

**ESTEBAN M. SADANG AND MARIA LACHICA,
PLAINTIFFS-APPELLANTS, VS. GOVERNMENT SERVICE INSURANCE,
DEFENDANT-APPELLEE.**

G. R. No. L-23448. October 28, 1966

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, taken by plaintiffs Esteban M. Sadang and his wife Maria Lachica, from a decision of the Court of First Instance of Manila dismissing their complaint, with costs against them.

Plaintiffs obtained from the Government Service Insurance System a loan of P144,000.00, on September 13, 1957, and an additional loan of P29,000.00, on August 11, 1958, payable, with interest, on installments. To guarantee the payment thereof, plaintiffs constituted a real estate mort gage on a parcel of land, belonging to them, situated in Manila and more particularly described in Transfer Certificate of Title No. 22386 of Manila in their name. Upon their default in the payment of some of the amortizations provided in the principal obligation, and the interest as well as the surcharges stipulated therein, despite repeated demands, defendant asked the Sheriff of Manila to extra judicially foreclose said mortgage, as agreed upon by the parties. After publishing the corresponding notice of sale in the newspaper "Voz de Manila", the aforementioned property was, on December 2, 1959, sold at public auction to the defendant as the highest bidder. Soon thereafter, or on January 11, 1960, the defendant applied for a writ of possession, which was granted, without any opposition thereto, on January 16, 1960, upon the filing of the corresponding bond by the defendant, which took possession of said property on November 10, 1960. Almost two (2) years later, or on September 8, 1962, plaintiffs filed the present action, in the Court of First Instance of Manila, to annul the aforementioned sale and recover damages, upon the ground that the newspaper "Voz de Manila" is not of general circulation and that the notice of sale had not been published for three (3) consecutive weeks.

After appropriate proceedings, said court rendered a decision dismissing the complaint, with costs against the plaintiffs, who, thereupon, interposed this appeal directly to the Supreme Court, upon the ground that the property in question is worth more than P200,000.00.

Plaintiffs maintain that the aforementioned sale at public auction is null and void ab initio upon the theory that the newspaper "Voz de Manila" is not of "general circulation" and that publication of the corresponding notice of sale once a week for three (3) consecutive weeks has not been sufficiently established.

In connection with the last issue, the customary affidavit of the editor of the "Voz de Manila" to the effect that said notice had been published in said newspaper on October 29, and November 5 and 12, 1959, was duly introduced in evidence, and constitutes prima facie evidence of said fact. There being no competent evidence to the contrary, and considering that, as the party alleging non-compliance with the requisite publication, plaintiffs had the burden of proving said allegation, it is apparent that the same has not been substantiated. The cases of Campo vs. Bartolome (38 Phil. 808), Balagtas vs. Arguelles (57 Phil. 317) and Borja vs. Addison (44 Phil. 895),

cited by the plaintiffs, refer to sales made without the notice required by law. Consequently, they are inapplicable to the present case, said notices having been given therein.

As regards the question whether the newspaper "Voz de Manila" is of general circulation or not, plaintiffs allege that said newspaper had never been registered with the Bureau of Commerce; that it was not accepted by the public; that there had been several interruptions in its publication from 1945 to 1961; that several offices of the Government and universities had never subscribed thereto or were not subscribed thereto in 1959; that, after June 30, 1959, the "Voz de Manila" had not submitted any report to the Bureau of Census and Statistics; and that a money judgment rendered against said newspaper in 1952 was still unsatisfied in 1959. The lower court had, however, the following to say:

"This Court can say that at the time of its publication, 'Voz de Manila' was edited in Spanish and was generally read by persons who understand said language, especially at the time, as it is now, when newspapers in Spanish were quite rare in the City of Manila. 'Voz de Manila', as a newspaper, contained news of general interest and character to the community and at the time of its publication, it used to carry court notices, notices of extra-judicial foreclosure of mortgages and notices of public sales of mortgaged property by the Sheriff of Manila, as well as by Sheriffs of the different provinces in the Philippines. Consequently, the fact, as contended by the plaintiffs, that some universities and colleges did not have copies of said newspaper in their files, is no proof that 'Voz de Manila' was not a newspaper of general circulation for it can be stated as a fact that it being in Spanish, its contents could not be of interest to university students who have hardly a working knowledge or understanding of the Spanish language as the mode of instruction in almost all the universities and colleges is in English."

Upon a review of the record, we are not prepared to disturb the foregoing finding of fact, which, in our opinion, is substantially correct. Moreover, admittedly, plaintiffs had been notified by the Sheriff that the mortgaged property would be sold at public auction on December 2, 1959, at 10:00 a.m., at the main entrance of the City Hall of Manila; the sale took place on said date, and at said time and place; over a month after the sale, or on January 11, 1960, defendant filed a motion for a writ of possession, to which plaintiffs did not object; the corresponding writ of possession was issued on January 16, 1960; and, on November 10, 1960, the property in question was actually delivered to the defendant, without any opposition on their part, either at that time or within the next twenty-two (22) months preceding the commencement of the present action. Since, it is presumed that official duty has been regularly performed and that the ordinary course of business has been followed (Rule 13, Section 5 [m] and [q], Rules of Court), we must assume that plaintiffs were notified of defendant's motion for a writ of possession, of the order of the court granting said motion and of the very fact of delivery of possession to the defendant. Plaintiffs' inaction during this period of time constitutes a waiver of such objection as they may have had to the foreclosure sale predicated upon the theory that the newspaper "Voz de Manila" is not of general circulation and bars their present action based upon said theory.

WHEREFORE, the decision appealed from is hereby affirmed, and this appeal being manifestly frivolous, plaintiffs and their counsel are hereby sentenced, jointly and severally, to pay treble costs (Rule 142, Section 3, Rules of Court).

IT IS SO ORDERED.

Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

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