

PHILIPPINE TRUST COMPANY, PLAINTIFF-APPELLEE, VS. SIMEON POLICARPIO, MODESTA REYES AND ILUMINADA (LUMEN) R. POLICARPIO, DEFENDANTS-APPELLANTS.

G.R. No. L-22685. August 25, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the decision of the Court of First Instance of Manila (Branch XVII), in its Civil Case No. 41518, and the subsequent order modifying the dispositive portion thereof, sent to Us by the Court of Appeals, the amount involved therein being beyond the latter's appellate jurisdiction.[1]

The constitutive facts which are not disputed in this appeal are stated in the decision of the trial court thus:

"From the evidence presented by the plain-tiff, it appears that on May 23, 1958, defendant Iluminada (Lumen) R. Policarpio, as principal, and defendant spouses, Simeon Policarpio and Modesta Reyes, as sureties, obtained a loan from the plaintiff, Philippine Trust Company, which is a banking corporation duly organized and existing in accordance with the laws of the Republic of the Philippines, with principal offices at the Philippine Trust Company Building, Plaza Goiti, Manila, in the form of an agreement for credit in current account, in the total sum of P300,000.00 with interest thereon at 9% per annum from said date until fully paid, with the stipulation that the overdraft line would be reduced by P3, 000.00 monthly, commencing on July 1, 1958 (Exh. "A"). To guarantee the payment of said obligation, defendants jointly and severally executed a deed of mortgage (Exh. "B") in favor of said plaintiff over the parcels of land including all the improvements existing thereon, covered by Transfer Certificate of Title No. 41144 (now 51668) of the Register of Deeds of the City of Manila, and Transfer Certificate of Title No. 24182 of the Register of Deeds of Rizal, which are more particularly described as follows:

(Descriptions of Land)

Said mortgage was duly registered in the Office of the Register of Deeds of Manila on May 23, 1958, and in the Register of Deeds of Rizal on May 28, 1958.

"On June 30, 1958, said overdraft line was increased to P320,000.00 and corresponding amendment of the deed of mortgage was executed, which amendment was duly registered on July 7, 1958, in the Office of the Register of Deeds of Manila and on July 8, 1958, in the Register of Deeds of Rizal (Exhs. 'C' and 'D'). To further guarantee the payment of said additional loan of P20, 000.00, defendants jointly and severally executed a chattel mortgage on June 30, 1958, in favor of the plaintiff on those chattels situated at 1301-1303 Rizal Avenue, Manila, which was listed therein and which deed of chattel mortgage was duly registered on July 7, 1958, in the Chattel Mortgage Register of Manila and on July 8, 1958, in the Chattel Mortgage Register of Rizal (Exh. 'E'). As further additional security for the payment of said loan, the defendant Iluminada (Lumen) R. Policarpio, executed a deed of assignment and special power of attorney on May 23, 1958, whereby she bound herself to reduce the overdraft line by paying to the plain-tiff the sum of at least P3, 000.00 a month from the rents of one of the mortgaged properties, which deed was amended on June 30, 1958, to cover the additional loan of P20, 000.00 (Exhs. 'F' and 'G').

"In accordance with the terms of the deed of mortgage (Exh. 'B'), in case of failure or refusal of the debtors to pay any of the amortization of the indebtedness or interest when due or whatever obligation secured by the aforesaid mortgage, the whole obligation would become due and payable. The defendants have failed and refused to comply with the agreements aforesaid to pay the plaintiff the monthly amortizations agreed upon from July, 1958 up to the present, despite repeated demands made by the plaintiff, and as of July 14, 1958, the total indebtedness of the defendants to the plaintiff amounted to P298, 121.75."

and supplemented by the allegations in the supplemental complaint, admitted unconditionally in the answer thereto, as follows:

"1. That according to the Deed of Mortgage Exhibit 'B' of the complaint, defendants bound themselves to duly pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the mortgage properties;

"2. That defendants failed and refused to pay the realty taxes due on the properties mortgaged in the amounts of P3, 186.55 and P6, 585.52;

"3. That it was also stipulated in the said Deed of Mortgage, that if the mortgagor (defendants herein) shall fail or refuse to pay said taxes and assessments, the mortgagee (plaintiff herein) may in its discretion, pay such taxes or assessments and the mortgagor shall, on demand, repay the mortgagee all sums expended by it for the above purpose with interest at the rate of ten per centum (10%) per annum from the date of such expenditures;

"4. That to protect its interest and pursuant to the provisions of the afore-mentioned Deed of Mortgage, and upon the request of defendant through defendant Iluminada (Lumen) Policarpio, plaintiff paid the realty taxes on the properties mortgaged in the amount of P3, 186.55 last February 20, 1962, and the amount of P6,585.52 on March 22, 1962, or subsequent to the filing of the complaint in this case;

