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[G.R. No. 573. April 21, 1903]

LA JUNTA ADMINISTRADORA DE OBRAS PIAS, PLAINTIFF AND APPELLANT, VS. RICARDO REGIDOR AND THE HONGKONG AND SHANGHAI BANKING CORPORATION, BY SUBROGATION, DEFENDANTS AND APPELLEES.

DECISION OF MOTION TO SUSPEND PROCEEDINGS

WILLARD, J.:

The motion of the appellee, made on the 2d of April, 1903, and argued on the 13th of April, must be denied.

The appellee asks that proceedings be suspended, because of the alleged admission by the criminal branch of the former Supreme Court of a complaint presented by him charging the falsification of the document dated April 30, 1898, executed by the judge and transferring, the houses in question to the *Obras Pias.*

When the complaint was presented the court made an order passing it to the fiscal. This was not an admission of the complaint within the meaning of article 497 of the old Code of Civil Procedure. At the request of the fiscal the criminal branch requested the civil branch that the instrument charged to be false be remitted to it. This was not an admission of the complaint within the meaning of said article 497.

We may add that, apart from the fact that as the appeal taken by Regidor against the order of February 9, 1895, was admitted in one effect, that is, not suspensively, it was no legal bar to the execution of the deed of sale, in consequence of the adjudication of the property to the board of directors of the *Obras Pias* on the 30th of April, 1898; neither could the appeal so taken and allowed in one effect from the order of February 9, 1895, and which was abandoned by the moving party himself before it was perfected, be considered as an obstacle having the effect of invalidating that deed.

Torres, Cooper, Mapa, Ladd, and *McDonough, JJ.,* concur.

Arellano, C. J., disqualified.

DECISION ON THE MERITS

WILLARD, J.:

The board of directors of the *Obras Pias* was on May 20, 1885, the owner of two mortgages on two houses numbered 40 and 40, duplicate, in Calle Magallanes, Intramuros. These mortgages were made in 1879 and 1880 by ricardo Regidor, the then owner of the houses. On said May 20, there being due and unpaid on said mortgages $12,250 and interest, the *Obras Pias* filed a complaint in an executive action against Sr. Regidor for the purpose of foreclosing them. That action has been pending since then and is now before us for decision.

A judgment of public auction sale having been affirmed in the *Audencia* on an appeal by the defendant, and the action being in the via do aprcmio, in December, 1894, the Hongkong and Shanghai Banking Corporation applied to the court to be substituted as defendant in the place of Sr. Regidor, presenting a certificate from the register of property. This certificate contained a copy of a deed executed on June 2, 1883, by Regidor to the bank. The legal effect of this instrument was a sale of the property with an agreement of *adicion in diem*, which expired on June 2, 1886.

On December 31, 1894, the court made an order substituting the bank in the place of Sr. Regidor. He sought a rehearing of this order. This was denied him on February 9, 1895, the court holding that the effect of the deed No. 328 was to make the bank the owner of the property, and Sr. Regidor was excluded from the case. His attempts to appeal from this order which are hereinafter described were without result. The case proceeded to a public auction of the houses on August 9, 1897, at which there were no bidders, and they were, on December 14, 1897, adjudicated to the *Obras Pias* and a deed executed by the judge on April 30,1898, which, as we infer, was at once recorded.

The *Obras Pias* being in possession of the property, Regidor on April 2, 1900, interposed in this executory action a complaint in an *incidente* of nullity asking that the order of December 31, 1894, substituting the bank as defendant and that everything done since that time be declared null. He claimed among other things that when deed No. 328 was executed, the parties thereto executed another deed, No. 326, that the two were together intended to furnish to the bank security for a credit of $20,000, which it was to give

Regidor, that the debt to the bank had been paid, and that the bank never became the owner.

The bank and the *Obras Pias* were served with this complaint, and the latter undertook to appear and oppose it, but its application was rejected for insufficiency of the power of attorney to its lawyer. Judgment was rendered by default against both parties on May 28, 1900. This judgment, while it did not in terms declare the order of December 31, 1894, null, did declare null everything by which Regidor was put out of the possession of the houses.

