

**CARLOS ALFARO AND MAGGIE CAPEN, PLAINTIFFS-APPELLANTS,
VS. LLANES & COMPANY AND THE SHERIFF OF THE CITY OF
MANILA, DEFENDANTS-APPELLANTS.**

G.R. No. L-27095. May 05, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

In Civil Case No. 51272 of the Court of First Instance of Manila Judge Carmelino G. Alvendia rendered a decision dated April 2, 1963, ordering the spouses Carlos Alfaro and Maggie Capen to pay Llanes & Company the sum of P16,778.94 plus six percent interest from August 15, 1962.

The court directed that, if the said amount was not paid within ninety days from notice, the mortgaged property described in the complaint should be sold at public auction to satisfy the mortgage obligation (See *Llanes & Co. vs. Bocar*, L-26992, February 12, 1976, 69 SCRA 318).

The Alfaro spouses did not appeal from that decision. The mortgaged property was sold at public auction on October 25, 1963 for P18,950 to the judgment creditor, Llanes & Company. The court confirmed the sale in its order of November 4, 1963.

Later, the Alfaro spouses filed in this Court a certiorari petition wherein they claimed that the lower court acted without jurisdiction in ordering the foreclosure of the mortgage to satisfy their obligation of P16,778.94, considering that the mortgage was executed as security for their obligation up to the amount of ten thousand pesos only.

That petition was dismissed for lack of merit in this Court's minute resolution of January 5, 1965 (L-23962, *Alfaro vs. Alvendia*).

Thwarted in their effort to nullify the foreclosure proceeding by means of certiorari, the Alfaro spouses resorted to another recourse. On March 1, 1965 they sued Llanes & Company and the sheriff of Manila in the Court of First Instance of Manila again for the purpose of setting aside the foreclosure sale. They resuscitated their theory in the certiorari case (L-23962) that the foreclosure was void because the mortgage was given as security only for the sum of P10,000 and, notwithstanding that contractual stipulation, the property was sold to the mortgagee for P18,950, thus making it difficult for them to redeem the property (Civil Case No. 60036).

The Alfaro spouses also assailed the foreclosure on the ground of inadequacy of price. They pointed out that at the foreclosure sale only the land, Lot 26, with an area of 168 square meters, was sold but not the improvements, and that, in spite of that fact, Llanes & Company wanted to assert dominical rights over the residential house erected on that lot. The Alfaro spouses also claimed damages.

Llanes & Company filed a motion to dismiss the complaint on the ground of lack of jurisdiction, lack of cause of action and *res judicata*.

The lower court in its order of April 21, 1966 dismissed the complaint because it was barred by the prior judgment in Civil Case No. 51272.

From the order of dismissal, the Alfaro spouses appealed to this Court. The appeal involves only a question of law (Sec. 2, Rule 42, Rules of Court).

The Alfaro spouses in this appeal contend that the lower court erred in dismissing their complaint, in holding that their complaint in Civil Case No. 60036 is merely an action for damages arising from the proceedings in the foreclosure suit, Civil Case No. 51272, and in holding that their claims in Civil Case No. 60036 are barred by res judicata or by the judgment in Civil Case No. 51272.

Considering the antecedents related above, we find the appeal to be devoid of merit. The matters raised by the Alfaro spouses should have been ventilated in the foreclosure proceeding.

The fact that the mortgage was a security for the obligation of the Alfaro spouses to Llanes & Company up to ten thousand pesos only and that the trial court did not take that into account in the order of foreclosure did not render void the foreclosure sale. If the Alfaro spouses wanted to stop the foreclosure, they should have paid the P10,000 to the mortgagee before the auction sale was held. They failed to do so.

They did not appeal from the judgment ordering the foreclosure of the mortgage. That judgment became final and conclusive. It operated as a bar to any subsequent action between the same parties involving issues which could have been litigated in that first case (Sec. 49[b], Rule 39, Rules of Court).

The judgment in the foreclosure suit was fortified by this Court's decision in *Llanes & Co. vs. Bocar*, supra. It was held in that case that the lower court's 1963 decision in the foreclosure suit, insofar as it was construed as referring only to the mortgaged lot, could not be amended so as to include the house in the foreclosure sale.

WHEREFORE, the lower court's order is affirmed with costs against the appellants.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Martin, JJ., concur.
Concepcion, Jr., J., on leave.

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