"5. That defendants failed and refused and still fail and refuse to pay plaintiff the above sums despite repeated demands made on them to do so;

"6. That it is further stipulated in the same Deed of Mortgage, Exhibit 'B' of the complaint, that the defendants shall at all times insure or cause to be insured, and keep insured against loss or damage by fire all the buildings and improvements on the mortgaged properties, and that the defendants shall promptly pay all premiums on such insurance as said premiums may accrue;

"7. That the defendants failed and refused to pay the premiums on the insurance of the buildings and improvements on the mortgaged properties in the amounts of P1, 522.56 and P388.02;

"8. That it is also a provision in the aforesaid Deed of Mortgage that if the mortgagor (defendants) shall fail or refuse to pay the above obligation, the mortgagee (plaintiff) may in its discretion, pay such premiums and the mortgagor shall, on demand, repay the mortgagee all sums expended by it for such purpose with interest at the rate of ten per centum (10%) from the date of such expenditures;

"9. That to prevent the insurance policy from expiring and in the exercise of its rights under the Deed of Mortgage, Exhibit 'B', plaintiff paid the premiums amounting to P1, 522.56 on March 1, 1962 and P388.02 on July 31, 1962, or subsequent to the filing of the complaint in the above entitled case;

"10. That the total amount due plaintiff from defendants as of this date is as follows:

Overdraft balance, inclusive of accrued to date P 398, 311.24

Add: Insurance Premiums & Other

Advances:

Aug. 30, 1960-Ins. Premiums.....P 171.12

Sept. 29, 1960 - do - 1, 790.47

Nov. 29, 1960 - do - 190.32

Mar. 6, 1961 - do - 1, 446.61

Aug. 30, 1961 - do - 161.40

Sept. 23, 1961 - do - 1, 689.12

Feb. 21, 1962 – Real

Estate Tax 3, 186.55

Mar. 1, 1962- Ins. Premium 1, 522.56

Mar. 22, 1962- Real Estate Tax 6, 585.52 - 16,743.67

P415, 054.91

Add: Accrued Interest on Advances: 10% int. on P171.12 from 8/30/60 to 9/25/62-767 days at P.104753 daily rate P 35.98

10% int. on P1, 790.47 from 9/29/60 to 9/25/62-727 days at P.49735 daily rate P 361.57

10% int. on P190.32 from 11/29/60 to 9/25/62 –666 days at P.05287 daily rate P 35.21

10% int. on P1, 446.61 from 3/6/61 to 9/25/62?569 days at P.4018 daily rate P 228.62

10% int. on P161.40 from 8/30/61 to 9/25/62 - 392 days at P.04483 daily rate P 17.57

10% int. on P1, 689.12 from 9/25/61 to 9/25/62-366 days at P.4692 daily rate P 171.73

10% int. on P3, 186.55 from 2/21/62 to 9/25/62?217 days at P.88515 daily rate P 192.08

10% int. on p1, 522.56 from 3/1/62 to 9/25/62?209 days at P.42293 daily rate P 88.39

10% int. on P6, 585.52 from 3/22/62 to 9/25/62?188 days at P1.82931 daily rate.....P 343.91- 1,475.06

P416, 529.97

Add: Demand Loan due on June 30, 1958 P20, 000.00

9% int. on P20, 000.00 from 7/1/58 to 9/25/62 1,548 days at P5.00 daily rate 7,740.00- 27, 740.00

Other charges 300.00

Total due Plaintiff as of

Sept. 25, 1962 P 444, 569.97

Upon these facts, the court a quo rendered a decision (amended) the dispositive part of which reads:

“WHEREFORE, judgment is hereby rendered, ordering the defendants, Si-meon Policarpio, Modesta Reyes and Iluminada (Lumen) R. Policarpio, to pay to the plaintiff, Philippine Trust Company, the sum of P444,569, with interest thereon at 9% per an-num from September 25, 1962, until fully paid, plus 10% of the amount due as attorney's fees and the costs of the suit.

"Upon failure of said defend-ants to pay said amounts within the period provided by law, let the mort-gaged properties and the improvements thereon be sold at public auction in accordance with the provision of law."

A review of the pleadings reveals that in their answer to the original complaint, appellants did not raise any issue which can be of any materiality in this appeal. The proceedings lasted from September 29, 1959 when the complaint was filed to November 14, 1963 when the amendatory judgment aforequoted was rendered mainly because of postponements requested by appellants. After appellee rested its case on September 16, 1960, appellants secured further delay until August 22, 1963 when the trial court denied their last motion for postponement and declared the case submitted for decision. Appellants made no move to have this order reconsidered in order to give them a chance to present evidence. In fact, they do not complain in such regard in this instance. Against the judgment of the trial court rendered on October 14, 1963 and amended on November 14, 1963, they have assigned only two alleged errors as follows:

"I

THE LOWER COURT ERRED IN ITS DECISION RENDERED IN THE ABOVE-ENTITLED CASE, IN THAT, IN THE DISPOSITIVE PART OF ITS DECISION, IT DISREGARDED AND IGNORED THE CLEAR PROVISION OF SECTION 2, RULE 68, NEW RULES OF COURT.

