

RAMON HERRERA, ET AL., PETITIONERS, VS. HON. FRANCISCO ARELLANO, ET AL., RESPONDENTS.*G.R. No. L-8164. October 27, 1955*

Ponente: CONCEPCION, J.

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Petitioners Ramon Herrera, et al. seek a writ of certiorari to annul certain orders of the Court of First Instance of Negros Occidental, issued by respondent Judge, Hon. Francisco Arellano. The controversy stems from the proceedings in civil case No. 8181 of the Court of First Instance of Negros Occidental, entitled "Ramon Herrera, et al., vs. The Provincial Sheriff of Negros Occidental, Siuliong & Co., Inc., and Francis Cu Unjieng." The pertinent facts are set forth in a decision therein rendered, on appeal, by the Court of Appeals (CA—G. R. No. L-6388-R) on August 18, 1952, from which we quote:

"* * * In September of 1920, Ramon Herrera, in his capacity as judicial guardian of his minor children Ricardo, Artijro, Dulcelina, and Cristeto Herrera, borrowed P7,000 from Siuliong & Co., payable with 12 per cent annual interest. Between 1920 and 1930, he also borrowed various other sums of money, and upon liquidation made on June 31, 1930, the total sum due was ascertained to be P14,176.26 after deducting payments made.

"While these acts of the guardian appeared to be unauthorized by the Court, the wards, upon attaining majority, by public documents executed on February 20 and 21, 1931 (Exh. 1 Rec. App., pp. 24-37) and April 26, 1934 (Exh. 2, pp. 38-53), confirmed the previous arrangements and manifested their entire agreement to the liquidation of their accounts, and compromised the case filed for the recovery of the sum due (No. 8442 of the Court of First Instance of Iloilo), by promising to pay Siuliong & Co., Inc., the acknowledged balance of P14,176.26, plus interest at 6 per cent per annum from July 31, 1930, on or before October 31, 1932. The debtors bound themselves to pay 10 per cent attorney's fees in case of suit for collection; and to deliver to the creditor in part payment the sugar corresponding to their 1/4 interest in the Hacienda San Roque, which interest they mortgaged to secure the payment of the indebtedness. The mortgagors further stipulated not to alienate, convey, mortgage, or in any wise encumber their rights and interests without written consent of the mortgagee.

"By separate notarial instrument dated March 12, 1932 Exh. 4), the spouses Ramon Herrera and Rosa Gallo compromised the pending civil case No. 8441 of the Court of First Instance of Iloilo, filed against them by Siuliong & Co., Inc., by acknowledging an indebtedness in favor of the latter in the sum of P39,084.21 as balance of their former account and promised to pay said sum, jointly and in solidum, with interests at 6 per cent per annum, from April 1, 1931, to be liquidated and compounded annually, on or before December 31, 1932; to pay 25 per cent attorneys' and collection fee in case of suit for collection; to deliver to the creditor their entire share of the sugar produced at Hacienda San Roque for credit against the debt; not to alienate or transfer, mortgage or otherwise encumber, their rights and interest, and to guarantee payment by mortgage of their 1/4 interest in the Hacienda San Roque, the house on Lot 91 of the Manapla Cadastre, plus the parcels of land designated as Lots 145, 226, and 363 of the Cadastral Survey of Manapla, and certain work animals described in the deed (Exh. 4, Rec. App., pp. 63-77).

"Both mortgage credits were assigned by the creditor Siuliong & Co., Inc. to Francisco Cu Unjieng, by public instrument executed on September 26, 1935 (Exh. 3, Rec. App., pp. 54-63; Exh. 3A of the Exhibit folder).

"It is also admitted that from 1937 to 1945, the Hacienda San Roque was leased by the mortgagors to Ricardo Herrera and Lope Ilustre without the consent of the appellees.

