

GREGORIO SALAZAR, PETITIONER, VS. JUSTINIANA DE TORRES, ET AL., RESPONDENTS.

G.R. No. 13711. May 25, 1960

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13711/>

MONTEMAYOR, J.:

This is a petition for a writ of mandamus to declare the orders of the trial court of November 21, 1957 and February 3, 1958 null and void, and to order the court to approve petitioner Salazar's redrafted record on appeal and give due course to said appeal. The petition was at first denied by us for lack of merit, with the statement that appeal was the proper remedy (Resolution of April 10, 1956), but on motion for reconsideration, we gave the petition due course.

The original action was brought by respondents Justiniana de Torres, et al., against petitioner Gregorio Salazar to foreclose a real estate mortgage. On September 8, 1956, both parties, assisted by counsel, filed a joint motion for judgment on the following compromise agreement:

"1. That the defendant Gregorio Salazar will pay unto plaintiffs the sum of P2,896.50 as follows:

"(a) P1,830.00 on or before October 31, 1956;

"(b) P1,038.50 on or before January 15, 1957;

"2. That plaintiffs hereby accept the terms of payment as specified above;

"3. That failure on the part of the defendant to comply with the terms of payment as specified in paragraph 1, hereof, the plaintiff will be entitled to the immediate execution of the full amount of P2,896.50 and to foreclose the mortgage.

"4. That on the basis of the above-stated agreement it is prayed that this Honorable Court render judgment which will become final, executory and not subject of appeal by both parties." (Annex B)

In its order of October 30, 1956, the trial court approved the joint motion for judgment. It would appear, however, that petitioner Salazar paid only P1,030.00, failing to pay the balance of P1,866.50. As a result, respondents asked for the issuance of the writ of execution and a writ of foreclosure was issued, which resulted in the sale at public auction on February 25, 1957 of the mortgaged property to three of the four respondents in the sum of P2,034.00 to satisfy the balance of the judgment in the amount of P1,866.50, plus the sheriff's fees and costs incurred in the sale, amounting to P167.50.

On February 28, 1957, respondents moved to confirm the Sheriff's sale, but upon objection of petitioner on the ground that the sale had been made to only three of the four respondents, and that there was no proof that the fourth respondent, Bonifacia de Torres, had been paid her share of the proceeds of the sale, the trial court denied the motion to confirm and ordered the property to be sold anew at public auction.

After due notice and publication, the second auction sale was made on September 24, 1957 in the course of which, petitioner submitted a written bid which he handed to the Sheriff, in the amount of P2,069.00, to cover the judgment credit of P1,866.50 and the costs of the second foreclosure sale amounting to P202.60. However, the Sheriff returned petitioner's bid after respondents had made their bid for P2,257.34, representing the balance of the judgment, the Sheriff's fees and the costs of the sale at public auction, which the Sheriff considered to be the highest bid. A deed of sale was subsequently issued to respondents, without requiring them to pay down the amount of the bid for the reason that they were the judgment creditors. On October 1, 1957, respondents moved to confirm the second sale. On his part, petitioner filed two motions: one dated October 3, 1957, to declare the judgment debtor (himself), as the highest bidder and to set aside the sale; and the other dated October 4, 1957, to stay confirmation of the sale until after his motion to annul the same had been acted upon. It is petitioner's contention that although respondents' bid was higher than his, nevertheless, the former was void since respondents did not actually pay down or offer to pay the amount of their bid of P2,257.34; that Bonifacia de Torres' participation in the bid was illegal and unauthorized, she having previously waived whatever cause or causes of action she had against him; that his bid of P2,069.00 representing the judgment credit of P1,866.50 and the costs of the second sale amounting to P202.50 fully satisfied the obligation and so should have been accepted as the highest bid.

The trial court held the motion of respondents to confirm the sale, in abeyance. In an order of November 21, 1957, the trial court upheld the right of Bonifacia de Torres to participate in the bid, at the same time declaring untenable petitioner's petition regarding the failure of respondents to pay down the amount of their bid, saying that being judgment creditors, they need not pay down their bid unless it exceeded the amount of the judgment, in which case, they had to pay only the excess. At the same time, the lower court sustained the sufficiency of petitioner's bid for P2,069.00, saying that he need not pay the expenses incurred in the first auction sale, which was set aside. In conclusion, the court alternatively gave defendant-petitioner an unextendible period of two days within which to pay the amount of his bid of P2,069.00 to the Sheriff, otherwise, the plaintiffs-respondents were equally given an unextendible period of two days within which to pay to the Sheriff the sum of P167.50, representing the excess over the balance of the judgment, including the lawful Sheriff's fees and costs chargeable to the defendants, after which the sale would be confirmed. The dispositive part of said order is reproduced below:

"Wherefore, in order to obviate the necessity of a third sale at public auction of the mortgaged property the Court gives defendant an unextendible period of two days from the receipt of this order within which to pay Provincial Sheriff Mario J. Gutierrez of Batangas the amount of P2,069.00 and orders the latter to turn it over immediately to the plaintiffs in full satisfaction of their judgment, including the sheriff's fees and costs of sale for which defendant is liable, as stated above.