II

THE LOWER COURT ERRED IN AWARDING TO THE PLAINTIFF-APPELLEE THE SUM OF P44, 456.99 OR 10% PER CENTUM OF THE AMOUNT DUE, AS ATTORNEY'S FEES AND COSTS."

Under the first alleged error assigned, appellants point out that whereas Section 2 of Rule 68 provides that:

"Sec. 2. Judgment on foreclosure for payment or sale.- If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment for the sum so found due and order that the same be paid into court within a period of not less than ninety (90) days from the date of the service of such order, and that in default of such payment the property be sold to realize the mortgage debt and costs."

[Underlining supplied]

the appealed decision merely disposes that the amount which appellants are being sentenced to pay should be paid "within the period provided by law." Appellants contend that the phrase, in Section 2 above, "within a period of not less than ninety (90) days from the date of the service of" the corresponding judgment or order for such payment, which can be the only possible period referred to in the said appealed decision, does not constitute a definite period, such that the appellants are at a loss as to when exactly they would be in default and thereby suffer the sale of their mortgaged properties. In other words, the contention of appellants is that such phrase "within a period of not less than ninety (90) days" fixes only the maximum period within which they may not be compelled to pay, but it does not fix the maximum period within which they would have the right to pay without incurring in the default that would give rise to the power of the court to order the sale of the mortgaged properties. In effect, the position of appellants is that the appealed decision is incomplete.

While appellants are quite correct in such contention regarding the apparent incompleteness of the decision of the trial court, the proper course of action for them was not to immediately appeal, as they have done. All they had to do was to invite the attention of the court to the flaw in its judgment; and all the unnecessary delay and expenditure of money and effort which this appeal has entailed would have been avoided. Indeed, even if the judgment in question had become final without this appeal, appellants could have just the same asked the court a quo, if all they wanted was to be certain about the date of their possible default, to fix a definite period beyond the ninety (90) days referred to in the section aforequoted. An ordinary motion to such effect could have been filed and the trial court would have been within its proper bounds to act on and grant such motion.

In the case of *Rodriguez vs. Caoibes*, 62 Phil. 142, decided way back in 1935, a judgment of this Supreme Court

in a suit for the foreclosure of a real estate mortgage failed entirely to mention at all the period within which the amount of the adjudged mortgage debt should be paid, and after said judgment became final and was remanded to the lower court for execution, the latter fixed a period of three months for the payment ordered by this Court. Upon appeal taken here by the mortgagor, this Court held:

"In support of her appeal, the defendant-appellant assigns the following alleged errors committed by the trial court in its judgment, namely:

'1. In amending the judgment of this Honorable Supreme Court by converting an ordinary judgment to pay a sum of money into a foreclosure of a mortgage indebtedness, and in executing it as such.

'2. In confirming the sale by the provincial sheriff without trial or notice of trial to the parties in order that they may be fully heard, and notwithstanding the fact (1) That the final judgment rendered in the case was not for the foreclosure of a mortgage but an ordinary judgment to pay a sum of money; (2) that the bidding being by parcels, the award was for a lump sum; (3) that there has been included in the notice of public sale interest from November 9, 1931, whereas it should be only from the date of the decision of this Honorable Supreme Court, November 22, 1933, when the account was liquidated, thereby unduly increasing the amount of the advertised debit to P1,183.64; (4) that there has been included in the deed 'fees and publication P219.12, without justification and, apparently, exaggerated, there being no right to charge interest.

'3. In ordering the issuance of a writ of possession in favor of the plaintiff of the properties foreclosed.'

"The order to which the defendant-appellant's first alleged assignment of error refers is not that of September 14, 1934, to which she excepted and from which she announced her intention to appeal, but that of March 12, 1934, which reads:

'Motion granted: the defendant is ordered to pay the plaintiff, within three months, the sum of P10, 180.97, with legal interest from the date of the complaint, and the costs, and in the event said payment is not made within the period fixed, the properties will be sold in accordance with law in order to make good said amount. So ordered.

'Given in open court, Batangas, Batangas, March 12, 1934.

(Sgd) 'FERNANDO JUGO, JUDGE'

"The defendant neither excepted to nor appealed from this last order. The question raised by the defendant-appellant in the said first alleged error assigned is the jurisdiction of the trial court to amend the decision of this court rendered in this same case on the former appeal. (G. R. N3. 39044, Nov. 22, 1933 [58 Phil. 977]), the dispositive part of which is as follows:

'Wherefore, the appealed judgment is reversed, and the defendant-appellee Irineo Caoibes is ordered to pay the plaintiff-appellant Sebastiana Rodriguez the sum of P10, 180.97, with legal interest and costs. So ordered.'

