

**JOSE L. PONCE DE LEON, PLAINTIFF-APPELLANT, VS.
REHABILITATION FINANCE CORPORATION,
DEFENDANT-APPELLANT AND THIRD PARTY
DEFENDANT-APPELLANT, ROSALINA SORIANO, TEOFILA SORIANO
A...**

G.R. No. L-24571. December 18, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from a decision of the Court of First Instance of Rizal, the dispositive part of which reads:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment dismissing plaintiffs complaint with costs against plaintiff; ordering plaintiff Jose Ponce de Leon to pay the defendant RFC the amount of FIVE HUNDRED TWENTY-NINE THOUSAND TWO HUNDRED SIXTY FIVE PESOS AND FIFTY FOUR (P529,265.54) CENTAVOS, with interest at six percent Per annum from November 24, 1954 until fully paid, the further sum of ONE HUNDRED EIGHTY (P180.00) PESOS per month from May 20, 1955 until plaintiff vacates the house and lot at Taft Avenue, Pasay City, and FIVE THOUSAND (P5,000.00) PESOS as damages for the injunction and costs.

"The Court declares the mortgage of one-half of the lot covered by Original transfer certificate of title No. 8094 of the land records of Rizal Province belonging to the third party plaintiffs, namely Rosalina Soriano, Rev. Fr. Eugenio Soriano and Teofila Soriano del Rosario null and void and the sheriff's sale in favor of the RFC of said one-half share likewise null and void."[1]

As correctly set forth in said decision, the main facts are:

"On August 14, 1945, herein plaintiff Jose L. Ponce de Leon and Francisco Soriano, father of third-party plaintiffs Teofila Soriano del Rosario, Rosalina Soriano and Rev. Fr. Eugenio Soriano, obtained a loan for P10,000.00 from the Philippine National Bank (PNB), Manila, mortgaging a parcel of land situated at Barrio Ibayo, Municipality of Parañaque, Rizal, covered by original certificate of title No. 8094 of the land records of Rizal Province in the name of Francisco Soriano, married to Tomasa Rodriguez, as security for the loan (Exhibit 15-Soriano). On August 16, 1945, Ponce de Leon gave P2,000.00 to Soriano from the proceeds of the loan (Exhibit 'N'). The loan was subsequently increased to P17,500.00 and an amendment to the real estate mortgage, Exhibit '15-Soriano', was executed by Jose L. Ponce de Leon and Francisco Soriano on March 13, 1946 (Exhibit '16-Soriano').

"On May 4, 1951, Jose L. Ponce de Leon filed with the Rehabilitation Finance Corporation (RFC for short) Manila, his loan application, Exhibit '1-RFC', for an industrial loan, for putting up a sawmill, in the amount of P800,000.00 offering as security certain parcels of land, among which, was the parcel which Ponce de Leon and Soriano mortgaged to the PNB. The application stated that the properties offered for security for the RFC loan are encumbered to the PNB, Bacolod, and to Cu Unjieng Bros. The properties offered for security to the RFC were inspected by the appraisers of the latter, who submitted the following appraisals:

"1. Land

P480,228.00

"2. Building

P12,000.00

"3. Machinery & Equipment

P67,101.00

"4. Transportation Equipment

P14,00.00

Total

P573,329.00

(Exh. '6-aRFC')

"The application was approved for P495,000.00 and the mortgage contract (Exhibit 'A', also '16-RFC & '33-Soriano') was executed on October 8, 1951 by Jose L. Ponce de Leon, his wife Carmelina Russel, and Francisco Soriano. The same parties signed a promissory note (Exhibit 'A') for P495,000.00, with interest at 6% per annum, payable on installments every month for P28,831.64 in connection with the mortgage deed. Before the mortgage deed was signed, the Notary Pub-lic, Felipe Cuaderno, Jr. before whom it was acknow-ledged, translated it in Tagalog to Francisco Soriano, who thereafter affixed his signature to the document. At the time that Francisco Soriano signed the mortgage deed, Exhibit 'A', his spouse Tomasa Rodriguez was already dead leaving as her heirs, her children name-ly, Rosalina, Teofila and Rev. Fr. Eugenio Soriano, none of whom signed the said mortgage deed or the promissory note.

"The mortgage deed specifically stipulated that the proceeds thereof shall be used exclusively for the purchase of machinery and equipment, construction of buildings and the payment of obligations and that the release of the amounts loaned shall be at the discretion of the RFC. In view of these conditions, the RFC paid Ponce de Leon's obligations of P100,000.00 to the PNB; P30,000.00 to Cu Unjieng Bros; and P5,000.00 to Arturo Colmenares. From the balance of P360,000.00, the sum of P352,000.00 was released to Jose L. Ponce de Leon at various amounts during the period from December, 1951 to July 1952. The checks covering these releases were issued to Jose L. Ponce de Leon in view of the authority given to him in writing by Francisco Soriano and Carmelina Russell (Exhibit '33-A-Soriano', Exhibit 'A' and Exhibit '16-RFC'),

"On March 12, 1952, Jose L. Ponce de Leon and his wife Carmelina Russell executed an addendum to the chattel mortgage for machineries and equipments (Exhi-bit "F").

"None of the amortization and interests which had become due was paid and, for this reason, the RFC took steps for the extra-judicial foreclosure of the mortgaged properties consisting of real estates and the sawmill and its equipments of Ponce de Leon situated in two places in Samar. The RFC was the purchaser of all the mortgaged properties in the en-suing sheriff's sales, with the exception of two parcels of land situated in Bacolod City which were purchased by private individuals. Many items of the mortgaged machineries and equipments could not be found. The parcels of land mortgaged were sold as follows:

"1) Nine parcels at Bacolod City. . .

P78,800.00

"2) Two parcels "acquired by private individuals.

P 5,790.00

"3) Two parcels at Pasay City

with improvements.

