

ISABEL OCAMPO, PLAINTIFF-APPELLANT, VS. IGNACIO DOMALANTA AND PONCIANO MARTINEZ, IN HIS CAPACITY AS PROVINCIAL SHERIFF OF CAVITE, DEFENDANTS-APPELLEES.

G.R. No. L-21011. August 30, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Sole question raised on appeal is this: Is a court order confirming a sheriff's sale upon a judgment in a real estate foreclosure case a bar to a subsequent action by the judgment debtor to annul the sale upon grounds which were raised in said foreclosure proceedings?

First, to the background facts. A contested case to foreclose a real estate and chattel mortgage [Civil Case 45778, Court of First Instance of Manila, "Ignacio Domalanta, plaintiff, vs. Isabel O. Vda. de Chi Chioco, et al., defendants"], resulted in judgment ordering appellant Isabel O. Vda. de Chi Chioco (now known as Isabel Ocampo) to pay appellee Ignacio Domalanta P2,000.00, with 1% interest per month from December 5, 1958 until full payment, and P500.00 as attorney's fees, and directing that after failure to pay the above amounts in ninety days, the properties mortgaged be sold at public auction, subject to a first mortgage in favor of the Philippine National Bank in reference to appellant's land (located in Tanza, Cavite) mortgaged.[1]

The judgment debt remained unpaid. The court, on Domalanta's motion, issued a writ of execution. Pursuant thereto, on May 8, 1962, appellee sheriff sold at public auction the mortgaged land of 32,558 square meters to the highest bidder, appellee Ignacio Domalanta, for P3,537.00. Domalanta moved to confirm the sale. Over appellant's objection, the court, on June 2, 1962, confirmed.

After the June 2, 1962 order had become final, appellant started the present suit (Civil Case N-496 of the Court of First Instance of Cavite, entitled "Isabel Ocampo, plaintiff, vs. Ignacio Domalanta and Ponciano Martinez, in his capacity as Provincial Sheriff of Cavite, defendants") to annul the sheriff's sale. Grounds: Appellant mortgagor was not properly notified of the foreclosure sale; and the price for which the property was sold was "very much lower than the actual market value" and shocking to the conscience, and thus invalid. Appellee Domalanta moved to dismiss the complaint below. His reason, inter alia: res judicata. The court, on November 9, 1962, dismissed the case "with prejudice and with costs against the plaintiff." A move to reconsider was thwarted below in the order of November 21, 1962. Hence, this appeal.

1. Adverted to earlier is that the June 2, 1962 order of confirmation of the sheriff's sale in the first case - Case 45778 - was issued over appellant's opposition. That objection projected before the court the very same grounds relied upon in the complaint herein -the second case - to wit, lack of notice by the Provincial Sheriff to appellant of the foreclosure sale, and irregularities in the auction sale and non-conformity thereof to the rules of court. According to the order of confirmation, the thrust of appellant's said objection is that she "was not notified of the sheriff's sale and that the price for which the property was sold is unconscionable." But these factual allegations, so the same order of June 2, 1962 stresses, "have not been established by any evidence", nor was appellant's

opposition verified. Nothing in the record suggests that after the order of June 2, 1962 in the first case (Civil Case 45778), attempt was ever made by appellant to cure the defects so pointedly expressed by the court in that order.

2. Law and jurisprudence have formulated the rule that confirmation of sale of real estate in judicial foreclosure proceedings cuts off all interests of the mortgagor in the real estate sold and vests them in the purchaser. Confirmation retroacts to the date of the sale.[2] An order of confirmation in court foreclosure proceedings is a final order, not merely interlocutory. The right to appeal therefrom has long been recognized.[3] In fact, it is the final order from which appeal may be taken in judicial fore-closure proceedings.[4] No appeal was taken. It follows that said order is final, binding.

3. Not that the disputed order of confirmation may be labelled null and void, as appellant would want it to be. The presumption that the notice of sale of real estate in foreclosure proceedings has been given, holds true here. For, indeed, a legal tenet of long standing is that official duty presumptively has been regularly per-formed.[5] Appellant pleaded such lack of notice. Her duty it was to prove it in court. She did not.

And if the notice that appellant here complains of is personal notice to her, she is wrong. Because, personal notice is not required by Section 16 of Rule 39 of the 1940 Rules of Court, now Section 18, Rule 39 of the new Rules. This legal provision was given judicial nod as early as 1930 in *La Urbana vs. Bolando*, 54 Phil. 930, 932 -a case of foreclosure of real estate mortgage - where we pronounced that "[t]he law does not require that such notification be given personally to the party upon whose property execution is levied."