"Section 256 of the Code of Civil Procedure, as amended, by Act No. 2640, provides:

'SEC. 256. Trial and judgment in foreclosure suits.- If upon trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment for the sum so found due and order that the same be paid into court within a period of not less than three months from and after the date on which the order was made, and that in default of such payment the land shall be sold to realize the mortgage debt and costs.'

"In Soriano vs. Enriquez (24 Phil., 584), this Court enunciated the following doctrine:

'4. ID.; ID.; JUDGMENT UNDER CODE OF CIVIL PROCEDURE.- Section 256 of the Code of Civil

Procedure requires judgment to be rendered for a specific amount, and that an order be made requiring that the amount for which judgment is rendered be paid into court within a specified time. 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.'

"The case at hand is for the foreclosure of a mortgage. It was tried as such in the Court of First Instance of Batangas as well as in this court on appeal. In reversing the appealed decision, by an involuntary omission, it was not ordered to deposit the amount of the judgment with the clerk of court of origin, within a period of not less than three months, and, in default thereof, to sell the mortgaged properties to pay the mortgage indebtedness and the costs. This involuntary omission of an imperative man-date of section 256 of the Code of Civil Procedure, above quoted, cannot alter the nature of the action, and the amendment of the decision may be asked to correct the defect, inasmuch as said provision is a necessary part hereof.

"On this point the American jurisprudence has laid down the following doctrine:

'A judgment or decree of foreclosure may be corrected after its rendition in respect of an error or omission, so as to make it conform to the intention of the court or the facts of the case, x x x.' (42-Corpus Juris, 158.)

'If anything has been omitted from the judgment which is necessarily or properly a part of it, and which was intended and understood to be a part of it, but failed to be incorporated in it through the negligence or inadvertence of the court or counsel, or the clerk, the omission may be supplied by an amendment even after the term x x x. (34 Corpus Juris, 235.)

Appellants should have acted pursuant to this precedent.

Paraphrasing what was said in Reyes vs. Victoriano, 107 Phil. 763, 768, when it is considered that there is nothing in the record to show that appellants have made any attempt to settle their obligation during the intervening period, since the judgment of the court a quo of November 14, 1963, or have made any tender of payment thereof, or made a deposit of the money as required by law to prevent the foreclosure sale, one cannot help but engender the suspicion that the appeal taken by the appellants is merely dilatory and for no other purpose than to prolong their enjoyment of the mortgaged properties, to the prejudice of the appellee. This Court will never give its stamp of approval to such kind of attitude and procedure. Rather than return this case to the lower court with instructions to fix the definite period desired by appellants, it is the considered opinion of this Court that on account of the long period that has already elapsed since the judgment of the trial court was rendered and it does not appear that efforts have been made by appellants to pay the amount decreed therein, the judgment herein should be that the said amount should be paid within thirty (30) days after this decision becomes final and executory.

Anent the second assignment of error, it is likewise to be noted that the matter of reduction of stipulated attorney's fees could have been pressed upon the trial court whose powers in the premises are no less than those of this Court. Besides, appellants' contention that no evidence was presented relative to attorney's fees in connection with the supplemental complaint is without merit, inasmuch as the same contract of mortgage, with the same stipulation as to the amount of attorney's fees, was involved in both the original as well as the supplemental complaints, and since the existence of such stipulation was not denied in the answer to the original complaint, and the purpose of the supplemental complaint, all the allegations of which are admitted in the answer thereto, was merely to allege additional amounts for the payment of taxes, insurance premiums and interest for which the appellants should be liable, it is obvious that the ten per centum (10%) for attorney's fees should be applied to the total amount alleged in the supplemental complaint. Nonetheless, without necessarily agreeing with appellants that said stipulated ten per centum (10%) for attorney's fees is unconscionable and immoral, the Court feels that five per centum (5%) of the whole amount of the judgment herein is sufficient for the purpose.

WHEREFORE, the judgment appealed from is modified in the sense that instead of ten per centum (10%), the amount for attorney's fees and costs of the suit is re-duced to five per centum (5%) of the amount adjudged in the amended decision of the trial court, which amount must be paid by appellants within thirty (30) days after this decision has become final and executory. In all other respects, the said judgment is hereby affirmed, with treble costs against appellants.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano and Teehankee, JJ., concur.
Reyes and Zaldivar, JJ., are on official leave of absence.

[1] Resolution of the Court of Appeals, dated March 10, 1964 (before the effectivity of Republic Act 5440), p. 12, Rollo.

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