

**VICENTE DIAZ AND TEODORA RUBILLOS, PLAINTIFFS AND
APPELLEES, VS. SECUNDINO DE MENDEZONA ET AL., DEFENDANTS.
SECUNDINO DE MENDEZONA, APPELLANT.**

G.R. No. 24824. January 30, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

It appears from the record that the plaintiffs-appellees commenced an action in the Court of First Instance of Leyte for the collection of a mortgage credit of P10,000. Defendant-appellant was adjudged in default and the court rendered judgment, ordering the sale of the mortgaged properties. Before the expiration of the period of ninety days that the law grants the debtor within which to pay the amount of the indebtedness, a writ of execution was issued on March 24, 1919, which was duly enforced by the sheriff, selling the mortgaged properties and giving possession thereof to the plaintiffs-appellees on June 18, 1919.

Upon motion of the defendant-appellant, the lower court on September 22, 1920, annulled all the proceedings had under the writ of execution, including the sale of the mortgaged property. The plaintiffs-appellees appealed from said order, which was affirmed by this court in a decision rendered June 9, 1922 (R. G. No. 17536) .[1]

The record having been remanded to the court of origin, proceeding was again had for the sale of the mortgaged property, the same having been sold to the mortgage creditor. The court annulled said proceeding and the second sale to the mortgage creditor in view of certain irregularities committed in the proceeding. The plaintiffs appealed to this court, and this court, in a decision published December 16, 1924, affirmed the order appealed from (R. G. No. 22735). [2] The record having been remanded for the second time to the court of origin, the defendant-appellant, on March 14, 1925, reviving his motions dated December 20, 1920, and June 24, 1922, petitioned the court that the plaintiffs be ordered to render an account beginning June 18, 1919, when they took possession of the mortgaged premises. The court denied the motion, and for the third time the mortgaged property was ordered sold, the sale having been held March 16, 1925, and made to the plaintiffs who were in possession of the premises since June 18, 1919. The court approved and affirmed the sale and adjudication of the said property to the plaintiffs, over the objection of the defendants.

This appeal is concerned with the order of the court approving the sale and adjudication of the property to the plaintiffs, and with the order overruling the motion of the defendant for rendition of account by the plaintiffs.

In the two decisions of this court, affirming the orders appealed from, the question now submitted to this court was neither raised nor discussed. In the said two decisions this court limited itself to ordering the remanding of the record to the court of origin for further proceedings. It is evident that when a record is remanded, the subsequent proceedings to be had are the giving of a new notice for the sale of the mortgaged property, and the making of a demand upon the mortgagor to pay within ninety days the debt secured by the mortgage, with the advice that upon failure of payment, the mortgaged premises would be sold. The instant case, however, is a peculiar one in that the plaintiffs have been in possession of the mortgaged property since the date of the first sale which was annulled,

and continued in said possession until the present time. This circumstance gave rise to the right of the defendant-appellant to ask in turn that an account be rendered by the plaintiffs who had been in possession of the mortgaged property by virtue of sales that were annulled on account of irregularities in the proceedings.

In 19 R. C. L., 329, paragraph 104, we find the following:

"Purchaser at invalid foreclosure sale.—Though there is authority to the contrary, the great majority of the decisions are to the effect that, since a purchaser at a foreclosure sale, which, by reason of some invalidity, fails to pass the interest of the mortgagor acquires the interest of the mortgagee, he becomes, if he takes possession of the mortgaged property with the acquiescence of the mortgagor, a mortgagee in possession, entitled to the rights, and chargeable with the liabilities, of a person in that capacity, and the same has been held true as to one who takes possession under mesne conveyances from a purchaser at a void foreclosure sale of a valid mortgage. And the proposition has even been enunciated and applied that the consent of the mortgagor is not necessary to establish the relation of mortgagee in possession, where possession is taken under an invalid foreclosure proceeding. * * * "

And in 27 Cyc, 1237, note 71 to paragraph 4, it is also held that:

"Where possession was gained under foreclosure proceedings, the mortgagee occupies the position of a 'mortgagee in possession/ although such proceedings were defective or even voidable for irregularity (Blain vs. Rivard, 19 111. App., 477; Bryan vs. Brasius, 162 U. S., 415; 16 S. Ct., 803; 40 Law. ed., 1022; Stevens vs. Lord, 2 Jur., 92) * * * ." And "the term 'mortgagee in possession' is applied to one who has lawfully acquired actual or constructive possession of the premises mortgaged to him, standing upon his rights as mortgagee and not claiming under another title, for the purpose of enforcing his security upon such property or making its income help to pay his debt. * * * "

We might consider this phase of the question from the standpoint of the contract of antichresis which is regulated by the Civil Code in articles 1881 et seq.