P15,000.00

"4) The land of Soriano at

Parañaque, Rizal.

P10,000.00

"5) The Machineries & equip-

ments that were left.

P 6,000.00

"The Sheriff sold the land covered by original certificate of Title No. 8094 in the name of Francisco Soriano, married to Tomasa Rodriguez, on June 15, 1954 and the deed of sale, dated April 19, 1955 was executed by the sheriff in favor of the purchaser thereof, the RFC, including all the other properties sold (Exhibit '15-RFC; also '54-Soriano').

"Previous to the expiration of the one-year period of redemption, Francisco Soriano, through Teofila Soriano del Rosario offered to repurchase the Soriano lot for P14,000.00 and on June 14, 1955, the last day for the redemption of the lot, Francisco Soriano, in company with his daughter, Rosanna and Teofila, went to see Mr. Bernardo, Chief of the assets department of the RFC, and offered to redeem said lot for P14,000.00 but the offer was rejected and they were told to participate in the public sale of the land to be conducted by the RFC. Jose L. Ponce de Leon did not offer to redeem the mortgaged properties sold at anytime before the expiration of the period of redemption.

"The RFC scheduled a public sale of the lot registered in the name of Francisco Soriano and of the other lots which the RFC acquired in the Sheriff's sale for February 20, 1956 in view of the inability of Ponce de Leon or Soriano to legally redeem the properties sold by the Sheriff within the one year period after the sale.

"On February 18, 1956, Jose L. Ponce de Leon instituted the present action alleging that there was delay in the releases of the amount of the loan; that the RFC withheld the amount of P19,000.00 from the loan until it had verified whether Ponce de Leon had still an unpaid indebtedness to the defunct Agricultural and Industrial Bank, the AFC's predecessor, and this was paid only after one year had passed; that the typhoon in October and November, 1952 had caused destructions to his sawmills and hampered his operations for which reason, he asks, in his complaint, that the amortizations on his obligations which became due since October, 1952 be declared extinguished; that the sheriff's sales be declared null and void because the properties were sold at grossly inadequate prices and that said sales were not conducted in accordance with law; that the RFC be compelled to account for his machineries and equipments at his lumber mill in Calbayog and to reimburse him for the value of the unaccounted machineries and equipments; that the RFC be ordered to pay him actual and moral damages for P105,000.00 and costs. De Leon asked for the issuance of a writ of preliminary injunction to restrain the RFC from carrying out its contemplated public sale. The Court set the petition for injunction for hearing but no one appeared for the RFC at the hearing thereof so that the Court had to issue the preliminary injunction prayed for. De Leon caused notice of lis pendens to be recorded in relation with this case.

"The RFC filed its answer sustaining the legality of the mortgage and Sheriff's sales and counter-claimed that Ponce de Leon be ordered to pay the deficiency claim representing the balance of the latter's indebtedness, rental of the lot and house at Taft Avenue, Pasay City occupied by Ponce de Leon and damages.

"Subsequent to the filing of Ponce de Leon's complaint against the RFC, Francisco Soriano wrote a letter, dated February 20, 1956, to the President asking the latter's intervention so that the projected sale on the same date to be conducted by the RFC may be suspended insofar as the lot in his name is concerned and that he be allowed to redeem it (Exhibit '27-Soriano'). This letter was referred by the Executive Office to the RFC, which sent a letter, Exhibit '29-Soriano', to Francisco Soriano informing the latter that he could redeem his former property for not less than its appraised value of P59,647.05, payable 20% down and the balance in ten years, with 6% interest. Soriano did not redeem the lot under the conditions of the RFC. He then filed a third-party complaint in this case with the RFC and Jose L. Ponce de Leon as the third-party defendants. Due to the death of Francisco Soriano, he was substituted as third-party plaintiff by his children, namely, Teofila Soriano del Rosario, Rosalina Soriano and Rev. Fr. Eugenio Soriano.

"The Sorianos contend that the mortgage in favor of the RFC and promissory note signed by Francisco Soriano lacked the latter's consent and was without consideration insofar as Francisco Soriano is concerned and hence null and void as to him and his children; that the lot covered by original certificate of title No. 8094 in the name of Francisco Soriano belonged to the conjugal partnership of the latter and his wife, Tomasa Rodriguez, now deceased, and since the latter was already dead when the mortgage was executed and her children who have thus inherited her share have not signed the mortgage contract and promissory note, at least, the one-half share of the lot belonging now to the Soriano sisters and brother, the third-party plaintiffs, have not been legally included in the mortgage to the RFC so that the latter had not acquired said one-half share in the sheriff's sale. The Sorianos further ask that they be allowed to redeem the remaining one-half share, that which belonged to their father, for one-half of P10,000.00 which was the amount for which the RFC acquired the whole lot in the sheriff's sale. The third party-plaintiffs also ask that Ponce de Leon be ordered to reimburse them for whatever amount they may use in redeeming the lot and expenses incident thereto and that Ponce de Leon and the RFC be made to pay them moral damages which their father suffered and attorney's fees.

"Answering the third-party complaint, the RFC and Ponce de Leon affirm the legality of the mortgage deed insofar as Soriano is concerned. The RFC further contends that the mortgage was binding on the whole Soriano lot and that there was no valid redemption of this lot.

"Ponce de Leon interposed a counterclaim for various sums of money allegedly received from him by Francisco Soriano and the present third-party plaintiffs."¹

In due course, the lower court rendered judgment the dispositive part of which is quoted at the beginning of this decision. Said court held that the typhoons in October and November 1952 did not relieve the plaintiff from his obligations under the promissory note and the deed of mortgage in favor of the RFC; that the sheriff's sale of the mortgaged properties is valid; that the RFC need not account for the machineries and equipment of the sawmill in Samar or reimburse the value of such machinery and equipment as may be unaccounted for, they having become property of the RFC, owing to plaintiff's failure to exercise the right of redemption in accordance with law; that neither may he recover damages from the RFC for the alleged delay in the releases made by the same, since their contract stipulates that the proceeds of the loan shall be released at the discretion of the Mortgagee and plaintiff's offer of redemption came long after the expiration of the period therefor, and was not for the full amount of plaintiff's liability, which he, moreover, asked to be reduced and wanted to pay in installments; and that, accordingly, plaintiff has no right to recover any damages.