It is unnecessary to set out the steps which the bank and *the Obras Pias* took in order to appeal from this judgment, all of which was unavailing in the lower court, as the Supreme Court of Justice on March 9, 1901, in *recurso de queja* admitted appeals by each one of the said parties in both effects.

While these proceedings relating to the appeals were going on, Regidor not only had been restored to possession, but the *Obras Pias* had been compelled to repay to him upward of 5,000 pesos rent collected by them after the houses had been adjudicated to them.

The case is now before, us for decision on these appeals and various motions presented therein.

1. At the hearing on the appeals the appellee, Sr. Regidor, objected to the appearance of Sr. Ortigas as representing the bank. This objection is without foundation.

On July 23, 1900, Sr. Ortigas presented to the predecessor of this court in the *recurso de queja,* a power of attorney in due form, by which he was authorized to appear for the bank. No objection has ever been made to the sufficiency of this power by the appellee.

Moreover, by section 26 of the present Code of Civil Procedure, no written power of attorney is now required. This section is applicable to all actions, no matter when brought, and is not restricted in its operation by section 795 of the same Code. That Sr. Ortigas was in fact authorized to act for the bank appears from the said power, presented on July 23, 1900.

2. In his motion presented on the 31st day of December, 1902, and argued on the 12th day of January, 1903, Sr. Regidor asks us to set aside the order of the Supreme Court, dated March 9, 1901, which admitted the appeals from the judgment of May 28, 1900. The grounds stated are (1) that that court had no jurisdiction to make the order, and

(2) that the *recurso de queja* was repealed by Act No. 75 of the Commission, approved January 22, 1901.

(1) That the Supreme Court of Justice was, from July, 1900, to June, 1901, the tribunal which had jurisdiction of those *recursos de queja* which were properly presented to it, is unquestioned. It is not claimed that any other tribunal had that jurisdiction during that time. Having jurisdiction of such *recursos,* when properly brought before it, who was to decide whether they were so properly brought or not? The appellee apparently claimed that the Court of First Instance should decide whether the Supreme Court could properly take jurisdiction of such a *recurso,* for he insisted, in his petition presented to the Court of Binondo on August 27, 1900, that that court should retain jurisdiction of the case for practically the same reasons as those presented in the motion of December 31, 1902. This claim is without foundation.

The Supreme Court of Justice was then the court of last resort in the Islands. Having jurisdiction of the matter of *recursos do queja*, it must, of course, decide finally whether a particular case of that kind came properly before it. Whether the decision was right or wrong is of no importance, so far as its effect is concerned. It had jurisdiction to inake the decision, and there was no higher court in which it could be corrected if erroneous.

(2) Act No. 75 of the Commission did not abolish the *recurso de queja*. There is no clause in that law expressly so stating, and there was no repeal by implication, for the two remedies are not inconsistent with each other. This court, since its organization, has entertained *recursos de queja* in civil cases until the adoption of the Code of Civil Procedure, and in criminal cases, until the present time.

3. The motion for a suspension of the decision in this case that the fiscal may examine the record for the purpose of instituting criminal prosecutions, must be denied.

It is said that a crime was committed by the registrar of property in his certificate of December, 1894, relating to the title of the bank to the houses in question. We have not been able to find indications of any such crime. The document No. 328 was, in any event, properly annotated in the *Anotaduria* of the Ayuntamiento, because it contained a mortgage upon house No. 4 in Cabildo Street. This is admitted by the appellee. That document was in fact transferred to the modern registry prior to December 19, 1894. On that day the bank presented to the registrar of property a petition stating that such a transfer had been made and asking for a certificate which should contain that document and its inscription.

Pursuant to such petition the registrar, on December 19, issued the certificate in question which is claimed to be false. It contains and purports to contain nothing more than literal copies of papers which appeared in his books., The appellee concedes that these documents actually appeared upon the books, and that the copies contained in the alleged false certificate are true copies. That disposes of his claim that the certificate was false. The registrar did not certify that the bank was the owner of the property and that Regidor was not. He did not certify that the bank was in possession of the property. He did only what was asked of him, namely, to furnish true copies of documents which in fact appeared on his books. Upon this point it matters not whether the keeper of the *Libro Becerro* made a mistake or not in 1883 in copying the document No. 328 in full into his book, instead of making an extract of it, as it is now claimed by the appellee he should have done. It makes no difference Avhether the document was or was not properly transferred to the modern registry. It was in fact transferred, and when the registrar in December, 1894, gave a true copy of it, he committed no crime.