"By antichresis the creditor acquires the right to receive the fruits of real property belonging to his debtor, under the obligation of applying them to the payment of the interest, if any, and afterwards to the principal of his credit."

Under the provisions of the Civil Code, the creditor in antichresis does not acquire title to the property by the failure of payment of the debt, nor can the debtor recover the possession and enjoyment thereof without first paying the creditor all that he owes. On the other hand, the creditor is obliged to apply the fruits of the property to the payment, first, of the interest upon the debt, if there is any, and then to the payment of the principal. Hence, the duty of the creditor to render an account of said fruits to the debtor and the corresponding right of the debtor that the said fruits be applied to the mortgage debt. (Barretto vs. Barretto, 37 Phil., 234.)

In the case of Macapinlac vs. Gutierrez Repide (43 Phil., 770) this court said:

"The respective rights and obligations of the parties to a contract of antichresis, under the Civil Code, appear to be similar and in many respects identical with those recognized in the equity jurisprudence of England and America as incident to the position of a mortgagee in possession, in reference to which the following propositions may be taken to be established, namely, that if the mortgagee acquires possession in any lawful manner, he is entitled to retain such possession until the indebtedness is satisfied and the property redeemed; that the non-payment of the debt within the term agreed does not vest the ownership of the property in the creditor; that the general duty of the mortgagee in possession towards the premises is that of the ordinary prudent owner; that the mortgagee must account for the rents and profits of the land, or its value for purposes of use and occupation, any amount thus realized going towards the discharge of the mortgage debt; that if the mortgagee remains in possession after the mortgage debt has been satisfied, he becomes a trustee for the

mortgagor as to the excess of the rents and profits over such debt; and, lastly, that the mortgagor can only enforce his rights to the land by an equitable action for an account and to redeem. (3 Pom. Eq. Jur., secs. 1215-1218.)"

The objection of the appellees to appellant's petition for an accounting is based on the doctrine laid down by this court in the case of *Shioji vs. Harvey* (43 Phil., 333), in which it was held that:

"Inferior courts cannot vary the mandate of the superior court, or examine it, for any other purpose than execution; nor give any other or further relief; nor review it, upon any matter decided on appeal for error apparent; nor intermeddle with it further than to settle so much as has been remanded. (*Sibbald vs. United States* [1838], 12 Pet, 488, followed.)"

This doctrine, however, is not applicable to the instant case, not only because the question as to rendition of account by the plaintiffs, mortgagees in possession of the premises, was not considered before, but also because the aforesaid two decisions of this court in the former appeals did not decide except the question as to the annulment of the two sales of the mortgaged property, decreed in the two orders of the court below which were appealed from. It is clear that the judgment of the court dated February 11, 1919, ordering the defendant to pay the debt within ninety days and directing the sale at public auction of the mortgaged property in case of failure of payment has become final; but since the proceedings for the foreclosure of the mortgage were annulled, the case must relate back to the date of the judgment of the trial court, which was February 11, 1919, for the further proceedings. If the defendant should pay his debt within the legal period, there would be no reason for issuing any writ of execution. If he has a valid claim against the mortgagee by reason of the latter having been in possession of the property, as he does in the present case, such a claim should be settled before the mortgage for the reason that that claim arose from the first sale that was later annulled.

For the foregoing, the order of the lower court of July 27, 1925, approving the sale and adjudication of the mortgaged property to the appellees must be, as is hereby, reversed. The sale made by the sheriff on March 16, 1925, is hereby set aside and annulled. The order of July 7, 1925, denying the plaintiffs' motion of March 14th of the same year, is reversed and the plaintiffs-appellees are ordered to render an account to the court of the fruits obtained from the mortgaged property from the time they took possession thereof, to wit, June 18, 1919, until the date when they shall submit the account to the court for approval. The lower court, after considering the account and the facts of the case, shall determine the amounts to be applied to the payment of the interest of the debt, if any, and the rest to the payment of the principal, making such orders as may be necessary to enforce compliance with the judgment rendered by the court on February 11, 1919. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, and Villa-Real, JJ., concur.
Malcolm and Romualdez, JJ., did not take part.

[1] *Diaz and Rubillos vs. Mendezona and De Poli* (43 Phil., 472).

[2] *Diaz and Rubillos vs. De Mendezona*, not reported.

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