

ELEUTERIO L. SANTOS, PLAINTIFF AND APPELLEE, VS. MARIA MACAPINLAC, JUDICIAL ADMINISTRATRIX OF THE ESTATE OF THE DECEASED FULGENCIO JAIME, AND EMILIO PINLAC, DEFENDANTS AND APPEL...

G.R. No. 26640. December 16, 1927

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

On May 30, 1920, Fulgencio Jaime subscribed a document (Exhibit A), in which he acknowledged an indebtedness of P30,000 to Eleuterio L. Santos, which he obligated himself to pay in three installments of P10,000 in November of 1921, 1922 and 1923, respectively. To secure the payment of this obligation he mortgaged the two parcels of land belonging to him described in the complaint. This mortgage was duly registered.

On June 12, 1920, Eleuterio L. Santos, by means of the document Exhibit I, authorized Fulgencio Jaime to mortgage the same parcels of land to another person in his own name. On July 6th of the same year Fulgencio Jaime, in turn, by means of the document Exhibit 2, authorized Felix Balingit to mortgage the same parcels of land in his own name. On March 26, 1921, Felix Balingit sold these parcels to Emilio Pinlac for the sum of P15,500, reserving the right to repurchase the same within the period of one year.

Eleuterio L. Santos filed the complaint which initiated this suit, to recover from Maria Macapinlac, as judicial administratrix of the estate of the deceased Fulgencio Jaime, the sum of P30,000 because the dates on which the sums fell due had already lapsed. The defendant Maria Macapinlac, in the capacity in which the claim is presented against her, filed her answer denying generally the allegations of the complaint and alleging, by way of special defense, that the obligation contracted by Fulgencio Jaime in favor of the plaintiff was cancelled before the death of the former. Emilio Pinlac the other defendant, who is so by reason of being in possession of the mortgaged property, filed his answer, also denying generally the allegations of the complaint, and alleging as a special defense that he is the real and sole owner of said lands.

The trial court rendered judgment ordering the defendant Maria Macapinlac, as administratrix of the estate of the deceased Fulgencio Jaime, to pay the sum of P30,000, with legal interest on the sum of P10,000 from December, 1921, on the second P10,000 from December, 1922, and on the last P10,000 from December, 1923, until their full payment, which should be made within the period of three months, otherwise the mortgaged property should be sold. The defendants appeal from this judgment.

Neither the debt nor the mortgage of the property described in the complaint to secure its payment, is denied.

The defendant Maria Macapinlac alleges that this obligation of the deceased Fulgencio Jaime was cancelled by the authorization of the plaintiff to mortgage the same lands to a third party. There is no merit in this contention. This authorization can in no way imply the cancellation of the mortgage and much less the extinction of the debt.

There was no need of such authorization in order that the deceased Fulgencio Jaime might mortgage the same lands for the second time, since the law permits him to do so, without prejudice to the previous mortgage in favor of the plaintiff. In reality, the plaintiff authorized Fulgencio Jaime to do what he was already permitted to do,—even without such authorization. But it is clear that this authorization was not intended to cancel, nor can it have the effect of cancelling, the mortgage in favor of the plaintiff, since the latter did not cancel the registration of this mortgage in the registry. It is needless to say that such authorization could not extinguish the debt, and such is the case, even supposing that it effected a cancellation of the mortgage since, without it, the debt could subsist.

Neither is there any merit in the contention of the other defendant Emilio Pinlac that he is the sole owner of these parcels of land mortgaged by the deceased Fulgencio Jaime to the plaintiff. This defendant's alleged ownership is based on the sale of these parcels of land by Felix Balingit to him with the right of redemption. But the latter was not the owner of the lands and had no authority to sell them since the only authority given him, according to Exhibit 2, was to mortgage them. But even supposing that Fulgencio Jaime authorized Balingit to sell these parcels of land to the defendant Emilio Pinlac despite the mortgage in favor of defendant, which he could do, yet, the property right which Emilio Pinlac might have acquired, would always have been subject to plaintiff's mortgage right.

Neither the authorization to mortgage given by the plaintiff to Fulgencio Jaime, nor the subsequent sale of these parcels by Balingit to the defendant Emilio Pinlac without any authority therefor, can in any way bar plaintiff's action for the recovery of the sum owed him and for the foreclosure of the mortgage given as security for the payment of the debt.

Neither do we find any merit in the appellant's contention that the judgment appealed from should not order the sale of the mortgaged property as the same is not prayed for in the complaint. Although such prayer is not expressly made, it may be inferred from all the allegations of the complaint that the action is brought for the collection of a mortgage debt.

Defendant Emilio Pinlac's contention that, at all events, plaintiff should reimburse him in the sum of P15,500 which he paid as the price of the lands, is also without any merit.

Plaintiff was not the one who sold the lands, nor the one to whom this price was paid. As has been said, whatever right this defendant may have acquired to the lands, was subject to the mortgage in favor of the plaintiff.

The judgment appealed from is affirmed with the costs against the appellants. So ordered.

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

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