Nor was there an averment in the complaint now before us that if a resale should take place, "the realty would bring a higher price" thereat, a circumstance "essential to rescind a sale regularly made and confirmed by a competent court, on the ground of inadequacy of price." [6] The mere averment that the price is unconscionable is nothing more than a conclusion of law. The value of such allegation is further downgraded by the lack of proof. This is one case which epitomizes the fatal distance between allegation and proof.

4. Properly to be pointed out here is that the dismissal order of November 9, 1962 now on appeal, states that the legality of the foreclosure sale questioned in this action "was an issue that could have been, and was in fact, raised and litigated in the anterior suit" (Civil Case 45778). Except for the Provincial Sheriff who is a nominal defendant here, the parties in the two suits below are the same: Isabel Ocampo and Ignacio Domalanta. Subject matter is the same land. The judgment and order of confirmation of that sheriff's sale in the first suit have both become final.

The first suit is a judicial foreclosure of mortgage; the second, annulment of the foreclosure sale conducted in the first suit. A proceeding for judicial foreclosure of mortgage is an action quasi in rem. It is based on a personal claim sought to be enforced against a specific property of a person named party defendant. And, its purpose is to have the property seized and sold by court order to the end that the proceeds thereof be applied to the payment of plaintiff's claim.[7]

To be read as controlling here are Sections 44 and 45, Rule 39 of the old Rules of Court - which is now substantially embodied in Section 49, Rule 39 of the new Rules of Court, viz:

"SEC. 49. Effect of judgments. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

(a) In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate;

(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

Paragraph (a) of the foregoing rule is commonly known to speak of judgments in rem; paragraph (b) is said to refer to judgments in personam; and paragraph (c) is the concept understood in law as "conclusiveness of judgment." [8]

Here, the first suit was an action quasi in rem. A judgment therein "is conclusive only between the parties." [9] Directly applicable is paragraph (b) above-quoted. By that provision, the confirmation order in the foreclosure case is, "with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties" and their privies.

As we view this case from another standpoint, we reach the same result. It is true that the cause of action in the first suit is not exactly identical to the cause of action in the second. For, the latter merely challenges the legality of the sheriff's sale in the first proceeding. We do say, however, that such legality of sale is an issue which could have been, and was in fact raised and rejected in the first case. Thus, coming into play also is paragraph (c) above-quoted. Therefore, the question raised by appellant in the present suit should be "deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

It is thus beyond doubt that the present action is barred by the conclusiveness of judgment in the anterior suit. [10] This case must be dismissed.

Conformably to the foregoing, the lower court's order of November 9, 1962 dismissing this case, and the order of November 21, 1962 denying reconsideration thereof, are hereby affirmed.

Costs against plaintiff-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

[1] The foreclosure action was filed in Manila upon a stipulation in the Deed of Real Estate and Chattel Mortgage which reads: "[P]rovided further that in case of litigation arising out of this mortgage contract the Court of First Instance of Manila shall decide the case x x x.

[2] Binalbagan Estate, Inc. vs. Gatuslao, 74 Phil. 128, 131; Clemente vs. H. E. Heacock Co., L-12786, October 29, 1959; Piano vs. Cayanong, L-18603, February 28, 1963.

[3] Warner, Barnes & Co., Ltd. vs. Santos, 14 Phil. 446; Raymundo vs. Sunico, 25 Phil. 365; Philippine Sugar Estates Development Co. vs. Camps, 34 Phil. 426, 428.

[4] Salazar vs. De Torres, L-13711, May 25, 1960.

[5] Section 5 (m), Rule 131, Rules of Court.

[6] *La Urbana vs. Belando*, supra, at pp. 932-933, citing *National Bank vs. Gonzalez*, 45 Phil. 693.

[7] *Banco Español-Filipino vs. Palanca*, 37 Phil. 921, 928.

[8] See II Moran, *Comments on the Rules of Court*, 1963 ed., pp. 320, 331.

[9] *Banco Español-Filipino vs. Palanca*, supra, at p. 928.

[10] *Peñaloza vs. Tuason*, 22 Phil. 303, 312-315; *Tejedor vs. Palet*, 61 Phil. 494, 502.

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