"In the event of defendant's failure to so pay the amount of P2,069.00 within the prescribed period stated above, and in order to avoid the necessity of a third sale, as already adverted above, the court authorizes the plaintiffs to pay the provincial sheriff of Batangas, Batangas the amount of P167.50 representing the excess over the balance of the judgment, including the lawful sheriff's fees and costs chargeable to the defendant, within an unextendible period of two days after they are so notified accordingly, which the provincial sheriff must do so immediately, after which the Court will confirm the sheriff's sale, otherwise, the Court will deny confirmation of the sale and order a new one." (Annex J).

Instead of complying with the above-reproduced order, petitioner on November 30, 1957, filed a notice of appeal and on December 3, 1957, his record on appeal. In the meantime, respondents paid the sum of P167.50 to the Sheriff and on December 3, 1957, upon their motion, the trial court confirmed the Sheriff's sale of the property in question.

Petitioner's record on appeal and the opposition thereto by respondents was set for hearing on January 8, 1958,

and on February 3, 1958, the lower court issued an order dismissing petitioner's appeal (one of the orders sought to be voided), the court stating that the order of November 21, 1957 which petitioner was appealing did not finally dispose of the case as between the parties, inasmuch as there was something more left to be done by the court, and that petitioner's failure to appeal the order of December 3, 1957 confirming the Sheriff's sale has allowed said order to become final, thereby rendering his appeal from the order of November 27, 1957, a moot question. The pertinent portion of the order is quoted below:

"The aforesaid order did not finally dispose of the action, as between the parties herein, as there was something more left to be done with it, in this Court. In other words, the said order did not end, as yet, the litigation between the parties completely and had left something still to be done upon the merits.

* * * * *

"The records of this case show that the Court issued its order confirming the sheriff's sale dated September 24, 1957 on December 3, 1957, and that accordingly the counsel for the defendant had received a copy of the said order on December 7, 1957. Said counsel did not appeal from this order. In view of this confirmation, and the defendant's failure to appeal therefrom, his appeal interposed on the order dated November 21, 1967 has become a moot question, as the order confirming the sale of December 3, 1957 has already become final."

It will be observed that the appealed order of November 21, 1957 neither set aside nor confirmed the foreclosure sale of September 27, 1957, but it held confirmation in abeyance so as to give petitioner an opportunity to pay to the Sheriff the amount of his bid. The same opportunity was alternatively given to the respondents to pay to the Sheriff the excess of their bid over the judgment credit. But even after the payment by respondents of the said amount because of the failure of petitioner to take advantage of the opportunity accorded to him by the court, still, the proceedings were not ended for the reason that the court had yet to confirm the sale, which would have been the final act to consummate and complete the foreclosure sale.

In the case of Philippine Sugar Estates Development Co. vs. Camps, 34 Phil., 426, this Court said:

"* * * the sale of property under foreclosure procedure must be confirmed by the court. * * * a sale by the sheriff does not have the effect of transferring the property sold until the same is confirmed by a decree of the court. Thus it appears that the confirming of a sale is a very important order. The title of the property cannot pass to the purchaser until the sale is confirmed. The court may decline to confirm the sale for good cause shown, and the same set aside and order a new sale. While the court may or may not confirm the sale within his discretion, we are of the opinion that, whatever his order is, the interested parties may appeal therefrom if they feel themselves aggrieved."

Courts have defined a final order or judgment which is appealable as one which either terminates the action itself or operates to vest some right in such manner as to put it out of the power of the court making the order to place the parties in their original condition:

"The true test for determining whether an order or judgment is final for the purpose of appeal is not whether the judgment disposes of the contentions of the parties, or whether it touches the merit of the case, but whether it finally disposes of the legal proceeding, so that nothing more can be done with it in the court where it is determined or in the language of Sec. 143 of Act No. 190, whether 'it disposes of the action.'" (Fuentebella vs. Carrascoso, Lawyers' Journal, Vol. XIV, p. 305).

A foreclosure sale is not complete until it is confirmed, and before said confirmation, the court retains control of the proceedings by exercising a sound discretion in regard to it, either granting or withholding confirmation as the rights and interests of the parties and the ends of justice may require. From this standpoint, the order of November 21, 1957 which neither set aside nor confirmed the foreclosure sale was merely interlocutory in character.

"Until confirmed the sale is in fieri—the highest bidder proposes to the court to buy the lands at a specified price, which the court may accept or reject. (Lowa vs. Guicie, 69 Ala. 82).

"The final act which consummates a decretal sale is an order confirming the sale, and only when that order is entered can there be an appeal." (Massey vs. Fischer, 243 S.W. 2d 889).

It has been held that:

"An appeal from an interlocutory decree would be futile when the whole case has been disposed of by a final decree no longer open to attack because no appeal has been taken from it and the time for appeal has expired." (4 C.J.S. 246, note 80.5)

"Commonly, an appeal from an interlocutory decree is lost where final decree becomes immune to attack for want of appeal from final decree." (4 C.J.S. 246, id.)

In view of the foregoing, the appealed order of February 3, 1958, dismissing petitioner's appeal is affirmed, and the present petition for mandamus is denied, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.