

VICENTE E. REYES, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF FELIPA ALONSO Y DE MESA VIUDA DE MENDIOLA, PLAINTIFF AND APPELLANT, VS. HENRY W. ELSE, DEFENDANT AND APPELLA...

G.R. No. L-21280. February 09, 1924

Ponente: VICENTE E. REYES, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF FELIPA ALONSO Y DE MESA VIUDA DE MENDIOLA, PLAINTIFF AND APPELLANT, VS. HENRY W. ELSE, DEFENDANT AND APPELLANT. MARIANO ALONSO Y DE MESA, INTERVENOR AND APPELLEE.

STATEMENT At the time of her death, Felipa Alonso y de Mesa, widow of Mendiola, was the sole owner of a parcel of land, known as lot 44-B subdivision of lot No. 44 of block No. 2130 of the cadastral survey of the City of Manila, together with the buildings and improvements thereon, consisting of 1,844.60 square meters, which is more fully described in transfer certificate of title No. 17652, issued by the register of deeds of Manila on June 22, 1922. In August, 1921, after her death, the plaintiff, Vicente E. Reyes, was appointed as administrator of her estate, and duly qualified as such, and at all times since has been and is now such administrator. After some negotiations, and by and with the knowledge, consent and approval of the heirs of the deceased, and founded upon an order of the probate court, the administrator sold the land in question to the defendant Henry W. Elser at the agreed price of P74,242.69, of which P10,000 was paid at the time of the purchase, and on March 29, 1922, Elser made his note to the plaintiff, as administrator, for the balance of 1*64,242.69 made due and payable May 29, 1922. To secure the payment of the note and on the same day, Elser executed to the administrator a first and voluntary mortgage on the premises, which was duly registered. By the terms of the note and the mortgage, the P64,242.69 was to bear interest at the rate of 12 per cent per annum from maturity until final payment. It was further provided that in case of a suit or action to collect the note and enforce the mortgage, Elser would pay the further sum of P5,000, as attorney's fees. For failure to pay the note at maturity, and on July 5, 1922, this suit was commenced to foreclose the mortgage and have the property sold. Among other things, the mortgage also provides: "(c) It is distinctly understood and agreed that all rents on the property above described from the date of the execution of this document until the full payment of the amount of the said note, shall be, as at present, collected by the party of the first part for the benefit of the estate under his administration." In the original complaint, the plaintiff prayed for P64,242.69, with interest thereon from May 29, 1922, at 12 per cent per annum, and for P5,000, as attorney's fees, and the sale of the property, and the application of the proceeds of the sale to satisfy the debt. Later, the plaintiff filed a plea in which he admits having collected rent upon the mortgaged property from May 29, 1922 to November 8, 1922, and that he kept the amount collected to apply upon the payment of the necessary expenses upon the mortgaged premises, and the balance, if any, to be applied to the payment of interest, and "that the plaintiff is, and always has been, ready to make an accounting of the rent collected upon the mortgaged premises and the expenses incurred in its preservation, but the defendant has never asked the plaintiff for a formal accounting." For answer, defendant Elser made a general denial, and further alleged that the plaintiff had collected all the rents upon the mortgaged premises from March 29, 1922, and never paid any part thereof to the defendant or given him credit therefor; that he has also collected from the defendant P104.80 as taxes which accrued prior to March 29, 1922, and further alleged that the "mortgage is invalid in that it provides for the payment of interest at the rate of 12 per cent per annum and for collection by the mortgagee for his benefit of the rents of the property alleged to have been mortgaged which amount to and have amounted to a sum in excess of 1*200 each month, constituting usury in violation of Act No. 2655, laws of the Philippine Islands." Over the protest and objection of the plaintiff, Mariano Alonso y de Mesa was permitted to file a bill of intervention, in which he alleges that for the last six years he has been and is now the usufructuary and in the possession of a two-story house on a certain lot on the premises, and that he obtained it as a

