

JUAN D. SALVADOR AND REMEGIA ZUÑIGA, PLAINTIFFS AND APPELLANTS, VS. GUILLERMO LOCSIN, DEFENDANT AND APPELLEE.*G. R. No. L-4629. May 29, 1953*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9fc08c1b240b/>**LABRADOR, J.:**

This is an action to foreclose a mortgage on a certain parcel of land in Buenavista, Iloilo, covered by Transfer Certificate of Title No. 9791 of the Register of Deeds of Iloilo. Plaintiffs sold this land on June 5, 1937, to Enrique Palenzuela and Lina Camon de Palenzuela for P50,000, of which P18,000 was paid at the time of the execution of the contract. The balance of P32,000 was agreed to be paid within 10 years from the sale, with interest at 8 per cent per annum, payable yearly in the month of June. A mortgage over the land and its improvements was constituted to guarantee the payment of the balance of the purchase price remaining unpaid. It was further agreed that if the purchasers should fail to pay the mortgage, they would be liable to pay P3,000 as judicial expenses. On June 24, 1938, Enrique Palenzuela and Lina Camon de Palenzuela sold the land to Guillermo Locsin for P61,055.94. Locsin assumed the mortgage to the plaintiffs, paying the balance to the spouses Palenzuela. As Guillermo Locsin failed to pay the mortgage, plaintiffs brought this action on November 1, 1945, to collect the total amount of the mortgage, plus P3,000 attorney's fees.

The original answer of the defendant was a general denial. On February 15, 1949, he filed an amended answer alleging that the mortgage is not due and demandable because of the provisions of section 2 of Republic Act No. 342, the defendant having filed a claim of P69,000 with the U. S. War Damage Commission. The trial took place on January 18, 1950, and thereupon the parties filed a stipulation of facts in which defendant admits (1) the indebtedness arising out of the contract of mortgage, and (2) nonpayment of interest from 1941. The plaintiffs, in turn, admit the filing of a claim by the defendant with the U. S. War Damage Commission. Upon this stipulation the Court of First Instance of Iloilo rendered judgment ordering the defendant to deposit the sums of P32,000 and P3,000, with interest due, within 90 days from the date on which the moratorium is lifted, pursuant to Republic Act No. 342. Against this judgment an appeal was prosecuted to this Court by the plaintiffs-appellants.

The first assignment of error is directed against the application of the moratorium law to the present action. It is claimed that an action for the foreclosure of a mortgage is a real action, which seeks to reach the property and subject it to the payment of an obligation; that the recovery of money indebtedness is not involved therein, and if it is, it is so only coincidentally, and, therefore, the moratorium law does not apply. We can not agree with this contention. The situation is not as appellants contend; it is the opposite. The principal obligation is the money indebtedness, and the subjection of the property only resorted to upon failure to pay the debt. Hence, the money debt is the principal thing; the foreclosure of the property only the result, or an incident of the failure to pay the indebtedness.

It is also contended that the defense of moratorium was waived by the defendant because after presenting it as a defense, it was subsequently made the basis of a motion for dismissal. The argument is without merit. A defense may be pleaded either in an answer or in a motion to dismiss. (Sec. 5, Rule 8, Rules of Court.)

The most serious contention of appellants is the unconstitutionality of the moratorium law. We have just held in *Rutter vs. Esteban*,[*] G. R. No. L-3708, promulgated May 18, 1953, that the said law is unreasonable and oppressive and, therefore, null and void. Following the ruling and the procedure adopted in said case, we hereby render judgment ordering the defendant-appellee to pay to plaintiffs, or deposit with the clerk of the Court of First Instance of Iloilo, the sum of P32,000, with 8 per cent interest per annum, from the year 1941 to the time of payment, plus the amount of P3,000 as attorney's fees, and costs. The deposit shall be made within ninety (90) days from the date of the service of this judgment, otherwise the property shall be sold to realize the mortgage debt and costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

[*] *Supra*, p. 68.

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