Upon the other hand, the court found that plaintiff should pay: (1) rentals for the use of the mortgaged property (house and lot) at Pasay City, after the title thereto had passed to the RFC, and (2) the sum of P529,265.54, representing the balance of plaintiff's obligation in favor of the RFC - which, as of November 24, 1954, amounted to P583,270.49, plus 10% thereof, as stipulated penalty, or the aggregate sum of P641,597.54 - after deducting therefrom the sum of P112,332.00 for which the mortgaged properties had been sold, (3) apart from the sum of P5,000.00, as damages for the injunction issued, at his behest, and the costs.

As regards the third party complaint of the Sorianos, the lower court: (1) overruled their claim to the effect that Francisco Soriano had signed the promissory note and the deed of mortgage in favor of the RFC without knowledge of the contents thereof and with-out any consideration therefor; but (b) held that, being registered in the name of "Francisco Soriano, married to Tomasa Rodriguez," the property covered by original certificate of title No. 8094 - here-inafter referred to as the Parañaque property - is presumed to be long to the conjugal partnership of said spouses, and that, the RFC having failed to offset this presumption, the mortgage on and the sale of the property by the sheriff are null and void as to one-half (1/2) thereof.

Moreover, the court declared: (a) that the RFC was justified in rejecting the offer, made by the Sorianos, to redeem said property for, pursuant to section 78 of Republic Act No. 337, redemption could be effected "only by paying the amount fixed in the order of execution"; (b) that plaintiff's counterclaim against the Sorianos is barred by the statute of limitations; (c) that neither may he recover damages from the Sorianos, their alleged bad faith not having been established; and (d) that, similarly, the Sorianos are not bound to pay damages to the RFC, the action of the former against the latter not being altogether unjustified.

All of the parties - namely, plaintiff, Jose Ponce de Leon, defendant, Rehabilitation Finance Corporation, hereinafter referred to as RFC (now Development Bank of the Philippines), and Rosalina Soriano, Fr. Eugenio Soriano and Teofila Soriano del Rosario, here-inafter referred to as the Sorianos - have appealed from said deci-sion.

Appeal of the Sorianos

The Sorianos maintain that the lower court erred: (1) in holding that the promissory note and the deed of mortgage executed by Francisco Soriano in favor of the RFC are valid as regards one-half of the Parañaque property; (2) in ruling that the extra-judicial sale thereof to the RFC is valid as to the aforementioned one-half of said property; (3) in not sentencing the RFC to allow the redemption of such half of said property by the Sorianos, as heirs of the deceased Francisco Soriano, for one-half of the sum of P10,000 for which the whole lot was sold to the RFC, or, at least, for the whole sum of P10,000; (4) in not declaring that section 78 of Rep. Act No. 337 is unconstitutional and in holding that the same, instead of Act No. 3135, as amended by Act No. 4118, is the law applicable to the case; (5) in considering that the case of Villar v. de Paderanga¹ is authoritative or controlling in the case at bar; (6) in not sentencing the plaintiff and the RFC to pay damages to the Sorianos; (7) in not ordering the RFC to return OCT No. 8094, covering the Parañaque property, to the Sorianos, free from any lien or encumbrance; and (8) in denying the motion for reconsideration of the Sorianos.

The latter's first assignment of error is predicated upon the theory that, when the promissory note and the deed of mortgage in question were executed by Francisco Soriano, he was somewhat absent-minded, owing to senility, he being then a septuagenarian, apart from illiterate, for he could write only his name; that he was persuaded to sign said promissory note and deed of mortgage thru fraud, deceit and undue influence, and did not know the true nature of these instruments when he affixed his signatures thereon; and that said instruments are also null and void for lack of cause and consi-deration. In this connection, the appealed decision has the following to say:

"The third-party plaintiffs ask that the mort-gage deed and promissory note be declared null and void with respect to Francisco Soriano for lack of consent and consideration. It is claimed that Francisco Soriano was made to believe by Ponce de Leon when he signed, the mortgage deed and the promissory note that these were documents releasing his land from the previous mortgage in favor of the PNB and that Francisco Soriano did not receive a single centavo out of the RFC loan.

"The principal witness on the above allegation of the third-party plaintiffs is Rosalina Soriano, who testi-fied that her father, Francisco was an old man who was absent-minded; that in 1945, Ponce de Leon merely bor-rowed her father's certificate of title on the pretext that he would see if it were valid; that she gave it to

Ponce de Leon who never returned the certificate and it turned out that the latter mortgaged it to the PNB by deceiving her father in signing the mortgage contract; that in 1951, her father received a sheriff's notice that the land would be foreclosed; that her father went to see Ponce de Leon in Negros but the latter assured him that nothing would happen to his land; that in October, 1951, she and her father went to see Ponce de Leon; that when the latter told her father that the property was mortgaged to the RFC, her father got angry at Ponce de Leon saying that the latter fooled him but Ponce de Leon' assured him that he would redeem the land but he failed to do so.

"Ponce de Leon denied having deceived Francisco Soriano into signing the mortgage deed covering his land, saying that the transaction was with the full and complete knowledge and understanding of Francisco Soriano. He was supported by Felipe Cuaderno, Jr., the Notary Public, who notarized the mortgage deed, who said that he explained and translated into Tagalog, a language known and spoken by Francisco Soriano, the mortgage deed.

