GIL CALIMBAS, AS ADMINISTRATOR OF THE PROPERTY OF THE DECEASED ANSELMA V. ANGELES, PLAINTIFF AND APPELLANT, VS. SEVERINA PAGUIO, DEFENDANT AND APPELLANT.

G.R. No. 22197. December 02, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a foreclosure proceeding and is before us upon appeal by both parties from a judgment of the Court of First Instance of Bataan.

The complaint upon which the case went to trial alleges, among other things, that the plaintiff is the duly appointed administrator of the estate of the deceased Anselma V. Angeles; that on January 2, 1910, the defendant Severina Paguio was indebted to the said deceased in the sum of P5,964, drawing interest at the rate of P369 per annum as evidenced by a document executed by the defendant on said date in favor of the deceased; that the interest on the debt from January 2, 1914, to January 2, 1923, amounting to the sum of P3,564 is still due and unpaid; that to secure the debt, with interest, a mortgage upon the property described in certificate of title No. 1044 of the registry of deeds of the Province of Bataan was given and which property consists of lot No. 905 of the cadaster of the municipality of Pilar; that the said mortgage is registered and entered upon said certificate of title No. 1044; that the original of the document evidencing the mortgage is in the possession of the defendant according to the information and belief of the plaintiff and that notwithstanding a diligent search no copy or duplicate of said document has been found in the office of the clerk of the Court of First Instance, or in the office of the register of deeds of said province, or in the General Land Registration Office, or in the Philippine Library and Museum; and that the defendant has paid no part of the interest thereon subsequent to January 2, 1914.

The defendant in her answer denies generally the allegations of the complaint, pleads the statute of limitations and sets up as a special defense that the annotation of the alleged mortgage upon certificate of title No. 1044 was procured by fraud and deceit and without her knowledge. She also sets up a counterclaim in the sum of P2,000 by way of damages for the malicious bringing of this action.

The trial court rendered judgment in favor of the plaintiff for the sum of P9,132, with interest at the rate of 6 per cent per annum from September 6, 1922, but directed the register of deeds to cancel the annotation of the mortgage upon the certificate of title upon the ground that the mortgage was not executed in legal form and that the document by which it was evidenced did not contain the clauses usual in a mortgage.

The defendant-appellant makes the following assignments of error:

> "(1) The trial court erred in overruling the demurrer to the complaint upon which the case was tried.
>
> "(2) The trial court erred in taking into consideration as authentic and trustworthy the document Exhibit A and in admitting said document as evidence and basing its decision thereon.
>
> "(3) The trial court erred in giving consideration or weight to the plaintiff's Exhibit D.

"(4) The trial court erred in not admitting Exhibit 2 of the defendant as evidence and in not taking it into consideration in rendering its decision.

"(5) The trial court erred in not holding that any action on the debt alleged in the complaint was barred by the statute of limitations.

"(6) The trial court erred in ordering the defendant to pay the plaintiff the sum of P9,132 with interest thereon at 6 per cent per annum from September 6, 1922.

"(7) The trial court erred in not absolving the defendant from the complaint.

"(8) The trial court erred in not sentencing the plaintiff to pay the defendant the sum of P2,000 as damages and in addition P100 as the amount of the debt of Anselma V. Angeles, due the said defendant.

"(9) The trial court erred in not sentencing the plaintiff to pay the costs."

The demurrer referred to in the first assignment of error was based on the grounds: (1) That the plaintiff had not the legal capacity to bring the action; (2) that there is a defect in the party plaintiff; (3) that the facts alleged do not constitute a cause of action; and (4) that the complaint is ambiguous, unintelligible, and uncertain.

Upon the first and second grounds counsel argues that the plaintiff's name should appear in the body of the complaint and that being an administrator of the estate of a deceased person, he had no authority to bring this action except upon a special order of the court having jurisdiction over the estate. Counsel is mistaken upon both points. The name of the plaintiff appears in the title of the complaint and this is sufficient. (See forms in section 784, Code of Civil Procedure.) Neither need an administrator obtain special authority from a court before bringing an action such as the present on behalf of the estate under administration; he is expressly authorized to do so by section 702 of the Code of Civil Procedure.

