

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

HENRY HERMAN,
Plaintiff
-Appellee,

-versus-

**G.R. No. 39633
March 7, 1934**

LA URBANA,
Defendant-Appellant.

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DECISION

GODDARD, J.:

This is an appeal from the decision of the Court of First Instance of Rizal, the dispositive part of which reads as follows:

“Por tanto el Juzgado es de parecer que la venta de los bienes en litigio, verificada el 4 de enero de 1932, debe ser anulada, pues el articulo 457 deCodigo de Procedimiento Civil, al proveerse en el la venta en lotes por separado, tiene por objeto dar oportunidad al deudor para que su obligacion se reduzca a la minima expresion.

“En su virtud, se declara nula la venta de los bienes en cuestion hecha el 4 de enero de 1932; se ordena al Registrador de Titulos de esta Provincia la cancelacion de las anotaciones relacionadas

con dicha venta en los certificados de títulos de los mencionados inmuebles; y se ordena, además, que se verifique de nuevo la venta de los mismos en lote tal como se dispone en el artículo 457 de la Ley No. 190, y se declara disuelto el interdicto prohibitorio preliminar expedido en este asunto, con las costas a cargo de la demandada. Se sobresee la reconvencción presentada por esta.”

The following assignments of error are made by the defendant-appellant:

- “I. El Juzgado erro al declarar que los bienes hipotecados podian ser vendidos por lotes separados.
- “II. El Juzgado erro al no declarar que la subasta discutida es valida y legal:
 - (a) Porque los bienes hipotecados forman una sola masa o una sola finca.
 - (b) Porque dichos bienes no podian ser vendidos por separado, sin disminuir de modo considerable su valor intrinseco.
 - (c) Porque dichos bienes garantizaban solidariamente la deuda del demandante.
 - (d) Porque el demandante nunca ha protestado contra dicha subasta, y se halla en ‘estoppel’.
- “III. El Juzgado erro al declarar que la Ley No. 3135 requiere la venta extrajudicial por lotes separados de los bienes hipotecados que se subastan de acuerdo con dicha ley.
- “IV. El Juzgado erro al no condenar al demandante a pagar a la demandada las cantidades reclamadas en sus dos reconvencciones.
- “V. El Juzgado erro al no sobreseer la demanda de autos y al no acceder a la mocion de nueva vista de la demandada.”

On August 5, 1927, the plaintiff secured a loan for P42,550 from the defendant and as security for the payment of that loan mortgaged certain real estate described under transfer certificates Nos. 4595, 4596, 4599, 4662, 4783, 4784 of the office of the register of deeds of the Province of Rizal.

Under the terms of the mortgage the defendant was authorized, in case plaintiff failed to comply with the conditions thereof, to foreclose in the usual manner prescribed by law, or, at its option, to have the land sold extrajudicially. This latter method was utilized by the defendant and after due publication in the newspaper La Opinion for three consecutive weeks the mortgaged property was sold at public auction on January 4, 1932. As there were no other bidders, the property was bid in by and adjudicated to the defendant for P36,292.16 subject to the right of the plaintiff to redeem within one year from that date. The plaintiff had notice of the date set for the sale and admits that he did not desire to be present at the sale of his property. The plaintiff also admits that he understood that the notice of sale provided that the property would be sold in mass. Notwithstanding this knowledge he did not object to the property being sold in mass nor did he, as we have seen, appear at the sale to make use of his right to "direct the order in which the property should be sold." The plaintiff and his family, without paying rent, continued to live in the building situated on the property during the entire year in which he had a right to redeem and were living there when this case was tried in the lower court.

On January 3, 1933, the plaintiff filed the complaint in this case, just one day before the year of redemption expired, praying that the sale be declared null and void on the ground that the property was sold in mass instead of selling it by lots, as described in the above-mentioned transfer certificates of title, thereby violating Act No. 3135 and section 457 of the Code of Civil Procedure. The plaintiff also alleges this was done to prevent other bidders from being present at the sale and for the purpose of preventing him from repurchasing said lots separately and to prevent him from selling his right over all or any of them.

