

JOSE A. LUNA, PETITIONER, VS. DEMETRIO B. ENCARNACION, JUDGE OF FIRST INSTANCE OF RIZAL, TRINIDAD REYES AND THE PROVINCIAL SHERIFF OF RIZAL, RESPONDENTS.*G.R. No. L-4637. June 30, 1952*

Ponente: BAUTISTA ANGELO, J.

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On September 25, 1948, a deed designated as Chattel Mortgage was executed by Jose A. Luna in favor of Trinidad Reyes whereby the former conveyed by way of first mortgage to the latter a certain house of mixed materials situated in barrio San Nicolas, municipality of Pasig, province of Rizal, to secure the payment of a promissory note in the amount of P1,500, with interest at 12 per cent per annum. The document was registered in the office of the register of deeds for the province of Rizal. The mortgagor having failed to pay the promissory note when it fell due, the mortgagee requested the sheriff of said province to sell the house at public auction so that with its proceeds the amount indebted may be paid notifying the mortgagor in writing of the time and place of the sale as required by law. The sheriff acceded to the request and sold the property to the mortgagee for the amount covering the whole indebtedness with interest and costs. The certificate of the sale was issued by the sheriff on May 28, 1949. After the period for the redemption of the property had expired without the mortgagor having exercised his right to repurchase, the mortgagee demanded from the mortgagor the surrender of the possession of the property, but the latter refused and so on October 13, 1950, she filed a petition in the Court of First Instance of Rizal praying that the provincial sheriff be authorized to place her in possession of the property invoking in her favor the provisions of Act No. 3135, as amended by Act No. 4118.

When the petition came up for hearing before the court on October 25, 1950, Jose A. Luna, the mortgagor, opposed the petition on the following grounds: (1) that Act No. 3135 as amended by Act No. 4118 is applicable only to a real estate mortgage; (2) that the mortgage involved herein is a chattel mortgage; and (3) that even if the mortgage executed by the parties herein be considered as real estate mortgage, the extra-judicial sale made by the sheriff of the property in question is invalid because the mortgage does not contain an express stipulation authorizing the extra-judicial sale of the property. After hearing, at which both parties have expressed their views in support of their respective contentions, respondent Judge, then presiding the court, overruled the opposition and granted the petition ordering the provincial sheriff of Rizal, or any of his deputies, to immediately place petitioner in possession of the property in question while at the same time directing the mortgagor Jose A. Luna to vacate it and relinquish it in favor of petitioner. It is from this order that Jose A. Luna desires now to obtain relief by filing this petition for certiorari contending that the respondent Judge has acted in excess of his Jurisdiction.

The first question which petitioner poses in his petition for certiorari is that which relates to the validity of the extra-judicial sale made by the provincial sheriff of Rizal of the property in question in line with the request of the mortgagee Trinidad Reyes. It is contended that said extra-judicial sale, having been conducted under the provisions of Act No. 3135, as amended by Act No. 4118, is invalid because the mortgage in question is not a real estate mortgage and, besides, it does not contain an express stipulation authorizing the mortgagee to foreclose the

mortgage extra-Judicially.

There is merit in this claim. As may be gleaned from a perusal of the deed signed by the parties (Annex "C"), the undertaking executed by them is a chattel mortgage, as the parties have so expressly designated, and not a real estate mortgage, specially when it is considered that the property given as a security is a house of mixed materials which by its very nature is considered as personal property. Such being the case, it is indeed a mistake for the mortgagee to consider this transaction in the light of Act No. 3135, as amended by Act No. 4118, as was so considered by her when she requested the provincial sheriff to sell it extra-judicially in order to secure full satisfaction of the indebtedness still owed her by the mortgagor. It is clear that Act No. 3135, as amended, only covers real estate mortgages and is intended merely to regulate the extra-judicial sale of the property mortgaged if and when the mortgagee is given a special power or express authority to do so in the deed itself, or in a document annexed thereto. These conditions do not here obtain. The mortgage before us is not a real estate mortgage nor does it contain an express authority or power to sell the property extra-judicially.

But regardless of what we have heretofore stated, we find that the validity of the sale in question may be maintained, it appearing that the mortgage in question is a chattel mortgage and as such it is covered and regulated by the Chattel Mortgage Law, Act No. 1508. Section 14 of this Act allows the mortgagee to have the property mortgaged sold at public auction through a public officer in almost the same manner as that allowed by Act No. 3135, as amended by Act No. 4118, provided that the requirements of the law relative to notice and registration are complied with. We are not prepared to state if these requirements of the law had been complied with in this case for the record before us is not complete and there is no showing to that effect. At any rate, this issue is not now important because the same can be threshed out when the opportunity comes for its determination, nor is it necessary for us to consider it in reaching a decision in the present case. Suffice it to state that for the present we are not expressing any opinion on this matter which concerns the validity of the sale in question for the reason that this opinion will only be limited to a matter of procedure relative to the step taken by the mortgagee in securing the possession of the property involved.

In the supposition that the sale of the property made by and the sheriff has been made in accordance with law, the question he is confronted is how to deliver the possession of the property to the purchaser in case of refusal to surrender its possession on the part of the debtor or mortgagor, the remedy of the purchaser, according to the authorities, is to bring an ordinary action for recovery of possession (*Continental Gin Co. vs. Pannell*, 160 P., 598, 61 Okl., 102; 14 C. J. S., pp. 1027-1028). The purchaser cannot take possession of the property by force either directly or through the sheriff. And the reason for this is "that the creditor's right of possession is conditioned upon the fact of default, and the existence of this fact may naturally be the subject of controversy" (*Bachrach Motor Co. vs. Summers*, 42 Phil., 3, 6). The creditor cannot merely file a petition for a writ of possession as was done by Trinidad Reyes in this case. Her remedy is to file an ordinary action for recovery of possession in order that the debtor may be given an opportunity to be heard not only regarding possession but also regarding the obligation covered by the mortgage. The petition she has filed in the lower court, which was not even docketed, is therefore improper and should be disregarded.

Wherefore, the order subject of the present petition for certiorari is hereby set aside, with costs against respondent Trinidad Reyes.

Bengzon, Tuason, Montemayor, and Labrador, JJ., concur.

Paras, C. J., Feria, and Padilla, JJ., concur in the result.

Pablo, M., concurs in the dispositive part.

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