In regard to the other two grounds of the demurrer, we are of the opinion that the complaint states a cause of action and that it is sufficiently definite and intelligible. The fact that the date of the execution of the alleged mortgage is not stated is not necessarily fatal; the omission is explained in the complaint itself. (Compania General de Tabacos vs. Jeanjaquet, 12 Phil., 195.)

The second assignment of error relates to Exhibit A. the document referred to in the complaint as executed by the defendant on January 2, 1910, in favor of Anselma V. Angeles and evidencing the debt here in question. In our opinion the evidence leaves no doubt whatever as to the authenticity of the document. Aside from the testimony of the subscribing witness Julian Calimbas, the handwriting of Julian de los Reyes, defendant's son, speaks for itself. In the third assignment of error counsel contends that Exhibit D, the defendant's sworn answer in regard to lot No. 905 of the cadaster of Pilar, Province of Bataan, and in which she recognizes the existence of a mortgage for the amount of 1*5,964 in favor of Anselma V. Angeles, was not prepared in accordance with the statements or instructions of the defendant and should not have been admitted in evidence. We see no reason to doubt the genuineness of this exhibit. The statements contained in the document are corroborated and affirmed by the defendant's own testimony in the cadastral case and while we have not lost sight of the fact that the transcript of the testimony is incorrectly dated and is erroneous as to the name of the witness, the contents of it shows clearly that the testimony is that of the defendant and that the transcript is substantially correct.

Defendant's Exhibit 2, which is discussed under the fourth assignment of error is a "receipt" acknowledging a debt of P100 to some one. The document is signed by Anselma V. Angeles, but the portion of it where the name of the creditor was written has been removed. Counsel insists that the portion removed contained the name of the defendant, that she was the creditor and that the missing part of tne document has been destroyed by mice. The less said about this exhibit the better for the defendant; it is singular that the mice should have eaten only the part

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of the exhibit which contained her name. The court below did not err in failing to take the document into consideration.

Under the fifth assignment of error defendant argues that the present action is barred by the statute of limitations. Inasmuch as Exhibit C, signed by the defendant, contains a written acknowledgment of the debt and is dated September 27, 1915, it is evident that this assignment cannot be sustained. (Code of Civil Procedure, sec. 50.) The complaint in this case was filed September 6, 1922.

With remarkable industry and ingenuity counsel for defendant, in their brief of 181 pages, have raised many points which we do not consider of sufficient importance to discuss in detail; suffice it to say that all of them have been fully considered and have been found without substantial merit.

The plaintiff as appellant argues that the court below erred in not regarding the debt sued on as a mortgage debt and in ordering the cancellation of the entry of the mortgage upon the defendant's original certificate of title No. 1044 for the aforesaid lot No. 905. The plaintiff's contention is, in our opinion, correct. It is true that it is very doubtful whether a deed of mortgage in proper form was ever executed, but the private document executed January 2, 1910 (plaintiff's Exhibit A) which provides for the delivery of the possession of the land to Anselma V. Angeles upon default in payment of interest may be construed into an equitable mortgage, and the defendant herself in Exhibit C interprets the transaction as a lien upon the land for the full amount of the debt stated in said Exhibit A. Moreover, it has been declared a mortgage by a final decree of a court of competent jurisdiction in cadastral case No. 3 of the Province of Bataan, and in the absence of fraud, that decree cannot now be reopened, not even in an action between the original parties. (See sec. 38 of the Land Registration Act in connection with the first proviso of section 55 of the same Act.) The question is therefore res adjudicata and in disregarding the express provision of the final decree and ordering the cancellation of the annotation upon the certificate of title, the court below clearly erred.

The portion of the judgment appealed from which provides for the cancellation of the annotation of the mortgage upon certificate of title No. 104 is therefore reversed and the judgment is further modified by adding to the final or disposing clause thereof the following:

> "It is further ordered that if the said defendant shall fail to pay the amount of this judgment within the period of four months from the date upon which the judgment becomes final, the said lot No. 905 shall be sold to realize the mortgage debt and costs in the manner provided for in sections 257 and 258 of the Code of Civil Procedure. If the proceeds of the sale prove insufficient for the sa- tisfaction of the debt, a deficiency judgment shall be entered for the balance in accordance with section 260 of said Code."

The defendant will pay the costs in both instances. So ordered.

Johnson, Street, Malcolm, Avancena, Villamor, Johns, and Romualdez, JJ., concur.

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