"The fact that Francisco Soriano may have been absent-minded could not be said to have the effect of vitiating his consent to the mortgage deed because the execution and signing of a contract is not a matter that concerns past events in which absent-mindedness may be taken into account. Besides, the testimony of Rosalina Soriano to the effect that her father told Ponce de Leon that the latter fooled him shows that the old man Soriano could remember past events, for if truly absent-minded, Francisco would not recollect what he claims to be what really took place at the RFC office as testified to by Rosalina.

"Neither could Francisco Soriano be considered feeble-minded if we believe the testimony of Rosalina which shows Soriano's determination to see to it that the wrong done him was righted and that his property may not be taken away from him, for according to Rosalina, he even went to Negros alone to see Ponce de Leon he received the Sheriff's notice of foreclosure and as shown by his alleged going to see Ponce de Leon a number of times about his land and of his enlisting the aid of Ramon Lacson.

"The Sorianos stress that, according to Felipe Cuaderno, Jr., the Notary Public, when the latter asked Francisco Soriano, after he had translated the mortgage deed into Tagalog if he (Francisco) understood it, it was Ponce de Leon who said that the old man already (k)new it. But, granting that this was what happened, yet, Francisco Soriano would certainly have protested against the statement of Ponce de Leon if Francisco did not really know what the transaction was about or he would have told Cuaderno that the document was not in accordance with the agreement between him and Ponce de Leon considering that the document was already translated to the old man by Cuaderno in the Tagalog language which Soriano understood.

"Besides, if Ponce de Leon really deceived Francisco Soriano into signing the mortgage deed and promissory note so much so that in October, 1951, the old man Soriano was so angry at Ponce de Leon that he told the latter that he fooled him as testified to by Rosalina Soriano, then why was it that Ponce de Leon was made one of the sponsors of the thanksgiving mass of Neo-Prysbeter Rev. Fr. Eugenio Soriano, the old man's son and one of the present third-party plaintiffs? The conduct of the Sorianos in making Ponce de Leon one of the sponsors in the thanks-giving mass of Rev. Fr. Eugenio Soriano in which Ponce de Leon 'spent a considerable amount for the big feast that followed the mass is inconsistent with the Sorianos' claim that Ponce de Leon had hoodwinked Francisco Soriano into signing the mortgage instrument and the promissory note.

"Moreover, the mere oral unsupported testimony of Rosalina Soriano, an interested party and one of the plaintiffs herein, is not sufficient to overcome the legal presumption of the regularity of the mortgage deed, a contract celebrated with all the legal requisites under the safeguard of a notarial certificate (Naval, et al. v. Enriquez, 3 Phil. 670-72). Such unsupported testimony of the interested party Rosalina Soriano is not that clear, strong and convincing evidence beyond mere preponderance of evidence, required to show the falsity or nullity of a notarial document (Sigue, et al., v. Escaro, CA, 53 Q. C. 1161; Jocson v. Ratacion, G. R. No. 41687; Palanca v. Chillanchin v. Coquinco, G. R. No. L-1355; Robinson v. Villafuerte, 18 Phil. 171).

"With reference to the contention that there was no consideration received by Francisco Soriano out of the

mortgage contract and the promissory note executed in connection therewith, this is a matter which concerned merely Francisco Soriano and Jose L. Ponce de Leon for Francisco Soriano had expressly in writing (Exhibit '33-a-Soriano') authorized Jose L. Ponce de Leon to have the check or checks covering the amount of the mortgage is-sued in the name of said Jose L. Ponce de Leon. What-ever arrangements the latter and Francisco Soriano may have had with respect to the amounts thus given by the RFC on account of the mortgage is not the concern of the RFC if Ponce de Leon did not in fact give any portion of the amount to Francisco Soriano. At any rate, there is ample evidence to show that Francisco Soriano received part of the consideration of the loan from the RFC. It will be recalled that part of this loan was paid for the obligation of Francisco Soriano and Ponce de Leon to the Philippine National Bank secured by a mortgage of the lot in the name of Francisco Soriano. That Francisco Soriano received portions of this PNB loan from Ponce de Leon is shown by the fact that on August 16, 1945, Francisco Soriano received the amount of P2,000.00 from Ponce de Leon, evidenced by the receipt exhibit 'N', and this amount must have been part of the P10,000.00 consideration of the PNB mortgage because this mortgage was executed on August 11, 1945 or two days before Soriano received from Ponce de Leon the amount of P2,000.00 on August 16, 1945. And two days thereafter, on August 18, 1945, Francisco Soriano again received from Ponce de Leon the amount of P350.00 as shown by the receipt exhibit '0-3' and, on April 27, 1945, the amount of P1,000.00 was received by Francisco Soriano from Ponce de Leon as shown by his receipt exhibit '0-1' to pay the mortgage on his lot to Apolonio Pascual. On March 12, 1952, Francisco Soriano received the amount of P3,000.00 from de Leon as shown by the check exhibit 'X-2' and on June 3, 1952, the amount of P50.00 as shown by the check exhibit 'X-6' and P200.00 on October 22, 1952 as shown by the check exhibit 'X-7'. Rosanna Soriano herself received P50.00 on March 30, 1952 from Ponce de Leon as shown by the check marked Exhibit 'X-3' and third-party plaintiff Rev. Eugenio Soriano received P100.00 on March 3, 1952 as shown by the check exhibit 'X-1' and P50.00 on March 31, 1952 as shown by exhibit 'X-4'. There is therefore no grounds for declaring the mortgage contract and promissory note invalid for lack of consideration insofar as Francisco Soriano and his children are concerned."¹

The facts thus relied upon by His Honor, the Trial Judge, are borne out by the record, and We are fully in accord with the conclusions drawn therefrom.

