

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. SANTIAGO JALANDONI, AS JUDICIAL ADMINISTRATOR OF THE PROPERTY OF EDUARDA BENEDICTO, DECEASED, DEFENDANT AND...

G.R. No. 26236. July 29, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action to recover a sum of money due upon a mortgage executed and delivered by the said Eduarda Benedicto during her lifetime to plaintiff. Said mortgage not having been paid, the plaintiff commenced the present action in the Court of First Instance of the Province of Iloilo on the 9th day of March, 1926. The facts upon which the action is based are best explained by the allegations of the complaint, which are:

"I. Que la finada Da. Eduarda Benedicto como deudora hipotecaria firmo y otorgo en vida, con fecha 23 de noviembre de 1921 y a favor de la aqui demandante, como acreedora hipotecaria, una escritura de hipoteca de bienes inmuebles formalizada y ratificada, en dicha fecha ante el Notario Publico de Iloilo, Don Felix Gurrea, escritura asentada bajo el No. 286, folio 18, Libro 6° del registro notarial del mencionado notario, no habiendose cedido ni traspasado esa hipoteca.

"II. La deudora hipotecaria, en la fecha misma de su otorgamiento, entrego a la acreedora hipotecaria la escritura de hipoteca, la cual se inscribio debidamente en el registro de la propiedad de la Provincia de Iloilo.

"III. Las propiedades inmuebles hipotecadas por virtud de la expresada escritura de hipoteca son de la propiedad de la referida deudora hipotecaria y se hallan radicadas en los sitios de Aliputos y Matanharon, del Municipio de Dingle, Provincia de Iloilo, y se describen poco mas o menos como sigue:

" '1. A parcel of land (Hacienda "Aliputos," with the buildings and improvements thereon, situated in the sitio of Aliputos, barrio of Aliputos, Municipality of Dingle).—Bounded on the N. and W. by the Jalaud River; on the E. by a trail from Dingle to Barotac and properties of Julian Masna, Tomas Juanico, Aniceto Luntao, Mariano Ruig, Alfonso Sorsano and Julian Javellana; and on the S. by properties of Monico Pamplona, Tomas Juanico and Alfonso Sorsano and the Jalaud River.—Containing an area of one million five hundred and sixty-six thousand four hundred and sixty square meters (1,566,460), more or less.

" '2. A parcel of land (Hacienda "Aliputos," with the buildings and improvements thereon, situated in the sitio of Aliputos, barrio of Aliputos, Municipality of Dingle).—Bounded on the NE. and SE. by properties of Tomas Juanico; on the SW. by properties of Juan Bolivar and Alfonso Sorsano; and on the NW. by properties of Alfonso Sorsano.—Containing an area of seven thousand two hundred and seventy-five square meters (7,275), more or less.

" '3. A parcel of land (Hacienda "Aliputos", with the buildings and improvements thereon, situated in the sitio of Aliputos, barrio of Aliputos, Municipality of Dingle).—Bounded on the N. by properties of Simplicio Habalos, Gabino Tiongko, Alfonso Sorsano and Dalmacio Dente; on the E. by properties of Julian Mosna and Prudencia Tarusa; on the SW. by properties of Aniceto Luntao; on the W. by property of Julian

Senon.—Containing an area of two hundred and sixty-one thousand one hundred and thirty-two square meters (261,132), more or less.

" 'Las parcelas arriba descritas en el Certificado de Titulo No. 335, librado por la oficina del registrador de titulos de esta Provincia de Iloilo, a favor de Da. Eduarda Benedicto.

" 'Una hacienda en el sitio de Matanharon comprension del Pueblo de Dingle, Provincia de Iloilo, compuesta de veinte (20) cavanos, poco mas o menos de semilla de palay marco de provincia; sus linderos son: Por Norte Pedro Luntas, por S. con el Rio Jalaud, por el E. con Nicolas Jalandoni y por O. con terrenos de Catalino Acosta, Asuncion Dean, Fernando Fortal, Bernardino Bandot, Eulalio Tangoy, Felizardo Evangelista y Manuel Pasumpan y con el Rio Jalaud.—Segun la medicion reciente la extension superficial de la citada hacienda es de setenta y seis hectareas (76) aproximadamente y esta hoy dotada de un molino de seis (6) caballos de fuerza marca MCONIE y caldera de ocho (8) caballos y un camarin y casa de materiales ligeros.'

"IV. La susodicha hipoteca se otorgo para garantizar un credito sobre azucar con vencimiento en 30 de junio de 1922, prorrogable mediante renovacion anuales, habiendo vencido, sin que fuera renovado el dia 30 de junio de 1925, fecha desde la cual es pagadero y exigible. Dicho credito devenga interes a razon de diez por ciento (10%) anual, liquidable y acumulable en 31 de diciembre de cada año y al vencimiento, segun estipulacion expresa del contrato de hipoteca.

"V. El credito mencionado, con sus intereses acumulados, segun convenios, arrojaba en 31 de diciembre de 1925 un saldo deudor contra la deudora hipotecaria por la suma de cincuenta y siete mil trescientos catorce pesos con treinta y seis centavos (P57,314.36), moneda filipina. Los intereses de esa suma a razon del 10 por ciento anual pactado, devengados desde el 31 de diciembre de 1923 hasta la fecha de la presentation de la demanda montan a mil sesenta y siete pesos con setenta y siete centavos (P1,067.77). Los intereses de esas dos cantidades, a razon del 10 por ciento anual, ascienden a quince pesos con setenta centavos (P15.70) y veintinueve centimos y un cuarto de centimo (P0.2925) respectivamente al dia. En la escritura de hipoteca mencionada se pacto una clausula penal de P5,000. Todas estas sumas estan sin pagar y han vencido y son exigibles."

