

**JUAN SUMULONG, AS ADMINISTRATOR OF THE ESTATE OF
TRINIDAD H. PARDO DE TAVERA, DECEASED, PLAINTIFF AND
APPELLEE, VS. JOSEFA MORAN, ADMINISTRATRIX OF THE ESTATE
OF MARIANO LIM, DE...**

G.R. No. 23451. December 02, 1925

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STATEMENT

This is a suit to foreclose a real mortgage upon property of the defendant given to secure the payment of two claims, aggregating P15,000, due since November 8, 1922. Plaintiff also claims interest at the rate of P125 per month from December 8, 1923, and the further sum of P1,000 for attorney's fees, expenses and judicial costs.

The defendant admits the indebtedness, but seeks to recover from the plaintiff on a counterclaim the sum of P25,000, based on three different grounds specified in the answer, and as a special defense, alleges that on account of a novation, she has been released from the payment of the P1,000.

August 19, 1925, Consuelo Legarda filed a bill of intervention, in which she prays for judgment against the defendant for the sum of P10,000, secured by a second mortgage on the same property, with interest thereon at the rate of 10 per cent per annum from November 27, 1923, and costs.

The lower court rendered judgment for the plaintiff and against the defendant for the sum of P15,000, with interest thereon at the rate of 9 per cent upon the first P10,000, and at 12 per cent per annum upon the remaining P5,000, to be computed from December 8, 1923, plus the sum of P1,000 as penalty, and allowed the defendant P200 on her counterclaim to be applied upon and deducted from the amount of plaintiff's judgment. It also rendered judgment against the defendant and in favor of Consuelo Legarda upon her bill of intervention, for the full amount of her claim, from which the defendant appeals, assigning the following errors:

"I. The lower court erred in admitting and taking cognizance of the intervention of Consuelo Legarda, she having failed to comply with the formalities provided by law.

"II. The lower court erred and exceeded its jurisdiction in rendering judgment for the intervener Consuelo Legarda on the complaint in intervention herein filed.

"III. The lower court erred and abused its judicial discretion in denying the reopening of the case, except as to clause (e) of defendant's counterclaim.

"IV. The lower court erred in denying defendant's motion for a reconsideration and amendment of its order refusing a reopening of the case upon its full merits.

"V. The lower court erred in denying defendant's motion for a new trial.

"VI. The lower court erred in rendering judgment in favor of plaintiff and against defendant."

JOHNS, J.:

There is no merit in the appeal as to the judgment rendered in favor of the plaintiff. The defendant admits the existence of the debt and the execution of the mortgage to secure its payment. The lower court allowed the defendant P200 on his counterclaim, and there is nothing in the record to show that this was error, or that there is any merit in the special defenses alleged in the defendant's answer.

The record failed to show that the defendant was served with notice of the motion for a bill of intervention, or that the intervenor served her with a copy of the bill or any other pleadings, and yet judgment was rendered against defendant and in favor of the intervenor for the full amount of her claim, and to foreclose her mortgage. There is no legal principle upon which that judgment can be sustained.

Section 121 of the Code of Civil Procedure expressly provides how and upon what terms and conditions a bill of intervention may be filed, and it appears from the record that, as to the defendant in particular, no attempt whatever was made to comply with the provisions of this section, which, among other things, says:

" * * * Such intervention, if permitted by the court, shall be made by complaint in regular form, filed in court, and may be answered or demurred to as if it were an original complaint. Notice of motion for such intervention shall be given to all parties to the action, and notice may be given by publication, in accordance with the provisions of this Code relating to publication, in cases where other notice is impracticable."

And where it is sought to foreclose a mortgage and to obtain affirmative relief against the defendant, as was done in this action, a copy of the bill of intervention should also be served upon the defendants against whom the relief is sought, or upon their attorney of record, if they have an attorney of record. Without such service and the compliance with the provisions of section 121, the court does not have any jurisdiction to render a decree on a bill of intervention.

The judgment in favor of the plaintiff is affirmed, with costs. The judgment in favor of Consuelo Legarda, the intervenor, is declared null and void, without prejudice to her right to obtain relief in another action, and without prejudice to the right of the plaintiff to issue an execution and enforce his judgment. The defendant to recover costs on her appeal against Consuelo Legarda. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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