"On December 6, 1934, the mortgagee Siuliong & Co., Inc. notified the mortgage debtors that the balance of their accounts as of November 30, 1934 amounted to P14,740.25 for Ricardo Herrera and his brothers, and P45,904.37 for Ramon Herrera and Rosa Gallo, and gave notice of their intention to foreclose the mortgages on January 12, 1935 (Exhs. 5-a and 10-a). Apparently, the sale was not carried out, for on August 28, 1936, the lawyers of the mortgagee wrote the debtors complaining that the land taxes of the mortgaged property had not been paid and the mortgagee had been forced to disburse the same (Exh. 7-A). Once again, on July 12, 1937, the mortgagees demanded satisfaction of the indebtedness (Exh. 9). Attempts to settle and compromise were fruitless (Exhs. K to P) and * * *." (Record, pp. 34-36.)

hence, on October 14, 1939, the mortgagors instituted said case No. 8181 against the mortgagees and the Provincial Sheriff of Negros Occidental,

"* * * for an accounting and to set aside an extrajudicial foreclosure of certain mortgages in favor of appellee Siuliong & Co., and assigned by it to co-appellee Francisco Cu Unjieng. On December 1, 1939, the answer was filed, pleading the due execution of mortgages on an undivided one-fourth (1/4) of Hacienda San Roque (Lots 91 and 219 of the Manapla Cadastre) to guarantee an obligation that had a balance of P17,076.79 as of January 1, 1938, due from and unpaid by plaintiffs-appellants Cristeto, Ricardo, Arturo, and Dulcelina Herrera; and another mortgage on a second undivided fourth of the Hacienda San Roque, plus Lots 145, 225, 226 and 363 of the Manapla Cadastre, to answer for a balance of P59,815.69 due as of January 1, 1938 from plaintiffs Ramon Herrera and Rosa Gallo; counter-claimed nonpayment and breach of the obligations of the mortgage by reason of the lease of the properties without defendants' consent; and prayed for judgment thereon with interest and attorneys' fees, and for a decree of judicial foreclosure.

"The case (Civil Case No. 8181 of Negros Occidental) was first decided on May 12, 1941, dismissing the complaint but without rendering judgment for defendants in view of a stipulation for extrajudicial foreclosure and sale of the mortgaged properties. Upon seasonable petition for reconsideration by defendants, and motion for new trial by plaintiffs, the Court granted a reopening, setting it for August 25, 1941. Hearing was accordingly held on October 23, 1941, but no decision was rendered.

"On February 15, 1947, defendants filed a petition for rendition of judgment, alleging that the records of the case were intact. As plaintiff Rosa Gallo had died in the meantime, she was ordered substituted by her heirs.

"On May 10, 1947, the plaintiffs objected to the petition for judgment, invoking the moratorium order No. 32 (Rec. App., p. 149), a petition reiterated on August 27, 1947 (Rec. App., p. 165). The lower court, overruling the objection, rendered judgment on March 30, 1949 as follows:

'(a) Bajo la primera reconvencion, condenando a los demandados Ricardo Herrera, Arturo Herrera, Dulcelina Herrera y Cristeto Herrera a pagar la cantidad de P18,274.88, suma debida en 31 de diciembre de 1939, con intereses a razon de 6 por ciento anual desde enero 1, 1940, hasta su completo pago; a pagar honorarios de abogado equivalente a 10 por ciento de la deuda hipotecaria debida a la incoacion de la presente accion, o sea en la cantidad de P1,827.48;

'(b) Bajo la segunda reconvencion, condenando a los demandados Ramon Herrera y Lope Ilustre, Bernardo Ilustre, Carlos Ilustre y Rosario Ilustre, estos cuatros ultimos como herederos legales y en sustitucion de Rosa Gallo, a pagar la suma de P59,322.07, cantidad debida en 31 de diciembre de 1939, con intereses a razon de 6 por ciento anual desde enero 1.º de 1940 hasta su completo pago; a pagar honorarios de abogado equivalente a 10 por ciento de la deuda hipotecaria; debido a la incoacion de la presente accion, o sea la cantidad de

P5,932.27;

'(c) Ordenando a dichos demandantes a pagar las cantidades arriba especificadas en el Juzgado dentro de noventa (90) dias desde la fecha en que reciban copias de esta sentencia, y que de no verificarse dicho pago se ordenara la venta de las propiedades hipotecadas y descritas en la contestacion de los demandados en publica subasta para hacer efectivo el pago de la deuda hipotecaria con sus intereses, honorarios de abogado y costas del juicio; y

'(d) Sobreseyendo la demanda, con las costas contra los demandantes.'" (Record, pp. 31-33.)