In support of their second assignment of error, the Sorianos maintain that the sum of P10,000, for which the Parañaque property was sold to the RFC, is ridiculously inadequate, considering that said property had been assessed at P59,647.05. This pretense is devoid of merit, for said property was subject to redemption and:

"x x x where there is the right to redeem x x x - inadequacy of price Should not be material, because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale."²

Then, again, as the trial court had correctly observed:

"But, mere inadequacy of the price obtained at the sheriff's sale unless shocking to the conscience will not be sufficient to set aside the sale if there is no showing that, in the event of a regular sale, a better price can be obtained. The reason is that, generally, and, in forced sales, low prices are usually offered (1 Moran's Rules of Court, pp. 834-835). Considering that in Gov't of P. I. v. Sorna, G. R. No. 32196, wherein property worth P120,000.00 was sold for only P15,000.00, in Philippine National Bank v. Gonzales, 45 Phil. 693, wherein property valued at P45,000.00 was sold for P15,000.00 and in Cu Unjieng & Sons v. Mabalacat Sugar Co. 58 Phil. 439, property worth P300,000.00 to P400,000.00 was sold for P177,000.00, the Court cannot consider the sale of the Bacolod properties, the Taft Avenue house and lot and the Parañaque property of the Sorianos null and void for having been sold at inadequate prices shocking to the conscience and there being no showing that in the event of a resale, better prices can be obtained."¹

The third, fourth and fifth assignments of error of the Sorianos refer to the amount for which they feel entitled to redeem the afore-mentioned property.

It will be recalled that, before the expiration of the redemption period, Teofila Soriano del Rosario offered to repurchase said pro-erty for P14,000; that she and her sister Rosalina reiterated the offer on the last day of said period; and that .the offer was rejected by the RFC, whose action was upheld by the lower court, inasmuch as sec. 78 of Rep. Act 337 provides that, "(i)n the event of foreclosure x x x the mortgagor or debtor whose real property has been sold at public auction x x x for the x x x payment of an obligation to any bank, banking, or credit institution, x x x shall have the right x x x to re-deem the property by paying the amount fixed by the court in the order of execution, x x x, " not the amount for which it had been pur-chased by the buyer at public auction. We have already declared that "x x x (o)nly foreclosure of mortgages to banking institutions (including the Rehabilitation Finance Corporation) and those made extrajudicially are subject to legal redemption, by express provision of statute, x x x"2 and, although neither an ordinary bank nor the RFC was involved in the case in which this pronouncement had been made, the same was relevant to the subject-matter of said case and to the issue raised therein. At any rate, We reiterate the afore-mentioned pronouncement, it being in accordance with law, for, pursuant to Rep. Act No. 337:

"x x x The terms 'banking institution' and 'bank', as used in this Act, are synonymous and in-terchangeable and specifically include banks, bank-ing institutions, commercial banks, savings banks, mortgage banks, trust companies, building and loan associations, branches and agencies in the Philippines of foreign banks, hereinafter called Philippine branches, and all other corporations, companies, partnerships; and associations performing banking functions in the Philippines."1

The Sorianos insist that the present case is governed, not by Rep. Act No. 337, but by Act No. 3135, as amended by Act No. 4118 - pursuant to which, in relation to section 465 of Act No. 190, the re-demption may be made by "paying the purchaser the amount of his purchase," with interest and taxes - the deed of real estate mort-gage in favor of the RFC having allegedly been executed and the aforementioned property having been sold pursuant to said Acts Nos. 3135 and 4118.

The conclusion drawn by the Sorianos from these facts is untenable. As set forth in its title, Act No. 3135 was promulgated "to regulate the sale of property under special powers inserted in or annexed to real estate mortgages," Section 6 thereof provides that in all cases of "extrajudicial sale x x x made under the special power he reinbefore referred to," the property sold may be redeemed within "one year from and after the date of the sale x x x " Act No. 4118 amended Act No. 3135 by merely adding thereto three (3) new sections. Upon the other hand, Rep. Act No. 337, otherwise known as "The General Banking Act," is entitled "An Act Regulating Banks and Banking Institutions and for other purposes." Section 78 thereof limits the amount of the loans that may be given by banks and banking or credit institutions on the basis of the appraised value of the property given as security, as well as provides that, in the event of foreclosure of a real estate mortgage to said banks or institutions, the property sold may be redeemed "by paying the amount fixed by the court in the order of execution," or the amount judicially adjudicated to the creditor bank. This provision had the effect of amending section 6 of Act No. 3135, insofar as the redemption price is concerned, when the mortgagee is a bank or a banking or credit institution, said section 6 of Act No. 3135 being, in this respect, inconsistent with the above-quoted portion of section 78 of Rep. Act No. 337. In short, the Parañaque property, was sold pursuant to said Act No: 3135, but the sum for which it is redeemable shall be governed by Rep. Act No. 337, which partakes of the nature of an amendment to Act No. 3135, insofar as mortgages to banks or banking or credit institutions are concerned; to which class the RFC belongs. At any rate, the conflict between the two (2) laws must be resolved in favor of Rep. Act No. 337, both as a special and as the subsequent legislation.1

The sixth, seventh and eighth assignments of error made by the Sorianos are mere consequences of those already disposed of. Hence, no further discussion thereof is necessary.

Plaintiff's Appeal

Plaintiff Ponce de Leon alleges that the lower court has erred: (1) "in not setting aside the foreclosure sales on the mortgage contract dated October 8, 1951"; (2) "in stating that the proceeds of the foreclosure sales were conscionable"; (3) in not granting Ponce de Leon's claim for adjustment and not "giving him a reasonable time to pay whatever obligations he may have"; (4) in not granting him damages nor directing the return of his properties; (5) "in not ordering a new trial for the purpose of adjusting" his "obligations and determining the terms and conditions of his obligation"; and (6) in not granting his claim against the Sorianos.

With respect to his first assignment of error, plaintiff maintains that his promissory note Exhibit A was not yet overdue when the mortgage was foreclosed, because the installments stipulated in said promissory note have "no fixed or determined dates of payment," so that the note is unenforceable and "the RFC should have first asked the court to determine the terms, conditions and period of maturity thereof."