This motion for a suspension might have been disposed of also on the ground that no criminal complaint had been admitted, and that the appellee had in other respects not brought himself within the former law relating to this matter. But we preferred to place it on the ground that the evidence showed conclusively that the crime charged had not been committed.

4. The judgment of May 28,1900, must be reversed.

(1) The *incidente* of nullity which resulted in this judgment, was commenced on Api'il 2, 1900. More than two years before this date, namely, on December 14, 1897, the property had been finally adjudicated to the *Obras Pias* at two-thirds of its appraised value, and on April 30, 1898, E.deed therefor was executed to the *Obras Pias* by the court find recorded. In July, 1898, an order was delivered to the registrar of property to cancel the Tuason mortgages. No action whatever had been taken in the case for a year and three months, during which time the plaintiff had been in possession. Even conceding, for the sake of argument, that *incidentes* may be admitted in an executory action in the *via de apremio,* about which we express no opinion, it must be certain that when the execution proceedings are over and the property has been transferred to the judgment creditor, and he has been placed in possession, and his title papers placed on record and have there remained for nearly two years, the time has passed for the presentation of an *incidente* concerning the nullity of some particular proceeding in the case. The purposes of this executory action had been accomplished more than a year and nine months before the institution of the

proceeding. It was practically terminated. Nothing more remained to be done.

The complaint should never have been admitted. All the proceedings in connection therewith were irregular and the judgment invalid.

Its invalidity having been properly attacked by appeal, it must be reversed and declared void.

(2) The order of December 31, 1894, subrogating the bank in place of Regidor as defendant in the case, was consented to by the defendant, Regidor, in two ways.

(*a*) Although he was allowed on February 27, 1895, an appeal in one effect from the order of February 9, denying *reposicion* of the order of December 31, 1894, he did not furnish the amount of stamped paper necessary for perfecting his appeal. The clerk, on April 30, 1895, reported this fact to the court and it, by the order of May 27, 1895, directed the petitioner to be notified of the condition of the record. The appeal rested in this case for more than three years, when Regidor undertook to renew it by pleadings of July 16, 1898. Against the order of the 15th of December, 1898, by which the court refused to take action upon the motion of Regidor's counsel with respect, among other things, to the issuance of a transcript formerly ordered; for the purpose of perfecting the appeal, taken and admitted in one effect, said counsel, by a petition dated the 23d of; the said month, asked for the reconsideration and vacation of the order, and moved the court to direct that the transcript be issued.

The court, by order of the 24th day of the same month of December, refused to take action on this motion, and Regidor's counsel having given notice of appeal against the said order of December 24, the judge, by an order of the 3rd of January, 1899, again refused to take action.

No motion was ever made to vacate the latter order. No attempt was made to prepare the *recurso de queja* in accordance with articles 381 and 382 of the old Code of Civil Procedure. This remedy was never utilized, and consequently, under the provisions of article 391 of the same Code, the judge having held that the appeal had been abandoned, the appealed order became final and executory by consent.

(*b*) The order of December 31,1894, subrogated the bank as defendant in place of Regidor, holding that the former, and not the latter, was the owner of the property.

On July 17, 1897, Regidor presented in this same action an intervention under claim of

ownership (*terceria de dominio*) against the Obras Pias and the bank. From the very nature of a *terceria* it must be true that this was a distinct recognition (1) of the bank as a party to the suit, and (2) of himself as a stranger to it. It was in effect a submission to the order of December 31, 1894.

This disposes of these appeals and terminates the executory action. It is, therefore, not necessary to consider the other questions argued by counsel, which relate to the validity of the order of December 31,1894.

5. The motion presented by the *Obras Pias* for the vacation of the order putting into effect the sentence of May 28, 1900, is already disposed of by this decision.

