

REHABILITATION FINANCE CORPORATION, PLAINTIFF AND APPELLANT, VS. ALTO SURETY & INSURANCE COMPANY, INC., OPPOSITOR AND APPELLEE.*G.R. No. 14303. March 24, 1960*

Ponente: BARRERA, J.

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This is an appeal from an order of the Court of First Instance of Camarines Sur, sitting as a land registration court (in Special Proceeding No. 781—G.L.R.O. Rec. No. 14837) denying appellant's petition under Section 112 of Act No. 496 for cancellation of the annotation of appellee's second mortgage on appellant's transfer certificate of title No. 1155 of the Register of Deeds of Camarines Sur.

Eustaquio Palma registered owner of a parcel of land with its improvements, located in San Agustin, Iriga, Camarines Sur, covered by Transfer Certificate of Title No. 12—Camarines Sur, executed a first mortgage to secure a loan of P20,000.00, in favor of the Rehabilitation Finance Corporation (RFC), and subsequently, with the consent of the RFC, a second mortgage over the same property, in favor of Alto Surety & Insurance Company, Inc. (Alto). Both mortgages were duly registered in the Office of the Register of Deeds of Camarines Sur and annotated on the corresponding certificate of title. Upon failure of the mortgagor to settle the P20,000.00 loan on its maturity, RFC foreclosed the mortgage extrajudicially under Act 3135 as authorized in the deed of mortgage and the property was sold in public auction under the direction of the Provincial Sheriff of Camarines Sur on April 17, 1951 in favor of mortgagee RFC as the highest bidder for the sum of P11,211.68.

Six months later, mortgagor Palma, by a deed of assignment dated October 15, 1951, transferred and conveyed all his rights, title and interest in and to the mortgaged property to the spouses Anacleto Trinidad and Rosa S. de Trinidad, the assignees assuming the obligation of paying the repurchase price of the auctioned property. Within the year of redemption, that is, on December 29, 1951, the assignee-spouses and the RFC executed a "Deed of Resale" whereby the mortgaged property was resold and reconveyed in favor of the "redemptioners, their heirs, assignees and successors in interest". However, instead of paying the whole redemption price, only P5,500 was paid on hand and the sum of P21,505.11, balance of the total indebtedness including 6% interest was agreed to be paid in ten annual amortizations.

On April 3, 1952, Alto, as junior encumbrancer, wrote the RFC inquiring as to the actual status of the property subject to redemption expiring on April 17, 1952. In its reply dated April 9, 1952, RFC advised Alto that the auctioned property had already been sold to the Trinidad spouses "under a deed of redemption on the installment plan".

This notwithstanding, the RFC, on October 2, 1952, executed an affidavit consolidating ownership on the purchased property, stating therein that the period of redemption had expired on April 18, 1952 without the debtor or any lien-holder thereon exercising said right of redemption or repurchase. This affidavit, together with the deed of sale evidencing its (RFC's) purchase of the property at public auction were registered on December 16, 1953,

by virtue of which, RFC was able to secure the cancellation of Transfer Certificate of Title No. 12, in the name of the owner-mortgagor Eustaquio Palma, and the issuance of a new title in its name (T.C.T. No. 1155). The second mortgage in favor of Alto, however, was carried and annotated at the back of the new title.

It is this annotation on its certificate of title No. 1155 that the RFC sought to have cancelled, alleging that with the consolidation and transfer to it as the first mortgagee of the mortgagee's rights on the property, the junior encumbrancer's lien on the same property had ceased. Alto, the second mortgagee, opposed the petition contending that with the execution of the Deed of Resale between RFC and the spouses Anacleto Trinidad and Rosa S. de Trinidad, assignees of the mortgagor, the mortgaged property had been completely released from the first mortgage and the second mortgage had been automatically transformed into a first lien on the property.

From the order denying the petition for cancellation, RFC appealed to the Court of Appeals. The case, however, was certified to this Court, the questions raised therein being purely of law.

