

**SOLEDAD ARANGCO, LAURENTE ABANO, JORGE ABANO, FATIMA ABANO AND GRACITA ABANO (INCOMPETENT MINORS)
REPRESENTED BY THEIR GUARDIAN, LEONOR ABANO; CALIXTO, JOCELYN AND SORIANO, ALL ...**

G.R No. L-28617. January 31, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

It does appear at times, and this appeal on a question of law from a lower court decision is one of them, that , litigants manifest their resentment at losing cases by indulging their propensity for elevating the matter to a higher tribunal in the hope of a successful outcome, notwithstanding the absence of any clear illegality or rank injustice in the judgment thus rendered. Counsel, if faithful to the command of legal ethics insofar as their duty to the judiciary is concerned, would do well to temper such inclination on the part of clients. Otherwise, the result would be to clog further what is already the crowded dockets of the courts. There is pertinence in the above observation in the consideration of this appeal, as the most careful scrutiny of the decision of Judge Roberto Zurbano fails to yield the slightest indication that in stamping with approval the consignment of the amount equivalent to the mortgage debt and disregarding the claims of defendant Gloria Baloso, now appellant, that there were additional sums advanced to plaintiffs, now appellees,[1] admittedly not covered by such mortgage, there is a violation of the applicable legal norm. The appeal then cannot prosper.

The antecedents of the case are set forth in the appealed decision thus: "Vicente Abano was married to Soledad Araiigo. Vicente begot [four] children with Soledad namely: Laurente, Jorge, Fatima and Gracita. Vicente begot [three] children with Anacorita Andes namely: Calixto, Jocelyn and Soriano after his marriage to Soledad. In 1946, Soledad was brought to the National Mental Hospital where she is actually confined. On May 28, 1964, Vicente mortgaged to the defendant Gloria Baloso for P960.00 the parcel of land which Vicente and Soledad acquired after their marriage. On July 24, 1964, another mortgage was executed by Vicente where the consideration was raised to P1,200.00. On November 17, 1964, another mortgage was executed by Laurente Abaflo with the conformity of Leonor Abaiio for P1,800.00. On June 16, 1966, the widow and the children of Vicente brought this action seeking to redeem the land from the defendant. On May 4, 1966, the plaintiffs deposited with the Clerk of Court the sum of P1,800.00 to redeem the land. Leonor said that there are [two] houses built on the land, one is owned by the defendant and the other house is owned by Salvation who pays the rental of the land to the defendant and her common-law husband, Piaka, a Chinaman. For attorney's fees, the plaintiffs paid Atty. Madrid P500.00 aside from the miscellaneous expenses of P200.00 they incurred in prosecuting the suit. Defendant's evidence is to the effect that she did not allow the plaintiff to redeem the land because the amount they offered to pay her is only P1,800.00 when the amount that should be paid is P2,600.00. It appears that on July 24, 1964, Vicente mortgaged the land (Lot No. 539 of the Cadastral Survey of Albay) to the defendant for P1,200.00. The mortgage consideration was increased to P1,400.00 but the deed of mortgage was not renewed as according to the defendant, Vicente just initialed the deed of mortgage that he executed on July 24, 1964, after he

received the additional amount of P200.00 from her. On October 26, 1964, Vicente obtained another amount of P100.00 from the defendant. On November 17, 1964, the consideration of the mortgage was increased to P1,800.00 as shown in the deed of mortgage that was executed by the plaintiff, Laurente Abafio. On January 21, 1965, Leonor, the sister of Vicente took another amount of P100.00 from the defendant. On February 9 and 14, 1965, Leonor, Jorge, Fatima and Gracita took from the defendant the amount of P100.00. On March 10, 1965, Leonor, Jorge, Fatima and Gracita took from the defendant another amount of P100.00. On August 16, 1965, Jorge, Fatima and Gracita took from the defendant P500.00. Adding the amounts taken from the defendant by Vicente, Leonor, Laurente, Jorge, Fatima and Gracita, the total sum is P2,600.00."[2]

Why such amount of P800.00 could not be considered as included in the mortgage debt was explained in such decision in this wise: "There is no question that the total amount of P800.00 was taken by Leonor, Jorge, Fatima and Gracita from the defendant but they contend that they are not liable for the said amount because at the time the various amounts were taken, Leonor was not yet appointed guardian of the minor plaintiffs and that Jorge, Fatima and Gracita were then minors. The Court is convinced that Leonor, Jorge, Fatima and Gracita received the amount of P800.00 from the defendant. Considering, however, that at the time the amounts were taken, Leonor was not yet appointed guardian of the minor plaintiffs while Jorge, Fatima and Gracita were minors, the Court cannot compel them to pay the said amount in these proceedings. However, the Court noted that Leonor has been appointed guardian of the person and estate of the minor plaintiffs in Special Proceedings No. 50 pending before the City Court of Legaspi City. The Court, therefore, suggests to the defendant to prosecute her claim against the minors in the guardianship proceedings so that the Court may authorize the guardian to pay her the sworn P700.00. Relative to the amount of P100.00 which was taken by Leonor it is but fair and proper that she should be sentenced to pay the aforesaid sum to the defendant."[3]