Upon the facts alleged in the complaint the petitioner prayed:

"Por todo lo cual, los abogados que suscriben, en su antedicha representation, al Honorable Juzgado con todo respecto piden se sirva dictar sentencia, conforme a ley:

"(a) a favor de la demandante, por la suma adeudada, montante a cincuenta y seis mil trescientos catorce pesos con treinta y seis centavos (P56,314.36) por capital, mas los intereses acumulados hasta el 31 de diciembre de 1925, por la cantidad de mil sesenta y siete pesos con setenta y siete centavos (P1,067.77) por intereses devengados por dicha suma desde el 31 de diciembre de 1925 hasta la presentacion de la demanda mas las sumas de P15.70 y P0.2925 diarios, respectivamente, por intereses del principal y de los intereses; ademas, por la suma de cinco mil pesos (P5,000), como clausula penal pactada.

"(b) ordenando al demandado, como administrador judicial del abintestato de la deudora hipotecaria la finada Da. Eduarda, Benedicto que deposite en ese Juzgado todas las expresadas sumas, con sus intereses respectivos, dentro del plazo de tres meses a contar desde la fecha de dicha orden, y

"(c) que, en defecto de pago de las sumas mencionadas, en la forma y tiempo ordenados, se vendan las propiedades hipotecadas para con su importe pagar la deuda hipotecaria, intereses, clausula penal y costas."

The defendant, in his answer, denied each and all of the facts alleged in the complaint and prayed that he be absolved from all liability thereunder.

Upon the issue thus presented, the cause was brought on for trial. The only witness presented during the trial of the cause was Mr. Federico Garcia Perez, who was the representative of the plaintiff. His testimony simply

disclosed the fact that said mortgage had been executed and delivered by the said Da. Eduarda Benedicto on the 23d day of November, 1921; that said mortgage had been duly registered in the registry of property. The mortgage (Exhibit A) was presented in evidence. The certificate of title, under the Torrens system, No. 335 (Exhibit D), showing that the land in question had been duly registered in the name of Eduarda Benedicto, was also presented in evidence. No objection whatever was made to any of the proof offered by the plaintiff. No proof whatever was presented by the defendant.

After hearing the evidence and the arguments of the respective counsel, the Honorable Leopoldo Rovira, auxiliary judge, after a careful statement of the facts, rendered a judgment in favor of the plaintiff and against the defendant, the dispositive part of which is as follows:

"En meritos de lo expuesto, se dicta sentencia a favor de la demandante y en contra del demandado, en su capacidad de administrador judicial del abintestato de la finada Da. Eduarda Benedicto, por la suraa de cincuenta y siete mil trescientos catorce pesos con treinta y seis centavos (P57,314.36), como capital e intereses acumulados hasta el 31 de diciembre de 1925; por la suma de mil sesenta y siete pesos con setenta y siete centavos (P1,067.77) como intereses devengados por la expresada suma desde el 31 de diciembre de 1925 hasta la fecha de la presentacion de la demanda en esta causa; por las sumas de P15.70 y P0.2925 diarios, como intereses, respectivamente, del principal y de los intereses arriba mencionados desde la presentacion de la demanda hasta su completo pago; por la suma de cinco mil pesos (P5,000), como clausula penal pactada, y por las costas del juicio.

"Se ordena al demandado, como administrador judicial del abintestato de la repetida finada Da. Eduarda Benedicto, que deposite en este Juzgado, a disposicion de la demandante, dentro del plazo de tres (3) meses, a contar desde esta fecha, todas las expresadas sumas con sus intereses indicados hasta la fecha del deposito, entendiendose que, de no efectuarse el deposito de esas sumas, en la forma y plazo ordenados, se venderan los bienes descritos en la escritura Exhibit A, para con su importe, pagar la deuda hipotecaria, con sus intereses, clausula penal y costas. Asi se ordena."

From that judgment the defendant duly appealed.

In his first assignment of error the appellant alleges that the lower court committed an error in considering said mortgage a valid mortgage upon the property described therein. An examination of the evidence, including the exhibits presented, shows clearly that said mortgage was duly executed by the said Eduarda Benedicto on the 23d day of November, 1921, and that the same was duly registered in the registry of property on the 9th day of February, 1923. The existence of said mortgage lien upon the property described therein was duly noted upon the owner's duplicate certificate of title No. 335. Notwithstanding the strenuous argument of the appellant concerning the legality of said mortgage, we fail to find anything of record which justifies his contention.

In his second assignment of error the appellant contends that the lower court committed an error in ordering the sale of the property covered by said mortgage. An examination of the evidence and the conclusions of the lower court fails to disclose any error committed by the lower court in ordering the sale of said property.

In the third assignment of error the appellant alleges that the penalty of P5,000 included in said mortgage for a failure on the part of the defendant to pay the same in accordance with the terms thereof, should not have been included in the amount of the judgment. An examination of the said contract of mortgage shows that said penalty was made a part of the contract, and the obligation to pay the same was not refuted by the slightest evidence during the trial of the cause. We see no reason therefore for modifying the judgment of the lower court under said assignment of error.

After a careful consideration of the issue presented by the pleadings and the evidence adduced during the trial of the cause in support thereof, we find no reason nor justification for changing or modifying the judgment appealed

from. The same is, therefore, hereby affirmed, with costs. So ordered.

Street, Malcolm, Villamor, Johns, and Villa-Real, JJ., concur.

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