

FERMIN VILLAR, PLAINTIFF AND APPELLEE, VS. CESARIA JAVIER DE PADERANGA, DEFENDANT AND APPELLANT.*G.R. No. L-7687. September 28, 1955*

Ponente: REYES, J.B.L., J.

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This is an appeal by defendant-appellant Cesaria Javier de Paderanga from an order of the Court of First Instance of Misamis Occidental denying her motion to invalidate the foreclosure sale of two parcels of land mortgaged by her to the plaintiff-appellee Fermin Villar, and to set aside the order of confirmation of said sale.

There is no dispute as to the facts of the case. After issues had been joined by the filing of plaintiff's complaint for foreclosure of mortgage and the defendant's answer, the case was set for hearing, but the hearing was postponed several times upon motion of the defendant. The case was set for final hearing on February 22, 1952; however, a few days before the date of the hearing, defendant again moved for postponement, which motion was vigorously opposed by plaintiff. On the day set for trial, neither defendant nor counsel appeared, so the Court directed plaintiff to present his evidence. After the hearing, the lower Court found that defendant had mortgaged the lots in question to plaintiff to secure a loan of P15,000, which defendant failed to pay, and rendered judgment for the plaintiff, ordering the sale of the mortgaged properties in case the amount of the judgment is not paid.

On November 24, 1952, the properties were sold by the sheriff at public auction, and were awarded to the plaintiff as the only bidder. On November 25, 1952, plaintiff moved for the confirmation of the sale; but the lower Court postponed the hearing of the motion for December 22, 1952, because the sale had not yet been registered, and also to give defendant an opportunity to show cause why the sale should not be confirmed. On December 22, 1952, the motion for confirmation of the sale was called for hearing; again, defendant or her counsel (who was personally notified) did not appear. Wherefore, the Court, after having been satisfied that notice of the hearing was mailed to and received by defendant, entered an order confirming the foreclosure sale and directing the transfer of the title and possession of the lots in question to plaintiff.

On January 13, 1953, defendant moved for an extension of time to deliver the lands to plaintiff because she and her husband, who is insane and under her custody, were still looking for a place wherein to transfer. Ten days later, defendant filed another motion, praying that the order of confirmation of the sale be set aside upon the ground that she did not oppose the same on the mistaken belief that she could redeem the lands within one year, and that there were other persons who were willing to buy the lots at a price higher than that paid by plaintiff at the public auction. Then, again, on February 10, 1953, defendant, represented by counsel, filed a third motion asking that the foreclosure sale be invalidated and its confirmation be set aside, on the theory that (1) the joint sale of the two parcels was irregular and against the law, and (2) that defendant still had the right to redeem within one year. On May 30, 1953, the Court below denied the motion to invalidate the sale and to set aside its confirmation; hence, this appeal by defendant.

Appellant complains that she was deprived of her day in court in the Court below because judgment was rendered

for plaintiff-appellee without giving her a chance to present her evidence. The charge is unfounded; for the records show that the hearing of the case had been repeatedly postponed upon motion of defendant, so that she was given every chance to be heard. On the final hearing neither she nor her counsel appeared, hence trial was had in her absence. Settled is the rule that if the defendant fails to appear at the trial, the hearing may proceed without him. And where a party is duly notified of the trial and fails to attend it without sufficient cause, he' can not thereafter claim that he was deprived of his day in court. (*Siojo vs. Tecson*, 88 Phil., 531). Besides, defendant-appellant never complained in the Court below that she was not' given her day in Court. The only pleading she filed after she received notice of the decision and before the sale of the mortgaged properties was a motion to suspend the sale because plaintiff's right to have the properties sold allegedly had not yet accrued (*Rec. App.*, pp. 7-8), which in effect is an admission of her liability on the complaint and conformity to the judgment against her.

Secondly, defendant-appellant charges that the trial Court erred in denying her motion to invalidate the sale of the two mortgaged lots as irregular and defective and in not setting aside the order of confirmation of the sale, since said sale is subject to appellant's right to redeem within one year, and therefore should not have been confirmed.

The rule that real property, consisting of several lots, should be sold separately, applied to sales in execution (Rule 39, section 19) and not to foreclosure of mortgages. A mortgage voluntarily constituted by the debtor on two or more parcels of land is one and indivisible (Art. 1860, old Civil Code; 2089, New); and the mortgagee has the right to have either or both parcels, jointly or singly, sold to satisfy his claim. Even assuming, however, that the prohibition cited applies to foreclosure sales, still the sale of appellant's properties cannot be set aside because she has failed to show that a better price could have been obtained if the lots were sold separately, or that the sale of one lot alone would bring sufficient proceeds to satisfy the judgment in appellee's favor (*Herman vs. La Urbana*, 59 Phil., 621; *Tria, et al. vs. Villareal*, 69 Phil., 478).

Appellant also argues that the lower court should not have confirmed the foreclosure sale because she still has a right to redeem the parcels in question within twelve months from the sale, claiming that this right of redemption in execution sales also pertains to the debt mortgagor in foreclosure sales. The claim is without merit. We have heretofore held that, in foreclosure of mortgages under Rule 70, there is no right of redemption after the judicial sale is confirmed (*Raymundo vs. Sunico*, 25 Phil. 365; *Benedicto vs. Yulo*, 26 Phil., 160). There is only the equity of redemption in favor of the mortgagor consisting in the right to redeem the mortgaged property within the ninety-day period from the order of foreclosure (Rule 70, section 2; *Sun Life Assurance Co. of Canada vs. Gonzalez Diez*, 52 Phil., 271) or even thereafter but before the confirmation of the sale (*Anderson vs. Reyes*, 54 Phil. 944; *Grimalt vs. Velasquez*, 36 Phil., 271); and when the foreclosure sale is validly confirmed by the Court, title vests upon the purchaser in the foreclosure sale, and the confirmation retroacts to the date of the sale (*Binalbagan Estate, Inc. vs. Gatuslao, et al.*, 74 Phil., 128). Only foreclosure of mortgages to banking institutions (including the Rehabilitation Finance Corporation) and those made extrajudicially are subject to legal redemption, by express provision of statute, and the present case does not come under such exceptions.

Wherefore the orders appealed from are affirmed, with costs against defendant-appellant Cesaria Javier de Paderanga.

Bengzon, Acting C.J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Order affirmed.

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