As stated by the lower court: "The only question at issue is whether the annotation of the second mortgage in in favor of the oppositor on the back of Transfer Certificate of Title No. 1155 was made in accordance with law", The petition for cancellation was filed by the RFC in the original registration case, under Section 112 of Act 496, on the alleged ground that the lien in favor of Alto had already ceased. In opposing this petition, Alto claimed that with the execution of the deed of resale between RFC and the Spouses Anacleto and Rosa S. de Trinidad, (Exhibit J), there had been a valid exercise by the latter, as the mortgagor's successors-in-interest, of the right of redemption, thus justifying the retention of the encumbrance in favor of the junior mortgagee in the certificate of title covering the property.

The court a quo acted correctly in denying, under the circumstances, the petition to cancel the annotation of the second mortgage at the back of the title covering the property originally owned by Eustaquio Palma., It has been consistently held by this Court, that the relief afforded by Section 112 of the Land Registration Act, may only be allowed if "there is a unanimity among the parties, or there is no adverse claim or Serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case.[1] In another case, this Court[2] has held that "Section 112 authorizes, in our opinion, only alterations which do not impair rights recorded in the decree, or alterations which, if they do prejudice such rights, are consented to by all parties concerned or alterations to correct obvious mistakes". This doctrine is but sound and proper. The proceedings provided in the Land Registration Act being summary in nature, they are inadequate for the litigation of issues properly pertaining to ordinary civil actions,[3] thus, questions involving ownership of or title to a real property,[4] or relating to the validity or cancellation or discharge of a mortgage should properly be ventilated in an ordinary proceeding.[5]

There is another reason why the petition must be denied. Granting arguendo that the extrajudicial foreclosure proceeding instituted by the RFC Is proper and justified, since the junior encumbrancer was admittedly not notified thereof, the foreclosure of the first mortgage cannot be considered to have terminated or extinguished the rights of said junior encumbrancer over the property.

An interest in the mortgaged property acquired subsequent to the (first) mortgage may be divested or barred only by making the holder thereof a party to the proceedings to foreclose (*Kurz vs. Pappas*, 146 So. 100, 107 Fla. 861; *Mediterranean Corp. vs. Pappas*, 146 So. 106, 107 Fla. 876). (Italics supplied.)

While as a general rule, the junior encumbrancer is not a necessary party to a suit to foreclose by a senior mortgagee, it is always proper and prudent to join him as a defendant, both to give an opportunity to defend and to, extinguish his right of redemption (*Lee vs. Slemons*, 150 So. 792, 112 Fla. 675; *Woodward vs. Householder*, 289 S.W. 571, 315 Mo. 1155).

When a Senior mortgagee forecloses and becomes the purchaser at his own foreclosure sale, but the holder of a subsequent mortgage or other subordinate interest has not been joined or has been eliminated from the proceeding, equity will keep the senior mortgage alive against the subsequent encumbrance and the senior mortgagee will be entitled to an action de novo to reforeclose the mortgage as to the omitted persons (*Van Meter vs. Field*, 159 P. 2d 546, 195 Okl.,55; *Rives vs. Stanford*, 106 P. 2d 1101).

In view of the foregoing, the decision appealed from denying the first mortgagee's petition to cancel the annotation of the second mortgage at the back of Transfer Certificate of Title No. 1155, is hereby affirmed, without prejudice to the proper adjudication, in an appropriate ordinary action, of the respective rights of the parties herein as a result of the execution of the Deed of Resale, Exhibit J. The petitioner-appellant shall pay the costs. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

Padilla, J., on leave, took no part.

[1] *Tanguman vs. Republic*, 94 Phil, 17; *Angeles vs. Razon*, 106 Phil., 384; Set also *Fidelity & Surety Co. vs. Court of Appeals*, 85 Phil., 485; 47 Off. Gaz., 4084.

[2] *Director of Lands vs. Register of Deeds*, 49 Off. Gaz., 937.

[3] *Castillo vs. Ramos*, 78 Phil., 809; 45 Off. Gaz., 183; *Garcia vs. Belsunce*, 84 Phil., 802; 47 Off. Gaz., 1820; *Government of the Philippines vs. Alvarez*, 103 Phil., 816.

[4] *La Orden de Padres Benedictinos de Filipinas vs. Philippine Trust Co.*, 86 Phil, 217; 47 Off. Gaz., 2894.

[5] *Nicolas Lizares & Co., Inc. vs. Tan*, 85 Phil., 159; 47 Off. Gaz., 2858.

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