

POTENCIANO ILUSORIO AND SILVERIO R. VIOLA, PLAINTIFFS AND APPELLANTS, VS. FERNANDO BUSUEGO, DEFENDANT AND APPELLEE.

G.R. No. L-822. September 30, 1949

Ponente: FERIA, J.

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FERIA, J.:

On May 3, 1943, the plaintiff Silvio R. Viola obtained from the defendant Fernando Busuego a loan of P35,000.00, and to secure the payment of said amount the former executed a deed of mortgage (Exh. A) of fifteen parcels of land situated in Bulacan in favor of the latter, which provides in its paragraphs 3 and 4 following:

"3. That the principal of P35,000.00 shall be repaid within the period of three (3) years from the date hereof with interest at the rate of eight per cent (8%) per annum payable annually in advance, the first payment of said interest to commence on the date of this instrument and the subsequent payments on the same date of every year thereafter.

"4. That the mortgagor binds himself, if the mortgagee so desires, not to redeem the mortgaged properties, during the continuance of this mortgage, but the mortgagee reserves his right to terminate the same and take steps for its foreclosure, judicially or extra-judicially in accordance with the provisions of Act 3135, as amended, upon default of the mortgagor to pay the stipulated annual interest on its maturity, and upon violation on the part of said mortgagor of any of the conditions herein stipulated."—Exhibit A. (*italics ours*).

Subsequently, on July 3, 1943, additional security and partial release of some of the properties mortgaged were agreed upon by the parties in another instrument (Exh. B), subject to the same terms and conditions stipulated in the deed of mortgage Exhibit A, part of which is quoted above.

On November 12, 1943, plaintiff Viola, without the knowledge and consent of the defendant Busuego, executed a deed of sale in favor of the other plaintiff-appellant Potanciano Ilusorio of five parcels of land, mortgaged to the defendant, and Ilusorio assumed the obligation to pay Viola's obligation or debt to the defendant Busuego under the terms and conditions stipulated in the above quoted deed of mortgage.

On April 27 and July 5, 1944, the plaintiff Ilusorio tendered to defendant Busuego the sum of P40,638.58, in payments of the Viola's debt with interest accrued and to accrue up to May 3, 1946; and as the latter refused to accept it on the ground that according to paragraph 4 of the deed of mortgage, "the mortgagor binds himself, if the mortgagee so desires, not to redeem the mortgaged properties during the continuance of this mortgage," the plaintiffs deposited the money in the court and filed a complaint against the defendant to compel him to accept the payment.

The defendant alleged in his answer as special defense that, according to the deed of mortgage, the plaintiff Silverio R. Viola bound himself, if the mortgagee so desires, not to redeem the mortgage during the continuance of the mortgage, and filed a counterclaim against the plaintiffs to pay the sum of P2,800.00 as interest of the debt for one year from May 3, 1944, to May 3, 1945, with interest at the rate of 8 per cent per annum.

After trial, the Court of First Instance of Manila rendered judgment on August 30, 1944, dismissing the plaintiffs' action on the ground that, according to paragraph 4 of the deed of mortgage, the plaintiffs could not redeem the property mortgaged without the consent of the defendant before the expiration of the period of three years, and sentencing the former to pay the latter the sum of P2,800.00 with interest at 8 per cent per annum from May 3, to July 5, 1944, with costs against the plaintiffs.

The plaintiffs appealed from the judgment of the lower court, and the question for us now to determine is whether, under the provisions of paragraphs 3 and 4 of the deed of mortgage, the plaintiffs-appellants have the right to compel the defendant-appellee to accept the payment of the debt before the expiration of the period of three years stipulated in the deed of mortgage.

We are of the considered opinion, and so hold, that the lower court is right in deciding that, according to paragraphs 3 and 4 of the mortgage, the appellants could not pay the debt and redeem the mortgage before the expiration of the period of three years, without the consent of the defendant appellee.

According to Sec. 59, Rule 123, of the Rules of Court, "In the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all"; and the only construction which may be adopted to give effect to the provisions of both paragraphs (3) and (4) of the deed of mortgage above quoted, is that the mortgage debt shall be payable at the expiration of three years, but it may be paid before the expiration of the period if the creditor consents to accept the payment; because otherwise, or to construe the deed in the sense that the mortgagor has the right to pay the debt within or before the expiration of the period of three years, would be to give no effect to the pertinent provision of paragraph 4 of the deed of mortgage.

In view of the foregoing, the appealed judgment is affirmed with costs against the appellants.

Moran, C.J., Ozaeta, Bengzon, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

DISSENTING

PARAS, J.:

As correctly pointed out by the majority, in the construction of an instrument where there are several provisions or particulars, such a construction is, if possible to be adopted as will give effect to all (Rule of Court No. 123, section 59). Under paragraph 3 of the mortgage in question, the debtor shall (not merely "may") repay the loan within a period of three years. Upon the other hand, it is provided in the succeeding paragraph 4 that "the mortgagor binds himself, if the mortgagee so desires, not to redeem the mortgaged properties, during the continuance of this mortgage." The majority have ruled that the mortgagor cannot pay the debt before the expiration of three years without the consent of the mortgagee,—a construction that obviously gives effect only to paragraph 4 in utter disregard of paragraph 3 and, hence, in contravention of the very rule invoked by them. In my opinion, a reverse interpretation is, under the facts of this case, not only fair and equitable but conformable to the rule of construction embodied in section 59 of Rule of Court No. 123. In other words, I hold that the mortgagor has the right to pay the indebtedness at any time within three years provided that, as in this case, he pays the interest for whole term of the mortgage. In the ordinary course of things, a loan is granted in consideration of interest, and if by the early payment of the obligation, the creditor would not lose any part of the stipulated interest, both paragraph 3 and 4 would practically be enforced. It cannot be alleged that the creditor herein, in addition to interest, wanted to have his money in the safekeeping of the debtor, because the contract is one of loan and not of deposit. It is to be remembered, moreover, that the debt was being paid in the same currency loaned

(Japanese money). The effect of inflation is one of the risks naturally incident to the money-lending business, and the lender should protect himself against it by plain covenants.

In view of the foregoing, I vote for the reversal of the appealed judgment.

PADILLA, J.:

I concur in this dissent.

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