The lots described in the transfer certificates of title mentioned above adjoin each other and are enclosed by a fence. These lots were bought by the plaintiff at different times and the residence of the plaintiff is built upon a portion of two of them.

The defendant answered with a general denial and filed a cross-complaint of P10,000 damages, P6,150 for attorney's fees and casts alleging that the plaintiff's only object in commencing this action was to molest the defendant and extend the times of repurchase and also that the plaintiff continued to live in the dwelling house on the property in question without paying any rents therefor.

The plaintiff relies principally upon the following provisions of section 457 of the Code of Civil Procedure:

“When the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or, when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels of articles which can be sold to advantage separately, and the officer must follow such directions.”

We need not dwell on the question as to whether or not, as a practical proposition, the lots described in the transfer certificates of title could have been sold separately. However the plaintiff admitted in his testimony in the lower court that lots Nos. 4595 and 4599 could not be sold separately because of the fact that the dwelling house occupies a part of these two lots.

Section 457 of the Code of Civil Procedure is taken from section 694 of the California Code and the interpretation of that section by the courts of California may be considered controlling in this case in the absence of any holding to the contrary by this court.

The California courts have held that while the rule is to consider every fair sale as final, an execution sale may be set aside on motion in a proper case on account of some irregularity on the part of the officer

making the sale. Whether a sale should be set aside rests very largely in the discretion of the court before whom the motion is made. (Humboldt Savings & Loan Society vs. March, 136 Cal., 321.) A party can not claim an absolute right to have a sale vacated unless he shall show either from the nature of the irregularity itself or from extrinsic facts that injury was caused thereby. (Humboldt Savings & Loan Society vs. March, supra; Summerville vs. March, 142 Cal., 554.) For example, a sale in mass of separate known lots or parcels will not be set aside, unless it is made to appear that a larger sum would have been realized from a sale in parcels or that a sale of less than the whole would have brought sufficient to satisfy the debt. (Meux vs. Trezevant, 132 Cal., 487; Hudepohl vs. Liberty Hill, etc. Co., 94 Cal., 588.)

In the case of Meux vs. Trezevant, supra, the court held:

“The only pretense of injury set forth in defendant’s affidavit is, that he was injured by said sale in one lot, because it ‘tended to reduce the number of bidders’, and because ‘it deprived affiant the right to redeem either of said colony lots separately.’ This is clearly insufficient. Defendant does not show that he could redeem, or that he ever desired to or now desires to redeem, any part of said property. Courts will not set aside a sale under foreclosure for light or trivial reasons. It must appear that there has been a material departure from the mandates of the decree, or the law governing such sales, to the injury of the party applying to have the same set aside. Nor can injury be presumed from mere irregularities.”

In the case of Hudepohl vs. Liberty Hill, etc. Co., supra, the court held:

“It is not alleged that the proceeds of the sale were less than they would have been if the land had been sold in separate parcels. Unless it is made apparent to the court that a larger sum would have been realized from the sale if the property had been sold in parcels, or that the sale of less than the whole tract would have brought sufficient to satisfy the writ, the sale will not be set aside. The question is, not what would the property bring if sold now or in the future, but whether the proceeds

would have been materially increased, or the execution satisfied, by a sale of less than the whole, if the land had been offered and sold in parcels.”

In the case under consideration the plaintiff, although he was notified of the date of the sale, purposely stayed away and made no request, either verbal or in writing, that the lots described in the transfer certificates of title should be sold separately. He has not proven that if they had been sold separately a larger sum would have been realized or that the sale of less than the whole tract would have brought sufficient to satisfy the debt, nor has the plaintiff shown that he could redeem any part of said property.

As to the counterclaim, under section 469 of the Code of Civil Procedure the defendant purchaser is entitled to receive the rents of the property sold or the value of the use and occupation thereof. The defendant presented some proof to the effect that the rental value of the property was P500 per month but in view of the well-known reduced rental value of property in the City of Manila, the rent of P150 per month would be fair. No attorney's fees will be allowed. The judgment of the lower court is reversed and let judgment be entered in favor of the defendant and against the plaintiff for the sum of P150 per month as the rental value of the property in question from January 4, 1933, until the date the plaintiff vacated said property, without costs.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.