Accordingly, in the dispositive portion of the decision of the lower court of November 23, 1967, the redemption of the land subject to the deed of mortgage, the amount of P1,800.00 having been consigned, was ordered. Likewise, one of the plaintiffs, Leonor Abaflo, was made to pay the sum of P100.00, thus leaving only the amount of P700.00 which, according to the lower court, could be sought from the minors in the proper guardianship proceedings. It would thus appear that the decision is not susceptible to the indictment that justice, according to law, was not accorded the parties. Nonetheless, defendant, unwilling to abide by the terms thereof, did prosecute this appeal at a time when under the Judiciary Act, she could do so as long as questions of law were raised. In the ten-page brief filed by her, characterized by brevity that hardly adds to its persuasive character, two errors of such nature were assigned. Neither one, as will be made clear, suffices for the reversal of the decision. For the first is so adroitly worded as to yield the misleading impression that the lower court would not allow recovery of the P700.00 when all that the decision stated was that such a suit should be prosecuted in the guardianship proceedings in view of the minority of the parties who obtained the loan. Neither is there any merit to the second assigned error, not only because it involves a question not passed upon by the lower court, but one essentially factual in character. Accordingly, as set forth at the outset, this appeal is doomed to futility.

1. As noted, appellant would impute to the lower court the alleged error in holding that appellees Jorge, Fatima and Gracita Abano "cannot be held liable for the various sums in the total amount of P700.00 for the reason that the said appellees are minors."[4] Such a characterization of the ruling of the lower court is, to repeat, misleading. It took some temerity for appellant to make such a flat assertion when the very decision quoted in her brief clearly states: "'The Court is convinced that Leonor, Jorge, Fatima and Gracita received the amount of P800.00 from the defendant. Considering, however, that at the time the amounts were taken, Leonor was not yet appointed guardian of the minor plaintiffs while Jorge, Fatima and Gracita were minors, the Court cannot compel them to pay the said amounts in these proceedings.'"[5] Even the most cursory reading of the above should convince anyone, perhaps not blinded by his own feeling of frustration, that all that was decided by the lower court was that the payment of

the sum in question, while in fact owing the defendant, could not be ordered in this suit for the redemption of a mortgage debt. In reaching such a conclusion, the lower court, as it should, merely paid deference to an unbroken line of decisions of this Court. As early as 1909, in *Nolan v. Majinay*,^[6] this Court, through Justice Torres, made clear that the recovery of the amount loaned and secured by the mortgage could alone be the subject of a proceeding in foreclosure, the inference being that the payment of such sum necessarily would suffice to release the mortgage. Such a doctrine was reiterated categorically in *Lim Julian v. Lutero*^[7] in these words: "The rule, of course, is well settled that an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage."^[8] It is true, as set forth in that case, that the exact amount for which the mortgage is given need not be specifically named, future advancements being likewise covered. Such a contention on the part of the parties must be evident, however, from a reading of the mortgage "from its four corners."^[9] There was a restatement of the above doctrine in *Tady-y v. Philippine National Bank*,^[10] in the opinion of the Court by Justice Regala, thus: "Indeed, the provision in the mortgage deed, including as part of the obligation future amounts that may be borrowed by the mortgagors-debtors from the Bank is not improper. For this Court, in the case of *Lim Julian v. Lutero*, 49 Phil. 703, held that the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security, if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered."^[11] In the decision now on appeal, it was very clear that the parties left no doubt as to their true intention. Originally, the mortgage debt secured was in the amount of P1,200.00. Then, it was increased to P1,400.00. Subsequently, it reached the sum of P1,800.00.^[12] That was the amount consigned. There was nothing in the mortgage to indicate that the additional P800.00 sought by defendant was likewise included. The lack of any legal support for the first error assigned, which perhaps led to its being so captiously phrased, is made evident by its failure to cite any provision of the Civil Code on mortgages or any decision of this Court that would lend persuasion to such a contention. There was no such citation because none could be found.

- The second assigned error, to the effect that there was contemplated in the mortgage a fixed period during which plaintiffs could not redeem the property, can be disposed of summarily. Such a question was not ventilated before the lower court. As far back as 1904, in *Tan Machan v. Trinidad*,^[13] for the appellate tribunal to consider a legal question, it must be raised in the court below. Such a principle has been consistently adhered to.^[14] As was categorically announced in *City of Manila v. Roxas*^[15] by Justice Hull, 'the rule is almost universal, and it has been repeatedly followed by this court * * *'.^[16] What is worse is that in discussing this alleged error, appellant would have this Court inquire into the facts to ascertain what the parties had in mind when the mortgage deed was executed. Nothing can be clearer than that in a review on a question of law, "when a party appeals directly to the Supreme Court, and submits his case there for decision, he is deemed to have waived the right to dispute any finding of fact made by the trial court." ^[17] The second assigned error is thus clearly equally unfounded.

