

GLICERIA C. LIWANAG, SPECIAL ADMINISTRATRIX OF THE ESTATE OF PIO D. LIWANAG, PETITIONER, VS. HON. LUIS B. REYES, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND ROTEGAAN FINA...

G.R. No. L-19159. September 29, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for certiorari to annul the orders of the Court of First Instance of Manila appointing a receiver and deferring action on the motion to dismiss in Civil Case No. 48154. A preliminary injunction was issued upon the filing of this petition.

On July 14, 1960, the late Pio D. Liwanag executed in favor of the Rotegaan Financing, Inc., a real estate mortgage on a parcel of residential land with the building and improvements thereon, at M. H. del Pilar Street, Manila, to secure the payment of a loan in the amount of one hundred and eighty thousand pesos (P180,000.00), Philippine Currency, with interest at the rate of 12% per annum on said loan. It was stipulated in the mortgage contract that the total amount of mortgage debt be fully paid a year thereafter, or on or before July 14, 1961. Before the one year period expired, the mortgagor Pio D. Liwanag died intestate.

As the total mortgage obligation of the deceased was not fully paid within the stipulated period, the mortgagee Rotegaan Financing, Inc., on September 21, 1961, instituted, in the Court of First Instance of Manila, a complaint for foreclosure against the Estate of Pio D. Liwanag and Gliceria Liwanag as administratrix of the estate. The action also prayed for the appointment of a receiver.

The defendant Gliceria Liwanag filed a motion to dismiss the complaint for foreclosure, on the theory that she may not be used as special administratrix.

The said defendant also filed opposition to the prayer for the issuance of a writ of receivership, on the theory that the property subject of the foreclosure proceedings is in custodia legis, since administration proceedings had already been instituted for the settlement of the estate of the deceased.

In two separate orders, the writ of receivership was issued, despite opposition, and action on the motion to dismiss was deferred "until after the trial of this case on the merits because there is a possibility that the estate of the deceased may be in a position to pay the amounts claimed by the plaintiff, in which case the latter may choose to file its claim against the decedent in the office of the Clerk of Court, and waive the mortgage."

Motion for reconsideration filed by the defendant having been denied, the latter filed this petition for certiorari, alleging abuse of discretion on the part of the lower court in issuing the questioned orders. As prayed for, a writ of preliminary injunction was issued upon the filing of the petition.

The case raises the following fundamental issues; first, the correctness of the action for foreclosure against the special administratrix, and second, the propriety of the appointment of a receiver.

Section 7 of Rule 86 of the New Rules of Court provides that a creditor holding a claim against the deceased, secured by a mortgage or other collateral security, may pursue any of these remedies: (1) abandon his security and prosecute his claim in the testate or intestate proceeding and share in the general distribution of the assets of the estate; (2) foreclosure of his mortgage or realize upon his security by an action in court, making the executor or administrator a party defendant, and if there is a deficiency after the sale of the mortgaged property, he may prove the same in the testate or intestate proceedings; and (3) rely exclusively upon his mortgage and foreclose it at any time within the ordinary period of limitations, and if he relies exclusively upon the mortgage, he shall not be admitted as creditor of the estate, and shall not share in the distribution of the assets.

Obviously, the herein respondent has chosen the second remedy, having filed his action for foreclosure against the administratrix of the property.

Now the question arises as to whether the petitioner herein can be sued as special administratrix. The Rules of Court do not expressly prohibit making the special administratrix a defendant in a suit against the estate. Otherwise, creditors would find the adverse effects of the statute of limitations running against them in cases where the appointment of a regular administratrix is delayed. So that if We are now to deny the present action on this technical ground alone, and the appointment of a regular administrator will be delayed, the very purpose for which the mortgage was constituted will be defeated.

The next point to be considered is whether or not there was abuse of discretion on the part of the lower court in the issuance of its order for the appointment of a receiver. This should be answered in the negative. It is to be noted that the contract of mortgage between the deceased and the Rotegaan Financing, Inc., provides:

"* * * In case of judicial foreclosure, the Mortgagor hereby consents to the appointment of the president of the mortgagee corporation or any of its officers as receiver, without any bond, to take charge of the mortgaged property at once, and to hold possession of the same, and rents and profits derived from the mortgaged property, before the sale, less the costs and expenses of the receivership, the expenses of collection and attorney's fees, which shall be fifteen per cent (15%) of the total indebtedness then unpaid, exclusive all costs and fees allowed by law, shall be applied first to the payment of the interest and then to the capital of the indebtedness secured hereby." (Italics Supplied)

It was, therefore, the will of the deceased himself that, in case of foreclosure, the property be put into the hands of a receiver, and this provision should be respected by the administratrix of the estate. The cases cited by petitioner in favor of the theory that property in custodia legis can not be given to a receiver is not applicable, considering that this is an action to enforce a superior lien on certain property of the estate and the appointment of a receiver, which is a very convenient and feasible means of preserving and administering the property, has been agreed upon by the contracting parties.

Wide latitude of discretion is usually given to the trial courts in the matter of receivership and unless that discretion is exercised arbitrarily, We are not to interfere. (See *Motoomull vs. Arieta, et al.*, G. R. No. L-15972, May 31, 1963.)

IN VIEW OF THE FOREGOING, the two orders complained of are affirmed. The petition is hereby dismissed and the preliminary injunctive writ heretofore issued dissolved. With costs against petitioner.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Dizon, Jr., J., concur in the result.

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