The judgment itself being void, the execution thereof must be set aside, and the *Obras Pias* have a right to be restored to the possession of the property and to the return by Regidor of all the rents received by him subsequently, or which might have been received by him, since the possession taken by him under the judgment of May 28, 1900. Sr. Regidor was not a possessor in good faith, because the judgment was not executory.

6. The appeal by Regidor from the order of September 21, 1900, which refused to pass the orders to the fiscal for the purposes of a criminal prosecution, is without merit. The order appealed from is affirmed with costs against the appellant, Regidor.
7. The judgment of December 2, 1896, from which Sr. Tuason appealed on December 9, 1896, is hereby affirmed without especial condemnation as to costs.
8. To the motion of Sr. Regidor dated December 31,1902, are attached what purport to be copies of certain letters. When they wore presented to the court at the hearing of the motion, they were objected to. With the exception of one, they can not be considered. They are in no way authenticated. If they were, they were not properly produced as evidence either in the first or second instance. The letter excepted was attached to the complaint presented on April 2, 1900.

In connection with the charges of fraud so profusely used by Sr. Regidor in his motions and oral arguments, it may be noted that the *Obras Pias*, since 1880, has had against Sr. Regidor an admitted debt of more than 12,000 pesos which was the first lien on the houses in question. In 1885 they commenced this summary proceeding to foreclose the mortgages. Regidor never had any defense to this claim, and the *Obras Pias* ought to have obtained the possession of the property, or the payment of the debt, at least as earlv as 1886. Instead of such a result, the action is still pending. Regidor is still in possession, and is still receiving

the rents, which in 1883 amounted to 375 pesos a month.

It is ordered:

(1) That the judgment of May 28,1900, be reversed and everything done in the *incidente* of nullity, commenced by the complaint of April 2, 1900, including such complaint, be vacated and annulled, without special condemnation as to costs of this instance.

(2) That the plaintiff be restored to the possession of the property in question.

(3) That the appellee Ricardo Regidor repay to the plaintiff all sums received by him from its representatives as rent of said property.

(4) That the said Ricardo Regidor pay to the plaintiff all rents received, or which ought to have been received, from said property since he was put into possession thereof by the said judgment of May 28, 1900.

(5) That the order of September 21, 1900, from which Sr. Regidor appealed on September 22, 1900, be affirmed with costs of this instance against the said appellant.

(6) That the judgment of December 2, 1896, from which Sr. Tuason appealed on December 9, 1896, be affirmed without especial condemnation as to costs of this instance.

Torres, Cooper, Mapa, and *Ladd, JJ.,* concur.

Arellano, C. J., and McDonough, J., did not sit in this case.

DECISION OP APPLICATION FOR WRIT OF ERROR

WILLARD, J.:

Passing the question as to whether or not an appeal would be the appropriate remedy in cases of this kind, the application for a writ of error will have to be denied on the ground that the value in controversy does not exceed 25,000 dollars.

The petitioner has never questioned the validity of the mortgages sought to be foreclosed in this action, and in his tenth assignment of error filed with the present petition he recognized

their validity. The amount due on these mortgages, on May 20, 1885, when this suit was brought, was more than 12,000 pesos. They bear interest at the rate of 6 per cent per annum. The amount now due thereon would exceed 25,000 pesos, which, reduced to United States currency at the present official rate, would be in excess of 10,000 dollars. We assume that the value of the property is just in excess of 25,000 dollars. The value actually in controversy is, then, not more than 15,000 pesos. It is true that section 10 of the Act of July 1,1902, contains the words "in which the title or possession of real estate exceeding in value the sum of 25,000 dollars * * * is involved or brought in question." But this must be construed to refer to cases in which the possession is sought, or retained, in connection Avith some claim to the title itself. Otherwise a case of forcible entry and detainer, involving only the right to the possession for a month of a house worth 25,000 dollars, might be taken to the Supreme Court, when the actual amount in controversy did not exceed 500 dollars.

So an action to determine the right to a life estate in property of the value of 25,000 dollars might be appealed though the value of the life estate, the only thing in controversy, did not exceed 5,000 dollars.

The application for a writ of error is denied.

Torres, Mapa, and *McDonough, JJ.,* concur.

Arellano, C. J., disqualified.

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