compensation "for the long and valuable services rendered by him in favor of Felipa Alonso who died on June 25, 1921;" that the right existed a long time prior to her death, and was recognized and confirmed by the deceased in her will; that the real property described in the mortgage was sold by Vicente Reyes, as administrator of the estate of Felipa Alonso to Henry W. Elser for P74,242.69; that the intervenor gave his consent to the sale with the understanding that he would intervene in the execution of the deed of sale, and that he was to receive "the proportional amount corresponding to his right of usufruct and possession," and that he has never received any part thereof; that the intervenor is entitled to, should have and receive, his proportional part "which corresponds to his usufructuary right and possession, inasmuch as on account of said sale he would be deprived of his aforesaid right of usufruct and possession, and for the reason that he had and was enjoying said usufructuary right and possession even prior to the death of the late Felipa Alonso." Wherefore, he prays a corresponding judgment for the value of the usufruct, or at least P4,640. To the bill of intervention, the plaintiff made a general denial. Pending the suit Mr. Elser died, and C. W. Rosenstock was appointed as administrator of his estate, and, as such, was substituted as defendant. The case was tried upon such issues, and the lower court rendered judgment in favor of the plaintiff and against the defendant Elser for the sum of P64,242.69, with interest thereon from May 29, 1922, at the rate of 12 per cent per annum, from which was deducted the sum of P1,812.29, the total amount of the rents received by the plaintiff, as shown by Exhibit J. The trial court also rendered judgment for the further sum of P5,000, as attorney's fees and the costs of the action, and dismissed the cross-complaint of the defendant Elser, and directed the sale of the property to satisfy the judgment. It also rendered judgment against the plaintiff, as administrator, in favor of Mariano Alonso y de Mesa, as intervenor, for the sum of P2,000 as the value of his right of occupation and usufruct, with interest from the date of the judgment, without costs. From the judgment against him and in favor of the plaintiff, as administrator, the defendant Rosenstock, as executor of the Elser estate, appeals and assigns the following errors: "I. The trial court erred in not finding that the sum or value reserved and secured by Exhibit A, paragraph 6, sub-paragraphs (a) and (c) was for the forbearance of P64,242.69 imported by the said exhibit and was greater than is allowed by section 2 of Act No. 2655. "II. The trial court erred in not finding that Exhibit A was tainted with usury and therefore void. "III. The trial court erred in condemning the defendant-appellant to pay to the plaintiff-appellant within the space of three months from April 30, 1923, the sum of P64,242.69 with interest at 12 per cent per annum less the sum of P1,812.29 and to pay the further sum of P5,000 as attorneys' fees and the costs of the action." From the judgment against him and in favor of the intervenor, the plaintiff appeals and assigns the following errors: "I. The trial court erred in finding that the intervenor signed the petition asking for a license to sell the property, Exhibit D, with the understanding that he (intervenor) would intervene in the execution of the deed of sale and receive a remuneration as payment of his right of occupation in house No. 30 on Calle Almanza, which was included in the property sold to the defendant Henry W. Elser. "II. The trial court erred in holding that the intervenor had a right to receive P2,000, as reasonable compensation for his usufruct and right of occupation. "III. The trial court erred in accepting the intervenor's motion, asking permission to intervene, filed right at the trial of this case without serving previous notice to the plaintiff, as required by section 121 of the Code of Civil Procedure and section 10 of the rules of Courts of First Instance, and in not ordering the striking out of the record of the complaint in intervention, as prayed for by the plaintiff in his motion under date of November 15, 1922. "IV. The trial court erred in condemning the plaintiff to pay the intervenor the sum of P2,000 with legal interest." JOHNS, J.

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STATEMENT

At the time of her death, Felipa Alonso y de Mesa, widow of Mendiola, was the sole owner of a parcel of land, known as lot 44-B subdivision of lot No. 44 of block No. 2130 of the cadastral survey of the City of Manila, together with the buildings and improvements thereon, consisting of 1,844.60 square meters, which is more fully described in transfer certificate of title No. 17652, issued by the register of deeds of Manila on June 22, 1922.

