment. There is no evidence to support this finding. The only evidence in the case upon that point is the testimony of the defendant, himself, who made the following statements:

“P. Como vino V. a ser propietario de ello?—R. He comprado ese terreno.

“P. Cuando lo compro V.?—E. Hace diez años y despues lo cedi en arrendamiento a Agustina Brillo, esto hace tres años.

“P. Ahora la pregunta es: Doña Agustina Brillo pagaba a V. el alquiler?—R. No, señor; ella no me ha pagado y esa es la razon porque tuve que emplear a un abogado para poder conseguir mi dinero.”

In view of this evidence the judgment of the court below can not be sustained but we think that the case should be remanded for new trial and no final judgment should be now entered in favor of the plaintiff because it does not clearly appear what interest Tan Tongco had in

this property at the time the attachment was levied nor what interest he had at the time of the sale. The evidence shows that the lease was made by the defendant to Agustina Brillo. It also shows that at the time of the trial of this action in the court below she was the wife of Tan Tongco but there is no evidence to show that she was his wife at the time the lease was made, and there is no positive evidence to show who constructed the house upon the property, whether it was constructed by her or by Tan Tongco, or whether at the time of such construction they were husband and wife. Neither is there any evidence, as we have said, as to whether the leasehold interest still continued in force at the time of the attachment or at the time when the judicial sale was made. The parties should have an opportunity to present evidence upon these two questions, first as to the interest which Tan Tongco had in the property at the time of the attachment and whether that interest had been lost, if any existed, by the forfeiture of the leasehold estate for violation of the terms of the lease.

The judgment of the court below is reversed and the case remanded for a new trial. Upon the new trial it will not be necessary to retake the evidence already taken, but the parties will be at liberty to present such new evidence as they desire upon all the questions raised herein. No costs will be allowed to either party in this court. After the expiration of twenty days judgment will be entered in accordance herewith and ten days thereafter the cause remanded for proper procedure. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

^[1] 3 Phil. Rep., 735.
