

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOAQUIN SEENA, NARCISO XAVIER, FRANCISCO J. GONZALEZ, MARIANO G. VELOSO AND JOSE C. MACAPINLAC, DEFENDANTS....

G.R. No. 26659. September 09, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced by the Government of the Philippine Islands on the 11th day of July, 1924, in the Court of First Instance of the City of Manila to foreclose a mortgage for P40,000, executed by the defendant Joaquin Serna in favor of the Postal Savings Bank on a piece of land and the improvements thereon, located in the City of Manila; and also to recover several sums of money advanced by the Postal Savings Bank for insurance premiums due on said premises.

The defendant Francisco J. Gonzalez answered, alleging that he had acquired the land in question through foreclosure proceedings in the Court of First Instance of the City of Manila in civil case No. 25251, entitled Francisco J. Gonzalez vs. Narciso Xavier and Jose C. Macapinlac, subject to the mortgage held by the Postal Savings Bank. He prayed that his title to said land be recognized as well as his right to pay the mortgage held by the Postal Savings Bank on said land.

The defendant Narciso Xavier answered, denying generally each and every allegation of the complaint, and prayed that he be absolved from all liability thereunder.

The defendant Jose C. Macapinlac answered, admitting plaintiff's allegation, that on the 27th day of September, 1923 he (Macapinlac) bought the land in question together with the improvements thereon, subject to the first, second, and third mortgages thereon in favor of the Postal Savings Bank, Francisco J. Gonzalez and Mariano G. Veloso, respectively. He alleged that prior to his purchase of the premises he was not responsible for the interest then due on the mortgage as well as the premiums due on the insurance. He also alleged that on August 16, 1924, the Court of First Instance of Manila approved the sale of said premises to Francisco J. Gonzalez, as a result of foreclosure proceedings instituted by said Gonzalez. He prayed that he be absolved from all liability under the complaint, with costs against the plaintiff.

The defendants Mariano G. Veloso and Joaquin Serna, having failed to answer the complaint, were declared in default.

Subsequent to the answers of the defendants, the plaintiff filed three supplemental complaints, containing allegations as to additional amounts advanced by the Postal Savings Bank for assessment taxes and insurance premiums which have become due after the filing of the original complaint.

Upon the issue raised by the pleadings, the cause was brought on for trial. No one of the defendants appeared at the trial. (See minutes of the proceedings of February 5, 1926, p. 98, record.) During the trial the plaintiff

introduced oral and documentary evidence in support of its allegations. After a careful consideration of the evidence adduced by the plaintiff, the Honorable S. del Kosario, judge, rendered a judgment in favor of the plaintiff and against the defendant Jose C. Macapinlac, ordering him to pay the amount of the mortgage, P40,000, together with the interest thereon and the various sums advanced by the Postal Savings Bank for insurance premiums and assessments taxes and the interest thereon. Said sums are specifically stated in the judgment of the court and in the amendment thereto. The court further ordered the sale of the premises in case of nonpayment within three months of the amount of the judgment, and that, in case of insufficiency of the proceeds of the sale to cover the total amount of the judgment, the defendant Joaquin Serna should pay the balance remaining unsatisfied.

From that judgment the defendant Francisco J. Gonzalez appealed.

An examination of the record shows that on the 23d day of August, 1920, the defendant Joaquin Serna executed in favor of the Postal Savings Bank a mortgage for the sum of P40,000 on a piece or parcel of land located in the City of Manila, payable in two years, on or before August 23, 1922. The mortgage (Exhibit A), among other things, provides:

"I (Joaquin Serna) agree to and will pay and discharge at their maturity all lawful taxes or assessments laid or assessed upon said lot during the term and existence of this mortgage, and in default, thereof, said Philippine Postal Savings Bank may pay for and discharge the same; I further agree to insure and will keep fully insured against fire at my expense in the full amount of the loan to me herein made in the name and in favor of, and the policies endorsed to, the said Philippine Postal Savings Bank, any and all buildings which are now or may be hereafter erected upon said lot of land during the term and existence of this mortgage, and, in default thereof, said bank may pay for and so keep such buildings so insured, and any and all sums so paid by said bank for either or both such taxes or assessments and or insurance shall bear interest at the rate of seven per cent (7%) per annum, and shall be considered and held to be secured by this mortgage, and be a lien on said lot and buildings herein mortgaged; * * *."

The record also shows that said mortgage and the interest thereon have not been paid; that the Postal Savings Bank paid several amounts for insurance premiums and assessment taxes due on said premises; that on March 21, 1922, the defendant Joaquin Serna sold the premises in question (Exhibit C) to the defendant Narciso Xavier, subject to the mortgage held by the bank; that said premises were also encumbered with a second and third mortgages, dated March 21, 1922 and September 7, 1923, in favor of Francisco J. Gonzalez and Mariano G. Veloso, respectively; that on September 27, 1923, the defendant Narciso Xavier sold the premises in question to the defendant Jose C. Macapinlac (Exhibit D) for the sum of P44,475.45, subject to the encumbrances existing thereon, including the first mortgage in favor of the bank. Therefore, Macapinlac became responsible to the bank for the mortgage of P40 000 and for the other liabilities arising under the mortgage, as stipulated in the contract (Exhibit A). Literally Macapinlac stepped into the shoes of the mortgagor Joaquin Serna.

The appellant Francisco J. Gonzalez now contends that the lower court committed an error:

- In not making any findings as to the facts alleged by him in his answer to the complaint; and
- In not upholding his right, as purchaser of the premises, to pay the first mortgage executed by Joaquin Serna in favor of the Postal Savings Bank.

With reference to the first assignment of error, it may be said that mere allegations in the complaint or answer, which are not admitted or supported by evidence, of course, have no place in the decision of the court except as mere argument. Decisions of the courts should contain facts which are either admitted or proved. A mere allegation of facts, in the absence of admission or proof in support thereof, cannot furnish the basis for a decision.

Facts must be alleged and proved, unless admitted, in order to constitute the basis of a decision. In the present case none of the parties appeared during the trial of the cause and, Of course, presented no proof in Support of their allegation.

With reference to the second assignment of error, it may be said that no rule is better settled than the one which permits subsequent lienholders to relieve mortgaged property from prior lien by payment of such prior lien. The appellant therefore has a perfect right, before the final termination of the present cause, to pay off the amount of the first lien in favor of the plaintiff herein. In other words, the second lienholder has a perfect right in an action of foreclosure to redeem the land from a first mortgage by payment.

We have made a careful examination of the record and the decision of the lower court. We are fully convinced that the findings and conclusions of the lower court are correct and in conformity with the facts established during the trial. The judgment appealed from should be and is hereby affirmed, with costs. So ordered.

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

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