In this connection, it should be noted that, pursuant to Exhibit A, the total sum of P495,000 involved therein shall be satisfied in quarterly installments of P28,831.64 each - representing interest and amortization - and that, although the date of maturity of the first installment was left blank, the promissory note states that the "date of maturity (was) to be fixed as of the date of the last release," completing the delivery to the plaintiff of the sum of P495,000 lent to him by the RFC. He now says that this sum of P495,000 has not, as yet, been fully released by the RFC. But, this is contrary to the facts of record, for, during the trial, his counsel, Atty. Jose Orozco, made the following admission:

"Out of the loan of P495,000.00, the following were paid to the creditors of Jose Ponce de Leon: P100,000.00 to the PNB, P30,000.00 to Cu Unjieng Bros, P5,000.00 to Arturo Colmenares, P1,000.00 to Lorenzo Balagtas. The total amount paid to the creditors is P136,000.00 which were taken out of the proceeds of P495,000.00. The rest were all paid in the name of Jose Ponce de Leon."¹

In short, part of the sum of P495,000 had been delivered by the RFC to the creditors of the plaintiff and Francisco Soriano, as agreed upon by them, in payment of their outstanding obligations, and the balance of said sum of P495,000 was turned over to the plaintiff, with the written authorization and conformity of Francisco Soriano. This is borne out by the fact that, prior to the institution of this case, plaintiff had not complained of failure of the RFC to fully release the aforementioned sum of P495,000. Indeed, in his own complaint herein, he merely alleged a "delay in the release." Even so, he impliedly admitted that the first installment was due in October 1952 - or, more specifically, on October 24, 1952, this being the date given therefor in the letter-demands of the RFC, the accuracy of which were not questioned by the plaintiff - so that the last release made by the RFC to complete the sum of P495,000 must have taken place on July 24, 1952, although, in answer to a question propounded to him, by his own counsel, as regards the date he "received the total amount granted by the RFC," plaintiff said - on the witness stand - he "believed that it was in the last part or quarter of 1953." At this juncture, it is noteworthy that plaintiff claims the right to a suspension of payment or an extension of the period to pay the RFC owing to the typhoons that had lashed his saw-mill in October and November 1952, thus indicating clearly that the amount of the loan extended to him and Francisco Soriano had then been fully released by the RFC three (3) months before October 1952 and that the first installment under the promissory note Exhibit A was due that month, as claimed by the RFC.

At any rate, Annex A, in effect, authorized the RFC to fix the date of maturity of the installments therein stipulated, which is allowed by the Negotiable Instruments Law² and when a promissory note expresses "no time for payment, it is deemed "payable on demand."¹

Under his second assignment of error, plaintiff maintains that the aggregate price of P112,332.00, for which the

mortgaged properties had been sold at public auction, is unconscionable, said properties being allegedly worth P1,202,976. This premise is inaccurate.

It should be noted that plaintiff and Francisco Soriano were granted a P495,000 loan on the security, not only, of the existing properties offered as guarantee, but, also, on that of assets - appraised at P570,000 - yet to be acquired by plaintiff, partly with money thus received from the RFC and partly with his own funds. After obtaining said loan and receiving the amount thereof, less the sum of P136, 000 applied to the payment of outstanding obligations, plaintiff failed to purchase the machinery and equipment he had promised to get, or to set up the constructions he had undertaken to make. Moreover, the RFC found that the mortgaged lots in the cities of Pasay and Bacolod, which were originally appraised at P492,288.00, were actually worth P172,530.00 only. Again, a good part of the machinery and equipment existing in one of the mortgaged lands, when it was inspected before the granting of the loan, were subsequently lost or missing, and those that remained were, at the time of the sale to the RFC, in bad shape, so that the appraised value thereof was then estimated at P10,000 only. Under these circumstances, it is clear that the lower court did not err in approving the sale of the mortgaged properties for the aggregate sum of P112, 332.

As regards his third assignment of error, it is urged by the plaintiff that he is entitled to a "suspension of payment," or a postponement of the date of maturity of his obligation to pay, in view of the typhoons that had "practically wiped out" his sawmill in Samar during the months of October and November 1952. This claim is predicated upon Article 1174 of our Civil Code, reading:

"x x x Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable."

Plaintiff cannot avail of the benefits of this provision since he was not bound to deliver the aforementioned sawmill, or any other the specific thing damaged or destroyed by typhoons, to the RFC. His obligation was merely generic, namely, to pay certain sums of money to the RFC, at stated intervals. As His Honor, the Trial Judge, had aptly put it:

"x x x in the instant case, 'there was an obligation on the part of the debtor to pay his loan; independently of the purpose for which the money loaned, was intended to be used and this obligation to pay continues to subsist notwithstanding the fact that it may have become impossible for the debtor to use the money loaned for the particular purpose that was intended (Milan v. Rio y Olabarrieta, 45 Phil. 718). There is hence no ground for declaring the amortizations due on the principal loan since October, 1952 as extinguished due to fortuitous event or to grant plaintiff a reasonable time to pay the due amortizations as asked for by Ponce de Leon in his, complaint."¹

Being mere corollaries to his first three assignments of error, which cannot be sustained, plaintiff's fourth, fifth and sixth assignments of error must have the same fate.

Defendant's Appeal

The RFC contends that the lower court erred: (1) in holding that the Parañaque property is presumed to belong to the conjugal partnership of Mr. and Mrs. Francisco Soriano; (2) in failing to give due weight to the testimony of Gregorio Soriano, and in holding that the same is insufficient to overcome the presumption in favor of the conjugal nature of said property; (3) in failing to consider that the Sorianos are now estopped from questioning the validity of the mortgage on and the foreclosure sale of said property; (4) in annulling the mortgage insofar as one-half of said property is concerned, despite the finding that part of the proceeds of the RFC loan was paid to settle the PNB loan secured by the same property; and (5) in holding that the mortgage thereon and the sheriff's

sale thereof to the RFC are null and void as regards one-half of said property. These assignments of error may be reduced to one, namely, that the lower court erred in voiding the sale to the RFC of the Parañaque property, upon the ground that the same formed part of the conjugal partnership of Mr. and Mrs. Francisco Soriano.

