

RODRIGO ENRIQUEZ, ET AL., PLAINTIFFS AND APPELLEES, VS. SOCORRO A. RAMOS, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-16797. February 27, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal on points of law from a decision of the Court of First Instance of Rizal in its. Civil Case No. Q-4232.

The record is to the effect that on 24 November, 1958, Rodrigo Enriquez and the spouses Urbano Dizon and Aurea Soriano de Dizon sold to Socorro A. Ramos, by a notarial deed of even date, eleven (11) parcels of land situated in Bago, Bantay, Quezon City, and covered by their corresponding certificates of title, for the stipulated price of P101,000.00. The vendee paid P5,000.00 down, P2,500.00 in cash, and P2,500.00 by a check drawn against the Philippine National Bank, and agreed to satisfy the balance of P96,000.00 within ninety (90) days. To secure the said balance, the vendee Socorro A. Ramos, in the same deed of sale, mortgaged the eleven parcels in favor of the vendors. By way of additional security, Socorro A. Ramos, as attorney-in-fact of her children, Enrique, Antonio, Milagros and Lourdes, and as judicial guardian of her minor child Angelita Ramos, executed another mortgage on Lot No. 409 of the Malinta Estate.

Because of the vendee-mortgagor's failure to comply with some conditions of the mortgage, this action for foreclosure of the mortgage was filed by the vendors-mortgagees in the court below, on 29 April 1959. Defendant Socorro Ramos moved to dismiss, alleging that the plaintiffs previously had filed action against her in the Court of First Instance of Manila on 24 February 1959 for the recovery of P2,500.00 paid by check as part of the down-payment on the price of the mortgaged lands: that at the time this first suit was filed, the mortgage debt was already accrued and demandable; that plaintiffs were, therefore, guilty of splitting a single cause of action, and under section 4 of Rule 2 of the Rules of Court, the filing of the first action for P2,500.00 was a defense that could be pleaded in abatement of the second suit. Upon opposition by the plaintiffs, the Court of First Instance of Quezon City denied the motion to dismiss; but defendant Ramos repleaded the averments as a special defense in her answer. After trial, on 16 December 1959, the Court of First Instance of Quezon City rendered judgment against defendant Ramos; ordered her to pay P96,000.00, with 12% interest from 24 February 1959 until payment, 10% of the amount due as attorneys' fees, and the costs of the suit; and further decreed the foreclosure sale of the mortgaged properties in case of non-payment within ninety (90) days.

Socorro Ramos appealed directly to this Court, and here insists that the action should be dismissed on account of the alleged splitting of appellee's cause of action, and that the obligation not having fixed a period, although one was intended, the court below should have set first a date of maturity before ordering payment or foreclosure.

We find no merit in the appeal.

An examination of the first complaint filed against appellant in the Court of First Instance of Manila shows that it was based on appellants' having unlawfully stopped payment of the check for P2,500 she had issued in favor of

appellees; while the complaint in the present action was for non-payment of the balance of P96,000.00 guaranteed by the mortgage. The claim for P2,500.00 was, therefore, a distinct debt not covered by the security; and since the mortgage was constituted on lands situated in Quezon City, the appellees could not ask for its foreclosure in the Manila courts. The two causes of action being different, section 4 of Rule 2 does not apply.

On the second assignment of error: the stipulation in the mortgage contract that the obligation for P96,000.00 was to be

"without interest, payable within ninety (90) days from this date, provided that in case of default it shall bear interest at the rate of 12% per annum".

clearly fixes a date of maturity, the stipulated twelve percent in case of default being nothing more than a penalty, designed to induce the debtor to pay on or before the expiration of the ninety (90) days. Hence, there was no call upon the court to set another due date.

Finding no error in the judgment appealed from, the same is affirmed, with costs against appellants.

Bengzon C. J., Padilla, Bautista Angelo, Labrador, Concepcion., Barrerra, Paredes, Dizon, Regala, and Makalinlal, JJ., concur.

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