The mortgagors appealed, from this decision, to the Court of Appeals, which in due course rendered its aforementioned decision, the dispositive part of which is of the following tenor:

"Wherefore, the judgment appealed from is affirmed insofar as it fixes the indebtedness of the appellants Dulcelina, Ricardo, Arturo and Cristeto Herrera at P18,274.88, with interest at 6 per cent annually from January 1st, 1940, until paid; and that of appellants Ramon Herrera and the heirs of Rosa Gallo at P59,322.07, plus interest thereon at 6 per cent per annum from January 1st, 1940, until full payment. The judgment of the Court below is reversed insofar as it orders the appellants to pay the amounts abovementioned within 90 days and decrees the sale of the mortgaged properties if not so paid. It is hereby declared that no action lies to enforce appellants' indebtedness until the moratorium expires or is lifted with respect to the same, reserving the right of appellees to demand such enforcement when proper. The indebtedness not being actionable, no attorneys' fees can be allowed. The dismissal of the plaintiffs-appellants' complaint is also affirmed. Without costs in either instance." (Record, pp. 42-43.)

On May 18, 1953 this Court rendered its decision in the case of Rutter vs. Esteban (93 Phil., 63), declaring that "the continued operation and enforcement of Republic Act No. 342 (the Moratorium Law) at the present time is unreasonable and oppressive and should not be prolonged a minute longer." Soon, thereafter, or on May 29, 1953, the mortgagee in the case at bar, filed with the Court of First Instance of Negros Occidental, a motion praying:

"* * * that a writ of execution be issued directing the provincial Sheriff of Negros Occidental to sell at public auction the properties mortgaged and described in the answer of the defendants to satisfy the payment of the mortgage obligations as specified in the judgment rendered by the Court of Appeals." (Record, p. 46.)

This motion was granted by an order, dated June 19, 1953, and the corresponding writ of execution was issued on July 13, 1953. In compliance therewith, on September 8, 1953, the Provincial Sheriff of Negros Occidental sold, at public auction, the mortgaged properties to the mortgagee, Cu Unjieng & Sons, Inc. On motion of the latter, the court confirmed this sale by an order dated October 9, 1953. Plaintiffs filed two motions for reconsideration of this order, the first on October 13, 1953, and the second on July 18, 1954, which were denied, respectively, on July 20, and August 7, 1954. Hence, the mortgagors instituted the present case for the purpose of securing a writ of certiorari "annulling the abovementioned orders of the respondent Judge dated June 19, 1953 and October 9, 1953."

Petitioners contend:

"That the aforementioned order for writ of execution of Judge Arellano, the sale at public auction of the properties of the petitioner and the order confirming said sale are all null and void, as the petitioners herein were not given the ninety (90) days period within which to pay their mortgage obligations in favor of the defendant Cu Unjieng & Sons, Inc., in accordance with Sections 2 and 3 of Rule 70, Rules of Court." (Paragraph 20, Petition.)

Upon the other hand, respondents argue that petitioners had not objected to respondents' motion for issuance of the writ of execution; that petitioners had neither sought a reconsideration of the order of June 19, 1953, granting

said motion, nor appealed therefrom; that said order has already become final and executory; and that petitioners had had, before the sale effected on September 8, 1953, more than ninety (90) days within which to pay their debt, computed, either from May 18, 1953, when the *It utter* case was decided by this Court, or from August 18, 1952, when the Court of Appeals rendered its aforementioned decision.

The issue thus raised has been settled in *Jose Ponce de Leon vs. Judge Fidel Ibañez and Santiago Syjuco, Inc.* (95 Phil.,) decided on May 28, 1954. Said case involved a decision of this Court, dated April 15, 1952, providing;

"In view of the foregoing, the decision appealed from should be modified in the sense of ordering the plaintiff to pay to defendant Syjuco the sum of P216,000, Philippine currency, value of two promissory notes, with interest thereon at the rate of 6 per cent per annum from August 6, 1944, up to May 5, 1949 until said amount is paid in full. It is further ordered that should the amount of this judgment,—principal and interest,—be not paid within ninety (90) days from the date this judgment becomes final, the properties mortgaged should be sold at public auction, and the proceeds applied to the payment of this judgment in accordance with law, with costs against the plaintiff.

"However, this judgment shall be held in abeyance, or no order for the execution thereof shall be issued, until after the moratorium orders shall have been lifted."