In this connection, it appears that the property was registered in the name of "Francisco Soriano, married to Tomasa Rodriguez," and that based upon this fact alone - without any proof establishing satisfactorily that the property had been acquired during coverture the lower court presumed that it belongs to the conjugal partnership of said spouses. We agree with the RFC that the lower court has erred in applying said presumption.

We should not overlook the fact that the title to said property was not a transfer certificate of title, but an original one, issued in accordance with a decree which, pursuant to law, merely confirms a pre-existing title.¹ Said original certificate of title does not establish, therefore, the time of acquisition of the Parañaque property by the registered owner thereof.

Then, again, the lower court applied said presumption, having in mind, presumably, Article 160 of our Civil Code, which reads:

"x x x All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."

This provision must be construed in relation to Articles 153 to 159 of the same Code, enumerating the properties "acquired x x x during the marriage" that constitute the conjugal partnership. Consistently therewith, We have held that "the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. In other words, proof of acquisition during coverture is a condition sine qua non for the operation of the presumption in favor of conjugal partnership."¹ It had, earlier, been declared,² that "(t)he presumption under Article 160 of the Civil Code refers to property acquired during-the marriage x x x." We even, added that, there being "no showing as to when the property in question was acquired x x x the fact that the title is in the wife's name alone is determinative." This is borne out by the fact that, in the previous cases applying said presumption,³ it was duly established that the property in question therein had been acquired during coverture. Such was, also, the situation obtaining in *Servidad v. Alejandrino*⁴ cited in the decision appealed from.

The case at bar is differently situated. The Sorianos have not succeeded in proving that the Parañaque property was acquired "during the marriage" of their parents. What is more, there is substantial evidence to the contrary.

Gregorio Soriano testified that his first cousin, Francisco Soriano, had acquired said property from his parents, long before he got married. In this connection, the lower court, however, said that:

"x x x the credibility of this witness is subject to doubt for it was shown that he had an improper motive in testifying against the third-party plaintiffs because he had a niece who was prosecuted by the third-party plaintiffs for estafa, x x x."⁵

This observation is, to our mind, hardly justifiable. To begin with, when counsel for the Sorianos asked the witness whether or not his grandchild or grandniece Flordeliza Clemente had been accused of "estafa" by the Sorianos, counsel for the RFC objected thereto, and the court sustained the objection, upon the ground that the question was "irrelevant." As a consequence, there is no evidence of the prosecution of Flordeliza Clemente by the Sorianos. What is more, the ruling of the court declaring the matter "irrelevant" to the present case rendered it unnecessary for the RFC to prove that said prosecution - if it were a fact - had nothing to do with the testimony of Gregorio Soriano. It would, therefore, be less than fair to the RFC to draw an inference adverse thereto resulting from the absence of evidence to this effect. At any rate, said prosecution does not necessarily warrant the conclusion that Gregorio Soriano was impelled by an "improper motive" in testifying as he did. After all, the

Sorianos are, likewise, nieces of Gregorio Soriano and he was not the party allegedly accused by them.

Again, this witness testified in a straightforward manner, and disclosed a good number of details bearing the earmarks of veracity. What is more, his testimony was corroborated, not only by Felipe Cuaderno, Jr. and OCT No. 8094, but, also, by the testimony of third-party plaintiff Rosalina Soriano. Indeed, Felipe Cuaderno, Jr. - an assistant attorney and notary public of the RFC, before whom the deed of mortgage was acknowledged - testified that, in a conference he had before the execution of the promissory note and the deed of mortgage in favor of said institution, Francisco Soriano assured him that the Parañaque property was "his own separate property, having acquired it from his deceased father by inheritance and that his children have nothing to do with the pro-property." This was, in effect, confirmed by no less than Rosalina Soriano, for she stated, on cross-examination, that her father, Francisco Soriano, "was born and x x x raised" in said property, so that - contrary to her testimony in chief - he could not have told her that he and his wife had bought it, as the Sorianos would have us believe.

Needless to say, had the property been acquired by them during coverture, it would have been registered, in the name not of "Francisco Soriano, married to Tomasa Rodriguez," but of the spouses "Francisco Soriano and Tomasa Rodriguez." In *Litam v. Espiritu*,¹ We quoted with approval the following observation made in the decision under review therein:

"Further strong proofs that the properties in question are the paraphernal properties of Marcosa Rivera, are the very Torrens Titles covering said pro-properties. All the said properties are registered in the name of 'Marcosa Rivera, married to Rafael Litam.' This circumstance indicates that the properties in question belong to the registered owner, Marcosa Rivera, as her paraphernal properties, for if they were conjugal, the titles covering the same should have been issued in the names of Rafael Litam and Marcosa Rivera. The words 'married to Rafael Litam' written after the name of Marcosa Rivera, in each of the above mentioned titles are merely descriptive of the civil status of Marcosa Rivera, the registered owner of the properties covered by said titles."

The records further show that on August 16, 1945 - or two (2) days after the execution of the deed of mortgage for P10,000 in favor of the PNB - Francisco Soriano received P2,000 from plaintiff herein; that, early in 1951, Francisco Soriano received a letter informing him that the PNB mortgage on the Parañaque property would be foreclosed, unless the debt guaranteed therewith were settled; that, accordingly, his children came to know of the mortgage in favor of the PNB; that on October 8, 1951, said mortgage was transferred to the RFC; that, thereafter, or from March to October 1952, Francisco Soriano and his children, Rosalina Soriano and Eugenio Soriano, received several sums of money, aggregating P3,450, from plaintiff herein; that the latter, moreover, spent over P6,000 on the occasion of the ordination of third-party plaintiff, Eugenio Soriano, as a priest, on April 20, 1952; that plaintiff, also, paid the bills of Francisco Soriano in the Singian Clinic when he fell sick in 1953; and that the former had, likewise, paid the real estate tax on the Parañaque property from 1947 to 1952.

