

SECOND DIVISION

[G.R. No. 127830, October 17, 2001]

MANOLET LAVIDES, PETITIONER, VS. ERNESTO B. PRE, IN HIS PERSONAL AND OFFICIAL CAPACITY AS DEPUTY SHERIFF OF PASAY CITY, THE CITY SHERIFF OF PASAY CITY, VIMARCO, INC., AND COURT OF APPEALS, RESPONDENTS.

DECISION

QUISUMBING, J.:

Before us is a petition for review of the decision of the Court of Appeals dated October 10, 1996, in CA-G.R. CV No. 47710. Said decision affirmed the judgment of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, in Civil Case No. 1719-G. Also for review is the Court of Appeals' resolution dated January 21, 1997, denying petitioner's motion for reconsideration.

The facts as found by the trial court and adopted by the appellate court are as follows:

Plaintiff Manolet Lavides purchased the six (6) properties, subject of this action, from the spouses Policarpio Castro and Natalia Dy Castro, who executed the following documents: (a) '*Kasulatan ng Biling Mabibiling Muli*' dated March 8, 1975 (Exh. 'A'), relative to the parcel of land covered by Transfer Certificate of Title No. T-34702, of the land records of Quezon (Exh. '1'), and (b) '*Kasulatan ng Biling Mabibiling Muli*' dated April 1, 1975 (Exh. 'B'), covering the properties registered under Transfer Certificate of Titles (sic) Nos. T-88030 (Exh. '2'); T-104900 (Exh. '3'); T-75611 (Exh. '4'); T-83936 (Exh. '5') and T-97768 (Exh. '6'), all of the land records of Quezon Province. These two (2) deeds of *pacto de retro* sale (Exhs. 'A' & 'B'), were not registered nor annotated on the titles of the subject properties.

On May 10, 1976, Vimarco, Inc., filed with the Court of First Instance (CFI) of Rizal, Pasay City, Branch XXXVIII a complaint against the spouses Policarpio Castro and Natalia Dy Castro, for (a) sum of money with damages with petition for preliminary attachment, and this was docketed as Civil Case No. 5122-P.

On May 28, 1976, said Court of First Instance issued an *ex-parte* order for a writ of preliminary attachment. Pursuant to said order, defendant Vimarco, Inc. caused its registration on the certificates of titles over subject properties with the Register of Deeds of Quezon Province.

On June 25, 1976, defendants in Civil Case No. 5122-P, filed a motion to dissolve the aforementioned writ. No resolution was rendered on said

motion to dissolve.

On October 13, 1976, acting on defendant Vimarco's motion for judgment on the pleadings, the CFI of Rizal rendered its decision in Civil Case No. 5122-P in favor of defendant Vimarco, Inc., and against Policarpio Castro and Natalia Dy Castro. This was appealed to the Court of Appeals by said spouses,^[1] but on June 3, 1977, the appellate court promulgated its decision in favor of defendant Vimarco, Inc. The spouses Castro went to the Supreme Court on a petition for certiorari and mandamus^[2] and on July 29, 1983, the Supreme Court rendered its decision dismissing said petition.^[3]

Thus, the decision in Civil Case No. 5122-P having become final and executory, the RTC of Pasay City, upon application by Vimarco, Inc., issued an order of execution dated November 29, 1983. In pursuance of said order of execution, defendant Deputy Sheriff Ernesto B. Pre in representation of the City Sheriff of Pasay City, caused a 'Sheriff's Notice of Auction Sale on Execution Upon Real Properties', which was issued and published in the "*Mabuhay News*" on December 16, 23, and 30, 1983. Auction sale on properties attached by the deputy Sheriff of Pasay City was first scheduled for January 10, 1984. However, on said date, plaintiff served on said defendants a third-party claim (Exh, 'B-1') over the properties covered by TCT Nos. T-34702, T-88030, T-104900, T-75611, T-83936, and T-97768, proposed to be sold at said auction sale. The auction sale was postponed for January 17, 1984.

Before the auction sale could proceed, plaintiff filed a separate action (Civil Case No. 1719-6) before this Court (RTC of Gumaca, Quezon, Branch 61) to assert his claim on subject properties praying that a preliminary injunctive writ be issued to maintain the status quo. Accordingly, a restraining order dated January 16, 1984, was issued and served on defendant Deputy Sheriff, on January 17, 1984, before the scheduled auction sale could be made on subject properties. The auction sale proceeded with respect to properties not claimed in this action. On March 20, 1984, this Court issued a writ of preliminary injunction.

The trial court then proceeded to receive evidence from the opposing parties in order to resolve the issue of which takes legal precedence: (1) the levy of the subject properties by virtue of a duly registered writ of attachment; or (2) the unregistered documents of *pacto de retro* sale executed before the said levy. ^[4]

On August 31, 1984, the RTC of Gumaca, Quezon, Branch 61, issued its decision. Its decretal portion reads:

WHEREFORE, judgment is hereby rendered against the plaintiff, and in favor of the defendant, as follows:

(a) Dissolving the writ of preliminary injunction previously issued; consequently, the City Sheriff of Pasay City or any of his deputy (sic), can

now proceed with the auction sale of the subject properties;

(b) Dismissing the complaint; and

(c) Dismissing the counterclaim.

No pronouncement as to costs.

SO ORDERED.^[5]

Dissatisfied with the above judgment, petitioner seasonably appealed the decision of the trial court to the Court of Appeals, and the appeal was docketed as CA-G.R. CV No. 47710. On October 10, 1996, the Court of Appeals (Ninth Division) affirmed *in toto* the trial court's decision and dismissed the appeal of petitioner and in its resolution dated January 27, 1997, denied his motion for reconsideration.

Hence, the instant petition assigning the following errors:

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE APPELLEE CORPORATION HAS A SUPERIOR RIGHT OF CLAIM TO THE SUBJECT PROPERTIES.

II

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE APPELLEE CORPORATION'S ACTUAL KNOWLEDGE OF THE PETITIONER'S CLAIM OVER THE SUBJECT PROPERTIES IS EQUIVALENT TO REGISTRATION AND THEREFORE WAS IN BAD FAITH.

III

THE COURT OF APPEALS ERRED IN FINDING THAT THE PREVIOUS ORDER OF PRELIMINARY ATTACHMENT IN CIVIL CASE NO. 5122-P HAD BEEN DECIDED WITH FINALITY.

IV

THE COURT OF APPEALS ERRED IN NOT AWARDING PETITIONER'S CLAIM FOR DAMAGES AND ATTORNEY'S FEES.^[6]

Carefully examining petitioner's assigned errors, we find that the pivotal issue in this case is whether the respondent court erred in holding that a levy on execution, pursuant to a decision affirmed by the Supreme Court, is superior to a prior unregistered *pacto de retro* sale of the same properties.

On record, four facts stand undisputed in this case. First, the deeds of sale of the properties in question by Policarpio and Natalia Castro to petitioner were