

JOSE F. APPARRI, PETITIONER, VS. THE COURT OF APPEALS, SALVACION E. VDA. DE FERRO AND LINO BAJAR, SHERIFF OF MASBATE, RESPONDENTS.

G.R. No. 15947. April 30, 1965

Ponente: REGALA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-15947/>

REGALA, J.:

The record shows that on June 9, 1947, Jose F. Aparri mortgaged a piece of land to the Philippine National Bank to secure the payment of F600.00. The mortgage was registered in the Office of the Register of Deeds of Masbate on June 21, 1947.

On July 1, 1953, a criminal case for malversation of public funds amounting to P5,467.24 was filed against Aparri in the Justice of the Peace Court of Masbate, Masbate, VOL. 121, APRIL 30, 1965, 591 Aparri vs. Court of Appeals, et al. which, on July 9, 1953, issued a writ of preliminary attachment against Aparri's properties, including the one he had mortgaged to the Philippine National Bank.[1]

In the meantime, Aparri failed to pay his indebtedness and so the Philippine National Bank extrajudicially foreclosed the mortgage. Subsequently, the property was sold at public auction for P1,500 to Salvacion E. Vda. de Ferro, to whom a certificate of sale was given on January 28, 1955.

Of the amount of P1,500, P1,400 was paid to the Philippine National Bank; P18.60 was paid to the sheriff for his fees and P477.40 was retained by the sheriff on the strength of an opinion of the Auditor General, in view of Aparri's pending criminal case, and the writ of preliminary attachment issued therein.

There is no question that within the one-year period of redemption, Aparri tendered to Ferro the sum of P1,265.32 and that when the latter refused to receive the same, Aparri paid the amount to the provincial sheriff. The sheriff refused to execute the corresponding certificate of redemption in favor of Aparri even as he refused to place Ferro in possession of the property and to execute in her favor a final deed of sale.

Ferro brought the matter on mandamus to the Court of First Instance of Masbate. After trial, the lower court rendered judgment in favor of the petitioner and against the respondent—

"1. Ordering the respondent Provincial Sheriff or anybody acting in his place to execute the absolute and final deed of sale of the land described in paragraph 3 of the petition;

"2. Ordering the respondent Provincial Sheriff or anybody acting in his place to place the petitioner in possession of the above described property;

"3. Ordering the respondent Aparri to pay the petitioner the sum of P450.00 as actual damages, representing attorney's fees and expenses of litigation;

"4. Dismissing the counterclaim and the cross-claim of the respondent Aparri for lack of merit."

On appeal to the Court of Appeals, said decision was affirmed. Hence, Aparri's petition to review. Section 464—466 of the Code of Civil Procedure, however, 4148, provides:

"In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the sale, and such redemption shall be governed by the provisions of sections four hundred, and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not Inconsistent with the provisions of this Act"

Sections 464-466 of the Code of Civil Procedure, however, have been superseded by Sections 29 to 31 of Rule 39 of the Revised Rules of Court.

Under Section 30 of Rule 39f in order to effect redemption, the judgment debtor must pay the purchaser within twelve months after the sale, "the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, and interest on such last-named amount at the same rate," otherwise, the purchaser may justly refuse the tender if it is for less than this amount (See *Ordones vs. Villaroman*, Phil., 116; 44 Off. Gas., No. 6, 2226) Indeed, the payment mentioned in the rule must be made by tendering and delivering to the purchaser the sum of money required for the purpose. Obviously, he cannot be compelled to accept a promissory note; much less may he be compelled to accept an amount in the possession of a third person, which amount, to make things worst, is the subject of an adverse claim by another party.

This is exactly the situation obtaining in the present case. Aparri tendered to Mrs. Ferro only the sum of P1,265.32, an amount admitted to be P 177.40 less than what he was under obligation to pay as redemption money. In effect, he told the purchaser: Here, take this sum of P1,265.32, and get the remaining P477.40 from the office of the Sheriff of Masbate who, as stated heretofore, was not willing to part away with the amount because it was claimed by the Government by reason of the preliminary attachment levied upon the parcel of land subject of redemption.