Under these circumstances, it is difficult to believe that the Sorianos did not know then of the mortgage constituted by Francisco Soriano, on October 8, 1951, in favor of the RFC. In fact, Rosalina Soriano testified that when, that month, Francisco Soriano and she conferred with the plaintiff, he stated that the Parañaque property was mortgaged to the RFC, whereupon her father got angry at the plaintiff and said that he had fooled him (Francisco Soriano). Being thus aware of said mortgage since October 1951, the Sorianos did not question its validity - until January 12, 1957, when they filed in this case their third-party complaint in intervention - as regards, at least, one-half of the Paranaque property, which they now claim to be their mother's share in the conjugal partnership. Worse still, after the foreclosure sale in favor of the RFC, they tried to redeem the property for P14,000, and, when the RFC did not agree thereto, they even sought the help of the Office of the President to effect said redemption.

Their aforementioned failure to contest the legality of the mortgage for over five (5) years and these attempts to

redeem the property constitute further indicia that the same belonged exclusively to Francisco Soriano, not to the conjugal partnership with his deceased wife, Tomasa Rodriguez. Apart from the fact that said attempts to redeem the property constitute an implied admission of the validity of its sale - and, hence, of its mortgage to the RFC - there are authorities to the effect that they bar the Sorianos from assailing the same.

"x x x defendants, by their repeated requests for time to redeem had impliedly admitted - and were estopped to question - the validity and regularity of the Sheriff's sale."1

"The petitioner himself believed that the company had a right to cancel, because in March, 1943, i.e., after the cancellation, he proposed the repurchase of the property, and the company agreed to resell it to him x x x. Unluckily he could make no down payment and the repurchase fell through. Wherefore, it is now too late for him to question the cancellation, inasmuch as he practically ratified it, x x x."2

"The fact that Mallorca failed to exercise right of redemption, which she sought to enforce in a judicial court, ends her interest to the land she claims, and, doubtless, estops her from denying PNB's mortgage lien thereon."3

It is thus clear that the lower court erred in annulling the RFC mortgage on the Parañaque property and its sale to the RFC as regards one-half of said property, and that the decision appealed from should, accordingly, be modified, by eliminating therefrom the second paragraph of its dispositive part, quoted earlier in this decision.

With this modification and that of other pertinent parts of the decision appealed from, the same is hereby affirmed in all other respects, with the costs of this instance against plaintiff, Jose Ponce de Leon and third-party plaintiffs, Rosalina Soriano, Teofila Soriano del Rosario and Father Eugenio Soriano.

IT IS SO ORDERED.

Reyes, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Dizon and Makasiar, JJ., on leave.

[1] Record on Appeal, p. 133.

1 Record on Appeal, pp. 103-112.

1 97 Phil. 604, 609.

1 Record on Appeal, pp. 120-127. Underscoring ours.

2 Barrozo v. Macaraeg, 83 Phil. 378, 381. Underscoring ours.

1 Record on Appeal, pp. 115-116. Underscoring ours.

2 Villar v. de Paderanga, 97 Phil. 604, 609.

1 Rep. Act No. 337, Sec. 2. Underscoring ours.

1 Nepomuceno v. RFC (DBP), G.R. No. L-14897, November 23, 1960.

1 T.s.n. pp. 4-5-, hearing of Jan. 3, 1957. Underscoring ours.

2 Sec. 13. When date may be inserted. - Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but

as to him the date so inserted is to be regarded as the true date.

Sec. 14. Blanks, when may be filled. - Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

1 Sec. 7. When payable on demand. - An instrument is payable on demand?

(a) Where it is expressed to be payable on demand, or at sight or on presentation; or

(b) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

1 Record on Appeal, p. 114. Underscoring ours.

1 Section 38, Act 496, *Maloles v. Director of Lands*, 25 Phil. 548, *Verzosa v. Nicolas*, 29 Phil. 425; *Government v. Triño*, 50 Phil. 708; *Misamis Lumber Co. v. Director of Lands*, 57 Phil. 881.

1 *Cobb-Perez v. Lantin*, G.R. No. L-22320, May 22, 1968.

2 *Maramba v. Lozano*, G.R. No. L-21533, June 29, 1967.

3 *Flores v. Flores*, 48 Phil. 288, 289-290; *Pratts v. Menzi*, 53 Phil. 51, 53; *Espiritu v. Bernardino*, 58 Phil. 902; - *Benayides v. Tordilla*, 59 Phil. 918; *Reyes v. Ilano*, 63 Phil. 629, 639; *Commonwealth v. Sandiko*, 72 Phil. 258, 259; *Guinoo v. Court of Appeals*, 97 Phil. 235, 238.

4 52 O. G. 2031.

5 Record on Appeal, pp. 128-129.

1 100 Phil. 364, 376., Underscoring ours.

1 *Tiaoqui v. Chaves*, G.R. No. L-10086, May 20, 1957, quoting from 59 C. J. S. p. 1372: "By claiming a right to redeem, or availing him-self of a statutory stay, or by seeking to impress a trust on the property in the hands of the purchaser, one affirms the validity of the sale and may not assail it; x x x." Underscoring ours.

2 *Tolentino v. Philippine Land Improvement Co., Inc.*, G.R. No. L-2469, September 30, 1950 (Unreported). Underscoring ours.

3 *Philippine National Bank v. Mallorca*, G.R. No. L-22538, October 31, 1967. Underscoring ours.

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