

ANDRES GRIMALT, PLAINTIFF AND APPELLEE, VS. MACARIA V. VELAZQUEZ AND SY QUIO, DEFENDANTS. SY QUIO, APPELLANT.*G.R. No. 11721. October 02, 1917*

Ponente: JOHNSON, J.

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The only question presented by this appeal is whether or not the debtor, in proceedings for the foreclosure of a mortgage, must be given notice of a motion made to have the sale of the mortgaged premises confirmed.

The facts out of which the appeal grew are not disputed and may be stated as follows: That on the 26th day of April, 1915, the plaintiff commenced an action in the Court of First Instance of the city of Manila to foreclose a mortgage executed and delivered by the defendant Macaria V. Velazquez to the plaintiff upon a certain piece or parcel of land; that a general denial was made by the defendant to the petition; that upon the issue thus joined a trial was had, and on the 3d day of August a judgment was rendered ordering the foreclosure of said mortgage; that the defendant was given time, in accordance with the provisions of the law, in which to deposit the amount due on said mortgage with the court; that in default of such deposit the land was ordered to be sold; that the defendant failed to make said deposit and an execution was issued in accordance with the provisions of the judgment theretofore rendered on the 7th day of October, 1915; that by reason of a motion of the defendant the sale of the mortgaged premises was suspended by the court until the 9th day of November, 1915; that on the 9th day of November, 1915, the mortgaged premises was sold to Francisco Dominguez, but by reason of his failure to pay to the sheriff the amount bid the property was again sold, after some proceedings were had, not important here to mention, on the 22d day of November, 1915, to Sy Quio, the appellant herein; that on the 4th day of January, 1916, the said purchaser (Sy Quio), by a motion, asked the court to confirm said sale; that on the 5th day of January, 1916, the court granted said motion and confirmed said sale; that on the 7th day of January, 1916, the defendant presented a motion in court praying that said order confirming said sale be annulled and set aside for the reason that no notice of said motion had been given to him, it appearing at the same time that he had, on the 6th day of January, 1916, deposited with the sheriff the full amount due upon said judgment of foreclosure. Said motion was duly heard. After hearing the respective parties the Honorable Simplicio del Rosario, judge, found that the defendant had not been given notice of said motion, and annulled and set aside his order theretofore made confirming the said sale, upon condition that the defendant Macaria V. Velazquez return to the purchaser Sy Quio the amount which he had theretofore paid to the sheriff, together with 10 per cent interest from the date of the payment, or from the 21st day of December, 1915, until paid. From that judgment the said Sy Quio appealed to this court.

The question of the necessity of giving the defendant notice of a motion to confirm the sale of premises under foreclosure proceedings has heretofore been discussed by this court. Section 257 of Act No. 190 provides that the title to premises sold under foreclosure proceedings does not pass until the sale of the same has been confirmed by the court. In the case of Raymundo vs. Sunico (25 Phil. Rep., 365), we held that, in order that a foreclosure sale may be validly confirmed by the court, it is necessary that a hearing be given the interested parties at which they

may have an opportunity to show cause why the sale should not be confirmed; that a failure to give notice is good cause for setting aside the sale. In the present case, however, in view of the fact that the defendant had, before the sale was finally confirmed, deposited with the sheriff the full amount of the judgment, with interest and costs, there is no occasion for ordering a resale of the premises.

In view of the foregoing, the judgment of the lower court should be and is hereby affirmed, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

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