- Nor is this all. There is need, it would appear, for members of the Bar to temper their enthusiasm in seeking appellate review whether by an ordinary appeal or through a writ of certiorari. It is well that they keep in mind that as officers of the court, they are required to exercise the utmost care and to undertake the most thorough preparation to assure that all the learning at their command be brought to bear on the legal questions that might be raised, or, in their opinion, could be raised, for the resolution of a higher court. To act otherwise would show less than full compliance with their duty to the bench. Moreover, in the end, it might only signify that in their unbounded optimism they plant seeds of hope in their client's minds which, unfortunately, may never grow. For obviously unless they could show the merit in such an appeal, all that they would have accomplished would be to increase unnecessarily the burden on appellate tribunals. In the final analysis then, the utmost fidelity to a client's cause requires a more discriminating appraisal of the matter, as in more cases than not, the prospect for reversal is

dim, not to say nonexistent. A sense of realism should thus infuse their actuation. Nor should there be any hesitancy in so informing the disappointed litigant that most likely the verdict would not be altered. This observation has pertinence in a case like the present where the lower court was commendably impelled to see to it that the children of the original mortgagor, all of whom are still in their minority, enjoy the full benefit of the law, ever solicitous of the young. It is not to be forgotten that appellees in this case had lost their father through a fatal accident, and the mother was confined as an incompetent in a mental institution. Certainly, only a clear misinterpretation or misapplication of the controlling legal norms would call for setting aside a decision that did not only apply settled doctrines but also did manifest full fidelity to the laudable policy of protecting the minors.[18] There is, it must be stressed anew, no such failing in the appealed judgment.

WHEREFORE, the decision of the lower court dated November 23, 1967 is affirmed. With costs against defendant.

Makalintal, Zaldivar, Ruiz Castro, Barredo, Makasiar, Antonio, and Esguerra, JJ, concurs.

Conception, C.J., and Teehankee, J, did not take part.

[1] The plaintiffs-appellees are Soledad Arango, Laurente Abano, Jorge Abano, Fatima Abano and Gracita Abano, represented by their guardian, Leonor Abafto; Calixto, Jocelyn and Soriano, all sumamed "Abafto," lepresented by their natural guardian, Anacorita Andes.

[2] Decision, Record on Appeal, 31-32.

[3] Ibid., 33.

[4] Brief for the Defendant-Appellant, 5.

[5] Ibid., 5 and 6.

[6] 12 Phil. 559. Cf. Luengo v. Moreno, 26 Phil. Ill (1913).

[7] 49 Phil. 703 (1926).

[8] Ibid., 714.

[9] Ibid., 715.

[10] L-188I7, Sept. 28, 1964, 12 SCRA 19.

[11] Ibid., 23. Cf Bacordo v. Alcantara, L-20080, July 30, 1965, 14 SCRA 730.

[12] Decision, Record on Appeal, 31.

[13] 3 Phil. 684.

[14] Cf. United States v. Dinglasan, 5 Phil. 695 (1906); Alvaran v. Marquez, 11 Phil. 263 (1908);Perlasv.Ehrman, 53 Phil. 607(1929); Ramirov. Graiio, 54 Phil. 744 (1930); Toribio v. Decena, 55 Phil. 461 (1930); Viuda de Echegoyen v. Collantes, 58 Phil. 518 (1933); City of Manila v. Roxas, 60 Phil. 215 (1934); San Agustin v. Barrios, 68 Phil. 475 (1939); Amor v. Florentino, 74 Phil. 403 (1943); DeLeon v. Padua, 75 Phil. 548 (1945); Roque v. de los Santos, L-218 (1946); Vda.de Sahidesv. Pajarillo, 78 Phil. 754 (1947); Elks Club v. Rovira, 80 Phil. 272 (1948); Coingco v. Flores, 82 Phil. 284 (1948); People v. Canlas, 82 Phil. 783 (1949); Suarez v. Santos, 96 Phil. 302 (1954); Atkins, Kroll & Co., Inc. v. Cua Hian Tek, 102 Phil. 948 (1958); Subido v. Lacson, 103 Phil. 417 (1958); Northern Motors, Inc. v. Prince Line, 107 Phil. 253(1960); Medel v. Calasanz, 109 Phil. 348(1960);

NgChoCiov. Ng Diong, L-14832, Jan. 28, 1961, 1 SCRA 275; Republic v. Aricheta, L-15589, May 31, 1961, 2 SCRA 469; Zambales Chromite Mining Co. v. Robles, L-16182, Aug. 29, 1961, 2 SCRA 1051.

[15] 60 Phil. 125 (1934).

[16] Ibid., 216.

[17] Republic v. Luzon Stevedoring Corporation, L-21749, Sept. 29, 1967, 21 SCRA 279, 281. Cf. Perez v. Araneta, L-18414, July 15, 1968, 24 SCRA 43, where 29 cases were cited.

[18] Cf. Nery v. Rosario, L-23096, April 27, 1972, 44 SCRA 431.

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