

ANTONIO G. TAD-Y, PETITIONER AND APPELLANT, VS. PHILIPPINE NATIONAL BANK, BINALBAGAN BRANCH, AND PROVINCIAL SHERIFF OF NEGROS OCCIDENTAL, RESPONDENTS AND APPELLEES.*G.R. No. 18817. September 28, 1964*

Ponente: REGALA, J.

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This is an appeal from the decision of the Court of First Instance of Negros Occidental dismissing appellant's petition for mandamus in Civil Case 5251. Originally, the appeal was made to the Court of Appeals, but since no questions of fact are involved, the case was forwarded to us by resolution of that court dated July 25, 1961.

It appears that on February 2, 1951, Segundo Swansing, acting for himself and as attorney-in-fact of Salvador Cabasaan and Rebecca Swansing, obtained an agricultural loan from the Philippine National Bank (called PNB, for short), in the sum of P840 and mortgaged to the latter Lot No. 1257, Pontevedra Cadastre, Negros Occidental. The mortgage deed was duly registered on the same date.

On April 30, 1955, Segundo Swansing, again as attorney-in-fact of Salvador Cabasaan and Rebecca Swansing, constituted a second mortgage on the abovementioned lot to one Marcelo G. Aguirre for P1,600 with interest at 12% per annum and attorney's fees in the amount of P550 in case of default.

On December 5, 1957, Aguirre, the second mortgagee, assigned his rights and interests in the mortgage to Antonio G. Tad-Y, herein petitioner-appellant, in a deed which was registered on August 17, 1959.

As the mortgagors had defaulted in their obligation to the PNB, the latter extrajudicially foreclosed the first mortgage, so that on January 31, 1958, upon petition of the Bank, the Provincial Sheriff sold the mortgaged property at public auction. The same Bank was the purchaser for the price of P5,093.45.

On March 31, 1959, Antonio G. Tad-Y, the assignee of the mortgage rights of Aguirre, filed with the lower court a complaint for mandamus against the PNB and the Provincial Sheriff of Negros Occidental praying that the defendants be ordered to deliver the amount of P2,868 to him, plus P800 for attorney's fees plus costs.

The complaint, in substance, alleged that the purchase price of the property involved, in the sum of P5,093.45, is very much in excess of the registered credit of the PNB as first mortgagee, plus interest and attorney's fees; that deducting P1,759.60—representing the total amount to which said PNB was entitled as of January 31, 1958 under the mortgage contract from the purchase price of P5,093.45—would leave a balance of P3,279.85, which is more than enough to cover and satisfy the total credit under the second mortgage; that plaintiff demanded from the defendants the delivery to him of P2,868, the amount corresponding to his credit, from the surplus of the proceeds of the sale of the property involved, but they refused to deliver said amount; that by reason of defendants' unlawful refusal to comply with their clear duty under the law to deliver said amount to plaintiff, the latter was constrained to hire the legal services of a counsel to whom he had bound himself to pay P800 as attorney's fees.

In resisting the complaint, the defendants averred that the account secured by the first mortgage in favor of the

PNB included not only the sum of P840 referred to the mortgage contract, but also "those that the mortgagee may extend to the mortgagor, including interest and expenses or any other obligation owing to the mortgagee whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the mortgagee; that as of January 31, 1959, the total unpaid obligation of the mortgagors to the defendant Bank was P9,579.08, representing the time loan account, sugar crop loan deficits for 1952-53, 1953-54 and 1954-55, and 1951-52 palay loan, plus interest and attorney's fees as of November 14, 1956, with the obvious result that the proceeds of the auction sale in the amount of P5,093.45 did not leave any surplus that may be applied to the second mortgage held by the plaintiff; that mandamus does not lie against the defendant Provincial Sheriff, because the complaint has not singled out the defendant possessing the alleged excess and, if it is with the defendant Bank, there can be no right of action against the defendant Provincial Sheriff; and that there is no law imposing the surplus of the proceeds from an extrajudicial foreclosure.

Issues having thus been joined, the case was submitted upon a stipulation of facts and memorandum from each of the parties. By decision dated February 27, 1960, the lower court, after going into the merits, dismissed the complaint. From that decision the petitioner has appealed.

It is contended by appellant that since only the sum of P840 plus interest appears in TCT 2417 (title to the land involved) as the mortgage debt of the Swansings to the PNB, only the amount resulting from this obligation should be paid out of the proceeds of the auction sale and that the other loans given out by the PNB which do not appear in the said transfer certificate of title do not affect the said property.

A scrutiny of the mortgage deed between the Swansings and the PNB, however, shows that the property therein mortgaged was to secure the payment of P840, "as well as those that the Mortgagee may extend to the Mortgagor, including interest and expenses or any other obligation owing to the Mortgagee whether direct or indirect, principal or secondary, as appears in the accounts, books and Records of the Mortgagee." Even the entry on the back of TCT No. 2417 admonishes that the mortgage secured the payment of P810 plus interest "plus other obligations arising thereunder." As aptly stated by the trial judge, this annotation should have caused any intending junior, encumbrancer to be wary and to examine the provisions of the mortgage deed for complete details.

Indeed, the provision in the mortgage deed, including as part of the obligation future amounts that may be borrowed by the mortgagors-debtors from the Bank, is not improper. For this Court, in the case of *Lim Julian vs. Lutero*, 49 Phil.1 703, held that the amounts named as consideration in a contract of mortgage (do not limit the amount for which the mortgage may stand as security, if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.

The PNB had submitted copies of deeds of chattel mortgages in its favor, to prove that the outstanding account of the debtors-mortgagors as of January 31, 1958 appearing in its books and records was P9,579.08, very much more than the proceeds of P5,093.45, obtained from the extra-judicial foreclosure. There is no showing that the mortgagors had ever questioned the correctness of these figures.

Petitioner-appellant advances the argument that the latter loans should have also been noted on TCT 2417. But We believe there was no necessity for such a notation because it already appears in the said title that aside from the amount of P840 first borrowed by the mortgagors, other obligations would also be secured by the mortgage. As already stated, it was incumbent upon any subsequent mortgagee or encumbrancer of the property in question to have examined the books or records of the PNB, as first mortgagee, the credit standing of the debtors. At any rate, the subsequent obligations incurred by the debtors-mortgagors, which are covered by chattel mortgages on standing crops, were each executed in a public instrument and registered with the Register of Deeds to give notice

to third parties. There can be no doubt from these circumstances that the second mortgagee is charged with notice of the other obligations of the mortgagors to the PNB. And being charged with said notice, the petitioner-appellant as second mortgagee is only entitled to whatever surplus there is, if any, from the proceeds of the auction sale, after covering the mortgagors' obligations to the PNB.

PREMISES CONSIDERED, the decision appealed from is hereby affirmed. Costs against petitioner-appellant.

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

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