

FELIX DE VILLA, PLAINTIFF AND APPELLANT, VS. CESARIO A. FABRICANTE, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 13063. April 30, 1959*

Ponente: BAUTISTA ANGELO, J.

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Plaintiff filed this action before the Court of First Instance of Camarines Sur to foreclose the mortgage executed by defendants covering two parcels of land situated in the same province. Defendants, after having been duly served with summons, filed a motion to dismiss, which was sustained, but, on appeal, this Court set aside the sustaining order and remanded the case to the trial court for further proceedings.

As defendants failed to answer the complaint within the reglementary period, they were declared in default, and forthwith, plaintiff presented his evidence. Thereupon, the trial court rendered decision ordering Cesario A. Fabricante to pay the plaintiff the sum of P16,666.66 (as amended), with interest at the rate of 6 per cent per annum from April 18, 1944 and, upon his failure to pay the same within a period of 90 days, to have the property covered by Transfer Certificate of Title No. RT-29 (50) sold for the satisfaction of the judgment. With regard to the property covered by Transfer Certificate of Title No. 15, the foreclosure of the mortgage was not decreed it appearing that the property had been sold to spouses Jose Jacob and Cecilia Baduria and they were not made parties defendant in the case. From this decision, plaintiff appealed to the Court of Appeals, but because the amount involved is more than P50,000.00, the case was certified to us under Section 17 of Republic Act No. 296. Appellant claims that the trial court erred in holding that only Cesario A. Fabricante is liable to pay the mortgage debt and not his wife who is exempt from liability.

The trial court said: "Only the defendant Cesario A. Fabricante is liable for the payment of this amount because it does not appear that the other defendant. Maria G. de Fabricante had authorized Cesario A. Fabricante to contract the debt also in her name. The power of attorney was not presented and it is to be presumed that the power was limited to a grant of authority to Cesario A. Fabricante to mortgage the parcel of land covered by Transfer Certificate of Title in the name of Maria G. de Fabricante." We went over the contents of the deed of mortgage executed by Cesario Fabricante in favor of appellant on April 18, 1944, and there is really nothing therein from which we may infer that Cesario was authorized by his wife to contract the obligation in her name. The deed shows that the authority was limited to the execution of the mortgage insofar as the property of the wife is concerned. There is a difference between authority to mortgage and authority to contract obligation. Since the power of attorney was not presented as evidence, the trial court was correct in presuming that that power was merely limited to a grant of authority to mortgage unless the contrary is shown.

Appellant also contends that the trial court erred in applying the Ballantyne Scale of Values in determining the liability of the appellee and in consequently ordering him to pay merely the sum of P16,666.66 instead of the sum of P150,000.00 as stated in the contract. The conditions under which the loan of P150,000.00 shall be paid appear in the contract of mortgage as follows:

"(1) That the right to redeem this mortgage shall begin after the lapse of four (4) years from the date hereof, and shall be within two years from the lapse of the said four years; in other words, the period of redemption shall begin from April 19, 1948, shall last until April, 1950.

"(2) That the interest of six per cent (6) per annum of the principal sum of One Hundred and Fifty Thousand Pesos accumulated and shall be added to the principal sum at the end of the said period, such that at the beginning of the fifth year or on April 19, 1948, the total mortgage indebtedness shall be one hundred) and eighty-six thousand pesos (P186,000.00), which amount shall bear the interest of six per cent (6) per annum payable at the end of each year until the total indebtedness is fully paid."

It thus appears from the contract that the appellee can only repay the loan within two years after the lapse of four years from date thereof, or from April 19, 1948 to April 19, 1950. This period falls after the liberation of the Philippines, and following the ruling laid down by this Court in a long line of decisions, the loan shall be paid in accordance with the currency then prevailing on the date of maturity.[1] Thus, in the case of *Londres vs. The National Life Insurance Company of the Philippines*, 94 Phil., 627, this Court said:

"Accordingly, as decided by the Supreme Court in other cases, where the parties have agreed that the payment of the obligation shall be made in the currency that would prevail by the end of the stipulated period, and this takes place after liberation, the obligation shall be paid in accordance with the currency then prevailing, or Philippine currency. (*Roño vs. Gomez*, 46 Off. Gaz., Sup. 11, 339; *Gomez vs. Tabia*, 47 Off. Gaz., 641). Therefore, the present claim should be paid in accordance with the present legal tender or the Philippine currency." (Vol. II, o. 4, pp. 220-221, jurisprudence, April 30, 1954.)

The loan should therefore be paid in accordance with the present currency, and not in accordance with the Ballantyne Scale of Values as erroneously applied by the trial court. This means that the appellee should pay to plaintiff the sum of P150,000.00 according to the present legal tender, plus 6 per cent interest thereon from the filing of the complaint. With regard to the compounding of interest as stipulated in the contract, we consider it unreasonable and so it should be disregarded. Evidently, appellee has been persuaded to enter into this onerous stipulation in view of his financial precarious situation. With regard to the expenses incurred by appellant in securing the reconstitution of the certificates of title covering the properties mortgaged which were lost during the liberation, we agree with the trial court that said expenses are not within the purview of the contract for the right thereto merely refers to any suit or judicial proceeding that may affect the title or ownership of said properties. The reconstitution of title is not of the nature therein contemplated.

It appears that the land covered by Transfer Certificate of Title No. 15 in the name of Maria G. Fabricante had already been cancelled and in lieu thereof a new one was issued in the name of Jose Jacob and Cecilia Baduria because the property was sold to the latter during the period of the mortgage. The encumbrance was however annotated on the back of the new certificate of title. Nevertheless, when this foreclosure case was instituted, only the mortgagor was included, while the subsequent purchasers were not made parties defendants. For this reason, the trial court found that the foreclosure of the mortgage insofar as said parcel is concerned cannot be decreed in view of the non-inclusion of said purchasers. This is now assigned as error.

This contention must be overruled, for we agree with the trial court that said purchasers are necessary parties to this action. This is clear from Section 1, Rule 70, of the Rules of Court which provides that "All persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage * * * shall be made defendants in the action." And this Court has held that if the mortgaged property is sold to another person, the mortgage debtor, as well as the person to whom it is sold, must both be made defendants.[2]

Wherefore, with the modification that appellee Cesario A. Fabricante be ordered to pay plaintiff the sum of P150,000.00, plus 6 per cent interest thereon from the filing of the complaint, the decision appealed from is

affirmed in all other respects, without pronouncement as to costs.

Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

[1] De Leon vs. Syjuco, Inc., 90 Phil., 311; Ilusorio vs. Busuego, G. R. No. L-882, September 30, 1949; Gutierrez vs. Zarate, et al., G. R. No. L-9631, December 18, 1956.

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