In August, 1921, after her death, the plaintiff, Vicente E. Reyes, was appointed as administrator of her estate, and duly qualified as such, and at all times since has been and is now such administrator.

After some negotiations, and by and with the knowledge, consent and approval of the heirs of the deceased, and founded upon an order of the probate court, the administrator sold the land in question to the defendant Henry W. Elser at the agreed price of P74,242.69, of which P10,000 was paid at the time of the purchase, and on March 29, 1922, Elser made his note to the plaintiff, as administrator, for the balance of P64,242.69 made due and payable May 29, 1922. To secure the payment of the note and on the same day, Elser executed to the administrator a first and voluntary mortgage on the premises, which was duly registered. By the terms of the note and the mortgage, the P64,242.69 was to bear interest at the rate of 12 per cent per annum from maturity until final payment. It was further provided that in case of a suit or action to collect the note and enforce the mortgage, Elser would pay the further sum of P5,000, as attorney's fees.

For failure to pay the note at maturity, and on July 5, 1922, this suit was commenced to foreclose the mortgage and have the property sold.

Among other things, the mortgage also provides:

"(c) It is distinctly understood and agreed that all rents on the property above described from the date of the execution of this document until the full payment of the amount of the said note, shall be, as at present, collected by the party of the first part for the benefit of the estate under his administration."

In the original complaint, the plaintiff prayed for P64,242.69, with interest thereon from May 29, 1922, at 12 per cent per annum, and for P5,000, as attorney's fees, and the sale of the property, and the application of the proceeds of the sale to satisfy the debt. Later, the plaintiff filed a plea in which he admits having collected rent upon the mortgaged property from May 29, 1922 to November 8, 1922, and that he kept the amount collected to apply upon the payment of the necessary expenses upon the mortgaged premises, and the balance, if any, to be applied to the payment of interest, and "that the plaintiff is, and always has been, ready to make an accounting of the rent collected upon the mortgaged premises and the expenses incurred in its preservation, but the defendant has never asked the plaintiff for a formal accounting."

For answer, defendant Elser made a general denial, and further alleged that the plaintiff had collected all the rents upon the mortgaged premises from March 29, 1922, and never paid any part thereof to the defendant or given him credit therefor; that he has also collected from the defendant P104.80 as taxes which accrued prior to March 29, 1922, and further alleged that the "mortgage is invalid in that it provides for the payment of interest at the rate of 12 per cent per annum and for collection by the mortgagee for his benefit of the rents of the property alleged to have been mortgaged which amount to and have amounted to a sum in excess of P200 each month, constituting usury in violation of Act No. 2655, laws of the Philippine Islands."

Over the protest and objection of the plaintiff, Mariano Alonso y de Mesa was permitted to file a bill of intervention, in which he alleges that for the last six years he has been and is now the usufructuary and in the possession of a two-story house on a certain lot on the premises, and that he obtained it as a compensation "for the long and valuable services rendered by him in favor of Felipa Alonso who died on June 25, 1921;" that the right

existed a long time prior to her death, and was recognized and confirmed by the deceased in her will; that the real property described in the mortgage was sold by Vicente Reyes, as administrator of the estate of Felipa Alonso to Henry W. Elser for P74,242.69; that the intervenor gave his consent to the sale with the understanding that he would intervene in the execution of the deed of sale, and that he was to receive "the proportional amount corresponding to his right of usufruct and possession," and that he has never received any part thereof; that the intervenor is entitled to, should have and receive, his proportional part "which corresponds to his usufructuary right and possession, inasmuch as on account of said sale he would be deprived of his aforesaid right of usufruct and possession, and for the reason that he had and was enjoying said usufructuary right and possession even prior to the death of the late Felipa Alonso."

Wherefore, he prays a corresponding judgment for the value of the usufruct, or at least P4,640.

To the bill of intervention, the plaintiff made a general denial.