Invoking our decision in *Rutter vs. Esteban* (93 Phil., 63), Syjuco (the mortgagee) filed a motion, on July 7, 1953, for the execution of the judgment aforementioned. The motion was granted by the Court of First Instance of Manila on July 22, 1953, and, two (2) days later, the corresponding writ of execution was issued. A reconsideration of said order of July 22, 1953 having been denied, the mortgagor applied for a writ of certiorari upon the ground that he had not been given the 90-day period provided in the Rules of Court. In their answer, the mortgagee alleged that the mortgagor had had ample time to pay his debt, from May 5, 1949, when it fell due, to July, 1953, when the order complained of was issued, and that, even if the period within which to pay the judgment in favor of the mortgagee should start to run from June 9, 1953—the date of entry of judgment in the *Rutter* case— still more than 90-day period had already elapsed before the filing of said pleading. In rejecting the mortgagee's pretense we said:

"It must be noted that the 90-day period granted the mortgage debtor within which to pay the amount of the mortgage is in Section 2 of Rule 70 of the Rules of Court, and it is to be counted 'from the date of the service of the order,' not from the date thereof. The order referred to in the rule is the order requiring the debtor to pay the judgment within 90 days. This 90-day period given in the rule is not a procedural requirement merely; it is a substantive right granted to the mortgage debtor as the last opportunity to pay the debt and save his mortgaged property from final disposition at the foreclosure sale. It is one of the two steps necessary to destroy what in law is known as the mortgagor's 'equity of redemption,' the other being the sale. It may not be omitted. As the writ of execution or the order allowing the sale of the mortgaged property was issued without granting the mortgage debtor said 90-day period, the order for the sale of the property would be a denial of a substantial right and void. It is true that the original judgment of this Court required payment within 90 days, but this same judgment was expressly held in abeyance; therefore, the 90-day period never began to run. Neither was it effective while the moratorium was in force. The order of execution that was held in abeyance did not ipso facto become effective upon the lifting of the moratorium. A new order of the court became necessary to revive the order of payment, and this new order may not suppress or deny the 90-day period originally fixed and required by the rules. The order complained of does not grant this 90-day period, and is, therefore, invalid.

"In the answer of the respondent, it is alleged that the injunction issued by this Court should be lifted, and the sale of the property as ordered by the respondent court now allowed, as the 90-day period has already transpired since the order was issued. The order of the court for the sale of the property is null and void, because it denied petitioner the 90-day period provided by the rules; hence, it may not be enforced on that ground. Even if it were to be interpreted as requiring the sheriff not to proceed with the sale unless the 90-day

period had expired, as the order of the sheriff for the sale of the property was made only one day after the order, it is also null and void. The claim that the action is moot cannot be sustained, because it is the validity of the order of execution that is attacked, not an order that may now be issued. The remedy of the respondent should have been to seek another order of the court directing the payment of the judgment within 90 days therefrom and the sale of the property mortgaged in case of failure to comply therewith, instead of contesting the petition for certiorari. If any delay has been caused the respondent by the delay in the sale, and petitioner is not to blame but the respondent corporation, which did not take the more expedient step above indicated.

"The petition is hereby granted, and the orders complained of are hereby declared null and void. However, in the interest of a speedy administration of justice, and as the judgment to be executed is our judgment, we hereby order the petitioner to pay the amount of the judgment within ninety (90) days, otherwise the property mortgaged shall be sold to satisfy the amount of the judgment. Without costs." (*Italics supplied.*)

The foregoing doctrine is squarely in point. It gives us no choice but to overrule respondents' pretense and to sustain that of herein petitioners. Indeed, the position of the latter is stronger than that of the mortgagor in the case cited, for the judgment therein specifically ordered De Leon to pay his debt to the mortgagee and directed foreclosure should the mortgagor fail to pay within ninety (90) days, whereas, the provision to this effect, found in the original decision of the court of first instance, in the case under consideration, was reversed by the Court of Appeals. In other words, in the case at bar, respondent Judge directed the execution of a judgment which neither contained an order requiring the mortgagors to pay their obligation to the mortgagees nor granted said mortgagors any period within which to effect said payment. At any rate, the 90-day period, prescribed in Section 2 of Rule 70 of the Rules of Court, should be counted "from the date of service of the order" directing the mortgagors to pay their obligation to the mortgagees and no such order having, as yet, been issued, it follows that the orders complained of, directing the sale of the mortgaged property and denying the reconsideration prayed for by petitioners herein, are "null and void," as held in the aforementioned De Leon case.

Wherefore, the petition is granted, and the orders in question set aside, with costs against the respondents, except the Judge of First Instance, the Provincial Sheriff and the Register of Deeds of Negros Occidental. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista. Angelo, Labrador, and Reyes, J. B. L., JJ., concur.

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