

THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BENJAMIN A. GREEN, DEFENDANT AND APPELLANT.

G.R. No. 24127. November 23, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal taken by the defendant from an order of the Court of First Instance of Manila, confirming the sale of defendant's property by the sheriff of Manila to the plaintiff as judgment creditor upon an execution issued to satisfy a judgment in favor of the plaintiff and against the defendant. The principal issue in the case is whether the variance between the execution and the judgment on which it is issued is so material as to vitiate the execution.

A statement of the case is first in order. The Bank of the Philippine Islands, as plaintiff, began action, against Benjamin A. Green, as defendant, in the Court of First Instance of Manila to foreclose a mortgage and to recover on two promissory notes. The answer was in the form of a general denial. The case proceeded to trial on the merits, after "which the presiding judge handed down a decision which concluded thus: "Benjamin A. Green is sentenced to pay to the plaintiff party the sum of fifty-seven thousand nine hundred pesos (P57,900), after deducting P62.24, with the agreed interest at 12 per cent a year from August 9, 1921, plus 10 per cent on the principal as attorney's fees and court's costs." The defendant attempted to appeal from this judgment, but on September 2, 1924, the Supreme Court dismissed the appeal.

The judgment having become final upon dismissal of the appeal by the Supreme Court, an "Ejecucion de Credito Hipotecario" (Execution Foreclosing Mortgage) was issued on November 20, 1924, by the same Judge of First Instance who had rendered judgment. A textual copy of this document follows:

"UNITED STATES OF AMERICA

"PHILIPPINE ISLANDS

"IN THE COURT OF FIRST INSTANCE OF THE CITY OF MANILA

"BANK OF THE PHILIPPINE

]

ISLANDS,

]

"No. 24594

]

"EXECUTION FORECLOSING

"vs.

]

"MORTGAGE

]

"BENJAMIN A. GREEN.

]

"To the Sheriff of Manila.

"GREETINGS:

"Whereas on April 25, 1924, judgment was rendered by the Court of First Instance of Manila, Branch I, in the above entitled case, ordering the defendant Benjamin A. Green to pay into this court on or before July 29, 1924, the sum of P57,900, after deducting P62.24, Philippine currency, with interest thereon at the rate of 12 per cent per annum from August 9, 1921, until payment, plus 10 per cent on the principal as attorney's fees and court's costs.

"And, whereas Benjamin A. Green has not complied with the order contained in the above cited judgment.

"Now, therefore, we command you to sell at public auction to the highest bidder the property described as follows :

" 'Land situated on Calle Azcarraga, district of Santa Cruz, composed of Lot No. 11-B, Block No. 2201 of the sub-divided property of the Government of the Philippine Islands known as Hacienda de San Lazaro, according to the amendatory plan of the former attached to the proceeding No. 235, record No. 11546 of the General Land Registration Office, copy of which amendatory plan is attached to the file No. 45. Said lot contains an area of two thousand thirty-five square meters (2,035.00), and its boundaries are stated in the aforesaid amendatory plan.'

"And of the proceeds thereof you cause to be made the sum of P57,900, Philippine currency, after deducting P62.24, with interest thereon at the rate of 12 per cent per annum from August 9, 1921, until payment, plus the sum of 10 per cent on the principal as attorney's fees, plus the sum of P80.24, Philippine currency, as costs of the suit, aside from your lawful fees on this execution; and to make return of your proceedings with this writ to the court within the period prescribed by the law.

"Manila, November 20, 1924.

"S. DEL ROSARIO

"Judge of the Court of First

"Instance of Manila"

In pursuance of the foregoing writ of execution, the property described therein was sold at sheriff's sale on December 29, 1924, to the plaintiff, the Bank of the Philippine Islands, as the highest and only bidder, for the sum of ten thousand pesos (P10,000). Thereupon, counsel for the plaintiff petitioned the court to confirm the sale. Opposition was entered by counsel for the defendant. The resolution of the court overruled this opposition and approved the sale of the land to the Bank of the Philippine Islands for the sum of ten thousand pesos (P10,000). Appeal followed.

The defendant advances three propositions to support his appeal. They are: (1) The so-called writ of "Execution Foreclosing Mortgage" issued by the lower court on November 20, 1925, is null and void and of no effect whatsoever; (2) the issuance of the so-called "Execution Foreclosing Mortgage" was premature, irregular, and insufficient; (3) the price was inadequate.

The first proposition is meritorious. The remaining two are not meritorious. As to the last two points, we content ourselves with citing the controlling authority and pass on to discuss the first point as decisive of the appeal. (See as to the second proposition the Code of Civil Procedure, secs. 502 and 506, and 4 Corpus Juris, 607; and as to the third proposition, Warner, Barnes & Co. vs. Jaucian and Jaucian [1909], 13 Phil., 4; Warner, Barnes & Co., vs. Santos [1909], 14 Phil., 446; and National Bank vs. Gonzalez [1924], 45 Phil., 693.)

It is elemental that the execution must conform substantially to the judgment on which it is issued. From this point of view, let us examine the judgment and writ of execution in this case.

The judgment is entirely valid. The appellant is the first to so admit. It is a judgment for a sum of money. It should have been drawn more clearly so as to make it speak the true conclusion flowing from the findings of the court. The appellee is the first to so admit.

The writ of execution is entitled "Execution Foreclosing Mortgage". It recites, among other things, that the judgment rendered ordered "the defendant Benjamin A. Green to deposit in this Court on or before the 29th of July, 1924, * * *," that is after the three-month period provided by law, whereas as a matter of fact the judgment contains no such order. The execution further provides for the sale of the mortgaged property in conformity with sections 256 et seq. of the Code of Civil Procedure.

The writ of execution is not a valid sale of mortgaged property for the judgment on which it depends is for money. It is not an execution referring to a judgment for money since it is not so labelled and since the attempt is to comply with the legal provisions dealing with the foreclosure of real estate mortgages. In other words, the execution is so out of harmony with the judgment that legal implications cannot save the execution from being found to be fatally defective. As the execution is not warranted by the judgment and exceeds it, it has no validity.

The order appealed from confirming the sale of defendant's property to the plaintiff must be set aside without prejudice to the right of the plaintiff to secure a new writ of execution for the enforcement of the money judgment. It is so ordered without special pronouncement as to costs in this instance.

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

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