Pending the suit Mr. Elser died, and C. W. Rosenstock was appointed as administrator of his estate, and, as such, was substituted as defendant.

The case was tried upon such issues, and the lower court rendered judgment in favor of the plaintiff and against the defendant Elser for the sum of P64,242.69, with interest thereon from May 29, 1922, at the rate of 12 per cent per annum, from which was deducted the sum of P1,812.29, the total amount of the rents received by the plaintiff, as shown by Exhibit J. The trial court also rendered judgment for the further sum of P5,000, as attorney's fees and the costs of the action, and dismissed the cross-complaint of the defendant Elser, and directed the sale of the property to satisfy the judgment. It also rendered judgment against the plaintiff, as administrator, in favor of Mariano Alonso y de Mesa, as intervenor, for the sum of P2,000 as the value of his right of occupation and usufruct, with interest from the date of the judgment, without costs. From the judgment against him and in favor of the plaintiff, as administrator, the defendant Rosenstock, as executor of the Elser estate, appeals and assigns the following errors:

"I. The trial court erred in not finding that the sum or value reserved and secured by Exhibit A, paragraph 6, sub-paragraphs (a) and (c) was for the forbearance of P64,242.69 imported by the said exhibit and was greater than is allowed by section 2 of Act No. 2655.

"II. The trial court erred in not finding that Exhibit A was tainted with usury and therefore void.

"III. The trial court erred in condemning the defendant-appellant to pay to the plaintiff-appellant within the space of three months from April 30, 1923, the sum of P64,242.69 with interest at 12 per cent per annum less the sum of P1,812.29 and to pay the further sum of P5,000 as attorneys' fees and the costs of the action."

From the judgment against him and in favor of the intervenor, the plaintiff appeals and assigns the following errors:

"I. The trial court erred in finding that the intervenor signed the petition asking for a license to sell the property, Exhibit D, with the understanding that he (intervenor) would intervene in the execution of the deed of sale and receive a remuneration as payment of his right of occupation in house No. 30 on Calle Almanza, which was included in the property sold to the defendant Henry W. Elser.

"II. The trial court erred in holding that the intervenor had a right to receive P2,000, as reasonable compensation for his usufruct and right of occupation.

"III. The trial court erred in accepting the intervenor's motion, asking permission to intervene, filed right at the trial of this case without serving previous notice to the plaintiff, as required by section 121 of the Code of Civil

Procedure and section 10 of the rules of Courts of First Instance, and in not ordering the striking out of the record of the complaint in intervention, as prayed for by the plaintiff in his motion under date of November 15, 1922.

"IV. The trial court erred in condemning the plaintiff to pay the intervenor the sum of P2,000 with legal interest."

JOHNS, J.:

The note and mortgage in question were executed by Mr. Elser, now deceased, to and in favor of the plaintiff, as administrator, and the whole transaction was authorized and approved by the court. It was the result of a series of negotiations between the plaintiff and Elser, and the sale itself was authorized and approved by the heirs of the deceased, including Mariano Alonso y de Mesa, the intervenor. It is true that clause C of the mortgage in question above quoted specifically provides "that all rents on the property above described from the date of the execution of this document until the full payment of the amount of the said note, shall be, as at present, collected by the party of the first part for the benefit of the estate under his administration." Standing alone and within itself, it might be construed as tending to show that the plaintiff was to receive more than 12 per cent interest on the amount of the note.

March 22, 1922, Elser wrote the plaintiff as follows:

"I have the honor to advise you that the said property is now sold to the undersigned under the following conditions :

"The sum of ten thousand (P10,000) pesos to be paid upon the execution of the deed of sale, and

"The balance to a term of sixty (60) days after the sale, same to be recorded on regular mortgage, upon the same property. It is understood that the said mortgage will carry no interest, during that period of sixty (60) days, but whatever rent to be derived from said property during said period to redound to the benefit of the estate."

Based upon that letter, the probate court made an order authorizing and approving the sale of the property.