Aparri contends that as the prosecution in the criminal case did not make any move to attach the surplus amount of P477.40, the sheriff had no right to retain the same and that, added to this amount the sum of P1,265.32, which he had paid to the sheriff, is equal to the amount paid by Ferro for the land and its taxes, assessments and interest. We disagree with this contention. The rule is that if any property under attachment is sold by order of the court because it is fungible in nature or by virtue of a writ of execution issued to satisfy the judgment rendered, the proceeds of the sale take the place of the property and should be used by the Sheriff to pay the judgment, and the balance, if any, should be retained by him security for the satisfaction of the claims of other parties with a subordinate lien on the same property, such that of another attaching creditor.

Petitioner further argues that because the lien by attachment upon the property in question was junior to the mortgage lien in favor of the Bank, the attaching creditor had nothing more than the right to redeem the Property after the extrajudicial foreclosure sale.

Distinction should be made, in this connection, of the three different kinds of sales under the law, namely: an ordinary execution sale; a judicial foreclosure sale, and an extrajudicial foreclosure sale. While the three are identical in most of the essential formalities required to make the sale, they differ from one another in important respects as far as it concerns their respective effects on the rights of the parties and the subject matter of the sale.

There is no question that in the case of an execution sale of real estate to satisfy a money judgment, a

redemption, as far as the property sold is concerned, has only the right to redeem it within the period and under the conditions provided by law. However, the case is different when the sale is the result of judicial foreclosure proceedings.

Section 4 of Rule 68 provides that the money realized from the sale of the mortgaged property, after deducting the cost of the sale, shall be paid to the mortgagee foreclosing his mortgage, and the balance or residue, if any, shall be paid to junior encumbrancers in the order of their priority to be ascertained by the court. Only if there be no such junior encumbrancers or there be a balance or residue after paying their claims, is said balance or residue to be delivered to the mortgagor.

Act No. 315, as amended by Act No. 4148, which governs extrajudicial foreclosure sales, expressly provides that the debtor, his successors in interest or any judicial creditor of said debtor, or any person having a lien on the property subsequent to the mortgage under which it was sold, may redeem the same within one year from and after the date of the sale, said redemption to be governed by the provisions of Sections 464-466 of the Code of Civil Procedure (now the pertinent sections of Rule 39). The said provision, however, is silent on the matter of what should be done in the event the highest bid made for the property at the extra judicial foreclosure sale is in excess of the mortgage debt; whether the balance or residue shall be delivered to the mortgagor or shall be used to pay the junior encumbrancers. Neither does said statute specifically limit the right of junior encumbrancers to the exercise of their right of redemption.

The problem, therefore, is whether in the event there be a balance or residue, the same should be delivered to the mortgagor, following the rule in ordinary execution sales where the property sold is not subject to any existing subordinate liens, or it should be used to pay the junior encumbrancers, as is provided in the case of judicial foreclosure sales. It is the considered opinion of this Court that the rule and practice in judicial foreclosure sales with respect to any balance or residue should be likewise applied to extra judicial foreclosure sales in a similar event, considering that both are foreclosure sales. Accordingly, the balance or residue of P 177.40 above referred to should be used to pay junior liens on the property subject of the extrajudicial foreclosure sale, such as the lien by attachment acquired by the Government.

Coming now to Ferro's counter-assignment of error that—

"Co-respondent Court of Appeals erred in not assessing in favor of respondent Salvacion Vda. de Ferro and against the petitioner herein actual damages representing the value of the products of the land in question from January 28, 1955."

the principle is that while an appellee, who is not an appellant, may assign errors in her brief, she may do so only to maintain the judgment on other grounds, but not to have the judgment modified or reversed, for, in such case, she must appeal. (2 Moran, Comments on the Rules of Court, 427-428 (1963).

PREMISES CONSIDERED, finding no error in the decision under review, the same is hereby affirmed. No pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

[1] This alleged malversation took place while Aparri was a pay-master in the Provincial Treasurer's Office of Masbate.

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.