

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARGARITA TORRALBA VIUDA DE SANTOS, PERSONALLY AND AS ADMINISTRATRIX OF THE ESTATE OF THE DECEASED EPIFANIO...

G.R. No. L-41573. August 03, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Margarita Torralba Viuda de Santos, personally and as administratrix of the estate of the deceased Epifanio de los Santos y Cristobal, appeals to this court from the judgment rendered by the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, the court sentences the defendant, in her dual capacity above stated, to pay to the plaintiff the sum of P44,397.94 with interest thereon at 9 per cent per annum, computed semi-annually from October 27, 1933, until fully paid, plus the amount of the taxes and insurance premiums which the plaintiff might have paid after June 30, 1933, upon justification thereof, with interest thereon at 9 per cent per annum, computed semi-annually from the date of their payment by the plaintiff, with costs. If upon expiration of ninety (90) days from the date of this decision, the defendant, in her dual capacity above stated, fails to pay the sums in question, let the mortgaged property be sold at public auction and the proceeds applied thereto; and in case any deficiency should remain unpaid by the proceeds of the sale, the same may be recovered from the defendant and the estate of the deceased Epifanio de los Santos Cristobal. So ordered."

In support of her appeal, the appellant assigns the following alleged errors as committed by the court a quo in its said judgment, to wit:

"1. The lower court erred in holding the defendant Margarita Torralba Vda. de Santos liable as well in her own name as in her capacity as administratrix of the estate of the deceased Epifanio de los Santos Cristobal for any deficiency which may remain after applying the proceeds of the sale of the mortgaged properties to the satisfaction of the judgment.

"2. The lower court erred in sentencing the defendant to pay the costs of the action.

"3. The lower court erred in denying appellant's motion for new trial."

The first question to be decided in the present appeal, which is raised in the first assignment of alleged error, is whether or not the court a quo erred in holding said defendant Margarita Torraiba Viuda de Santos, personally and as administratrix of the estate of the deceased Epifanio de los Santos y Cristobal, liable for any deficiency remaining unsatisfied after applying the proceeds of the sale of the mortgaged properties to the amount of the judgment.

Section 260 of the Code of Civil Procedure provides as follows:

"Sec. 260. Judgment for balance after sale of property.— Upon the sale of any real property, under a decree for

a sale to satisfy a mortgage or other incumbrance thereon, if there be a balance due to the complainant after applying the proceeds of the sale, the court, upon motion, shall give a decree against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue immediately if the balance is all due at the time of the rendition of the decree; otherwise the plaintiff shall be entitled to execution at such time as the balance remaining would have become due by the terms of the original contract, which time shall be stated in the decree."

It will be seen from the legal provision above cited that in order that a decree for any balance for which the mortgagor may be personally liable to the mortgagee may be issued, it is necessary that the sale of the mortgaged real property has been made according to the decree for said sale to satisfy the judgment; that there has remained a balance due the mortgagee after applying the proceeds of the sale to the debt; that the mortgagee presents a motion for the issuance of a decree for said balance.

In the case at bar, although a decree for foreclosure of the mortgage exists, the sale of the mortgaged property ordered thereby has not yet been made, and consequently, it cannot be known whether or not the proceeds of the sale will be sufficient to cover the mortgage debt or whether or not any deficiency will remain. Therefore, there is no justification for the legal issuance of a decree against the defendant, personally and as administratrix of the estate of the deceased Epifanio de los Santos y Cristobal, for any balance for which she may be personally liable to the mortgagee. Furthermore, this decree cannot be issued except upon petition of the mortgagee after knowing the existence of a deficiency to be paid.

In the case of Soriano vs. Enriquez (24 Phil., 584), this court has held that "* * * Section 260 requires the rendition of a judgment for the deficiency against the defendant, who shall be personally liable to the plaintiff, and execution may issue thereon at once."

And in the case of Staight vs. Haskell (49 Phil., 614, 619), this court also stated as follows:

"* * * In the event that the judgment is not then satisfied, an execution may issue upon such judgment, and the property sold and the proceeds of the sale applied to the satisfaction thereof, and that plaintiff may then have judgment over and against the defendants Haskell and the Magdalena Coconut Co., Inc., jointly and severally for any deficiency which may thereafter remain. * * *"

The authority given by the court a quo in its appealed judgment, for the mortgagee to claim said deficiency from the defendant and the estate of the deceased Epifanio de los Santos y Cristobal, is therefore not sanctioned neither by law nor by jurisprudence, and constitutes an excess of its jurisdiction.

The second question to be decided is whether or not the trial court erred in sentencing the defendant to pay the costs

Although it is true that in paragraph 6 of the mortgage contract, Exhibit A, it is stipulated that the Director of Posts may take possession of the lands mortgaged with the improvements thereon, without the necessity of resorting to court proceedings, it is also stipulated in paragraph 8 of the same mortgage contract, Exhibit A, that although the Director of Posts should take possession of the mortgaged lands with their improvements, he may institute the corresponding judicial proceedings to foreclose the mortgage in accordance with law. If the plaintiff, through the Director of Posts, instituted the present foreclosure suit in spite of having taken possession of the mortgaged lands with their improvements, it was because the conditions imposed by the defendant were prejudicial to the mortgagee.

Therefore the court a quo did not err in sentencing the defendant to pay the costs in the first instance.

For the foregoing considerations, we are of the opinion and so hold: (1) That a court authorizing the mortgagee in

a decree of foreclosure of mortgage to recover from the mortgagor the deficiency of the mortgage credit before the sale and before it is known whether or not a deficiency exists, exceeds its jurisdiction, and the authority so given is null and void; and (2) the fact that it is stipulated in a mortgage contract that the mortgagee may take possession of the mortgaged property in case of noncompliance by the mortgagor with any of the conditions of the mortgage, does not exempt said mortgagor from the payment of the costs of the suit if the mortgagee brings an action for foreclosure of the mortgage in accordance with the stipulation in said contract.

Wherefore, the appealed judgment is modified by eliminating therefrom the authority given the mortgagee to recover from the defendant and from the estate of the deceased Epifanio de los Santos y Cristobal any unpaid deficiency, without prejudice to the right of the mortgagee to ask for the issuance of a decree for said deficiency, as required by law, after the mortgaged property has been sold and the proceeds of the sale are not sufficient to cover the amount of the judgment, without special pronouncement as to the costs of this instance. So ordered.

Malcolm, Imperial, and Butte, JJ., concur.

GODDARD, J., concurring in the result:

I concur in the result as I understand that the majority opinion does not deprive the plaintiff-appellee of its right to file the proper motion for a deficiency judgment against the herein defendants in case the amount of the judgment is not realized by a sale of the mortgaged property. The defendants in this suit are Margarita Viuda de Santos and the estate of her deceased husband, Epifanio de los Santos Cristobal, which is represented in this case by said Margarita Viuda de Santos.

However, I do believe that the majority has given too much importance to the phrase in the dispositive part of the decision which reads: "* * * and in case any deficiency should remain unpaid by the proceeds of the sale, the same may be recovered from the defendant and the estate of the deceased Epifanio de los Santos Cristobal." In my opinion this language cannot be constructed as decreeing a deficiency judgment. It amounts to nothing more than a formal finding that the plaintiff would be entitled to such a decree in the event that the property should not sell for sufficient to pay the debt. Naturally the only way to secure such a decree is by following the procedure provided in section 260 of the Code of Civil Procedure.

Judgment modified.

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