March 25, 1922, Elser wrote the plaintiff another letter in which he said:

"The balance to a term of sixty (60) days after the sale, same to be recorded on regular mortgage, upon the same property. It is understood that the said mortgage will carry no interest during that period of sixty (60) days, but whatever rent to be derived from said property during said period to redound to the benefit of the estate."

Upon its receipt, another order of the probate court was obtained authorizing the sale upon the terms stated in that letter.

It is important to note that all of the transactions between the plaintiff and Elser were authorized and approved by the probate court, and that the transaction was a sale of property as distinguished from a loan of money by one person to another. It is also important to note that the promissory note in question became due and payable sixty days after its execution, and that it specifically provides that it shall not draw interest until after maturity. It is very apparent that at the time the mortgage was executed, it was contemplated by both parties that the note would be paid at its maturity, and that the clause, giving the plaintiff the right to the rents for the first sixty days, was inserted in consideration of plaintiff's waiver of interest on the note for the first sixty days. In other words, it was contemplated that the note would be paid at maturity. Pending that time it did not draw interest, and for such reason the plaintiff was to have the rents pending the maturity of the note. That was the real purpose and intent of the parties. It is true that in the original complaint the plaintiff claimed both the interest and the rents from May 29, 1922. But in a subsequent pleading, the exclusive right to the rents after May 29th was waived, and the plaintiff offered to account for them, and in its finding the lower court allowed the defendant credit for rents to the

amount of P1,812.29, and as a payment pro tanto on the note.

Clause C in the mortgage is a literal copy of Elser's letter to the plaintiff of March 25th, in which he modified his proposition of March 22d. In other words, clause C of the mortgage in question was founded on Elser's own proposition. It is very apparent that neither the plaintiff nor Elser ever contemplated the making of an usurious contract, and that, at the time it was made, neither of them ever thought or understood that it was. There is no merit in the claim that it was an usurious transaction. It was a sale as distinguished from a loan, and was authorized and approved by the probate court, and upon that question the judgment of the lower court is in accord with the actual facts and the intention of the parties, and for such reason is affirmed, with costs in favor of the plaintiff and against the appellant Rosenstock, as administrator.

Upon the bill of intervention, the trial court rendered judgment in favor of the intervenor and against the plaintiff for the sum of P2,000, without costs.

Here, again, it will be noted that both the note and the mortgage were executed by Elser to, and in favor of, the plaintiff, as administrator, and that there are other heirs of the deceased Felipa Alonso y de Mesa, of which the intervenor is only one, and that the deceased was the sole owner of the real property in question at the time of her death; that there are other improvements upon it outside of those claimed by the intervenor; that the sale in question was authorized and consummated with both the knowledge, written consent and approval of the intervenor, and that he shared in the proceeds of the sale.

This is a suit to foreclose the mortgage, and the validity of the mortgage is the only question involved between the plaintiff and the defendant Elser. The note and mortgage, having been executed to, and in favor of, the plaintiff, as administrator, by and with the knowledge, consent and approval of the heirs of the deceased, as administrator, plaintiff is entitled to have and receive the proceeds from the sale of the property. The question as to how it should be divided, and to whom it should be paid, and the amount which each should receive, and which the intervenor now seeks to litigate in this case, is a matter solely between the heirs of the deceased, and between them only, and the intervenor is the only one of them, who is a party to this action, and the other heirs would not be bound by any judgment of preference rendered in favor of the intervenor. In other words, the questions sought to be litigated by the intervenor in this action are questions between the heirs of the deceased, and between them only, and to which all of them should be made a party.

Assuming, without deciding, that the intervenor has a just and equitable claim, as contended for in his bill of intervention, it is a matter which should be settled in the administration of the estate between the intervenor and his coheirs.

The judgment in his favor and against the plaintiff, as administrator, is reversed, without costs to either party, and without prejudice to any rights which the intervenor may have arising from, or growing out of, any of the matters alleged in his bill of intervention. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

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