

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLANT, VS. ROMANA GANZON, DEFENDANT AND APPELLEE.

G.R. No. L-4502. April 13, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The Court of First Instance of Occidental Negros, from which comes the judgment appealed from in the present bill of exceptions brought before this court, made the following findings:

First. That the defendant, by virtue of a mortgage deed dated December 10, 1904, became indebted to the plaintiff up to September 12, 1906, in the sum of P75,420.54; that of this amount she paid P64,326.92, the value of the property mortgaged, and P3,055, the value of the carabaos and other personal property sold, making a total sum of P67,381.92, which, deducted from the first amount, leaves a balance of P8,038.62.

Second. That the sum of P200 was charged in the account, Exhibit B, of the plaintiff, as fees of the attorney for that company, the amount of P1,500 having been already awarded it as costs in a prior suit; therefore this sum of P200 should be deducted from that of P8,038.62, thus reducing the amount of the latter to P7,838.62 "as a final balance of the defendant in favor of the plaintiff on September 12, 1906, with interest at the rate of 10 per cent per annum, agreed to in Exhibit A, which is the basis or ground of the contract between Doña Romana Ganzon and the Compañia General de Tabacos, such balance being a consequence of said contract between the parties to the suit." (B. of E., 5.)

And the court rendered the following decision:

"The court sentences Romana Ganzon to pay to the plaintiff the sum of P7,838.62, with interest thereon at the rate of 10 per cent from the 12th day of September, 1906, until payment is made. To the payment of this sum and its interest, as well as that of the sum of P500 which is hereby adjudged to the plaintiff as costs, there shall be applied the net profits of the sugar obtained from the attached cane of the defendant, and of the personal and movable property also attached at the Hacienda San Jose on account of this suit, and in case this should be insufficient, the necessary amount of the proceeds from the sale of the defendant's attached right of repurchase of said hacienda shall also be applied to the payment of this judgment, and the receiver is hereby ordered immediately to render an account of the sugar produced in said hacienda. The execution of this judgment, if it becomes final, shall not be ordered until that account be filed and approved by the court. Furthermore, by virtue of the attachment of the right of repurchase of the defendant on the Hacienda San Jose, the period of the repurchase is suspended until this judgment becomes final, such suspension to be understock as being effective from May 10 last." (B. of E., 6.)

The sum of P11,093.62, claimed in the complaint, having been reduced by this judgment to P7,838.62, the plaintiff, as may be seen, has agreed to this part of the judgment and only claims as error therein:

- In so far as it is decreed therein "that the net profits of the sugar produced by the cane attached from the appellee should be applied to the payment of the balance adjudicated to the appellant."

- In so far as it is also ordered "that to the payment of the debt of the appellee there shall be applied, the necessary amount from the proceeds of the sale of the right of repurchase of the Hacienda San Jose that was sold at public auction by virtue of the foreclosure of mortgage on September 12, 1906."

- In so far as it has suspended the right of repurchase of the Hacienda San Jose.

And the plaintiff alleges: That the court should have limited itself to rendering a judgment in favor of the plaintiff without in addition providing the form of the execution; that the court could not order the application of the value of the sugar produced by the attached cane, because the plaintiff contends that this cane is its own, or at least until it has been finally held that it does not belong to the plaintiff; that the action brought in this case (No. 249 of the court) is purely personal, not one of mortgage, as is that instituted in the other (No. 85); that there is no right of repurchase in the execution of a judgment of foreclosure of mortgage, in which it differs from a simple execution resulting from a personal action; that, therefore, the value of the right of repurchase, in the matter of the sale at public auction made in case No. 85, which was the result of a mortgage action, could not be ordered applied to the payment of the execution of this judgment; that there is no law authorizing the court below to suspend, in its discretion, the right to repurchase the Hacienda San Jose.

The trial court has not incurred in the first error, since section 436 of the Code of Civil Procedure expressly authorizes it to order the sale of the property attached in this suit.

Neither has it incurred in the second error for the same reason. As to whether or not the right to repurchase mortgaged property sold at public auction exists, this is a question that can not be decided at present by this court; it was not brought up on appeal and was neither presented to nor decided by the court below.

However, the order of the court relating to this right of repurchase is the outcome of the attachment of the said right; the attachment was admitted by the appellant in saying in its brief (p. 10): "This attachment matters nothing * * * not by our attachment of it (the right to repurchase) nor by our admission would it be created." Whether it should not legally exist and whether it was not created, are questions to be decided by the court only; but we have to deal with a juridical act which, so long as it is not declared null and void, as such a juridical act serves for something and, with respect to the parties who have executed it and consented thereto, is of course efficient and binding in its effects and consequences.

If it was actually attached the same as was the sugar cane, at the instance of the appellant, the latter can not evade the consequences and efficiency of its own act, nor did the court exceed its powers, in making use of that conferred upon it by the said section 436, which deals with the final disposition of attached property.

With regard to the suspension of the term of the right to repurchase, by virtue of the conclusive presumptions: "16-That all the matters within an issue in an action were laid before the court and passed upon by it;" and "31-That the law has been obeyed," there being no proof or allegation to the contrary, this court must find that the court below, considering that the attachment of a right implies an inhibition or privation of its exercise, and that, the right of redemption being attached, it could not be exercised during the period of attachment, and while the litigation was pending, could, by virtue of the principle that a prescriptive term shall not run against him who can not act, fix the period during which the legal term for the exercise of that right which was suspended by reason of its attachment should not run.

The findings of the court below, impugned in this appeal, are, according to the assignment of errors of the appellant, as follows:

- The application, to the payment of the sentence, of the net proceeds of the sugar obtained from the attached cane of the defendant.

- The application to that payment, in the second place, of the value at the sale, in the necessary amount, of the right to redeem the said hacienda, which right was attached from the defendant.

- The suspension of the term for redemption from May 10, 1907, until the judgment in this case becomes final.

All the other findings having been accepted, we decide that we should affirm the decision with regard to the three findings objected to in the brief of the appellant, with the costs of this instance against the said appellant.

Torres, Mapa, and Carson, JJ., concur.

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