

TEODORO DE CASTRO, JR., PLAINTIFF AND APPELLANT, VS. MARINO OLONDRIZ AND ALFONSO ESCUDERO, DEFENDANTS AND APPELLEES.*G.R. No. 27180. September 24, 1927*

Ponente: JOHNS, J.

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Plaintiff alleges that he is the legitimate son of Teodoro de Castro y Martial, now deceased, by his first marriage with Buenaventura Maria Zabala. That on June 18, 1923, the Court of First Instance of Sorsogon in the case of the Philippine National Bank vs. Ruperta Basona, as administratrix of the estate of the deceased Teodoro de Castro, rendered a judgment foreclosing a mortgage on certain real property therein described, and ordering the defendant therein to pay the plaintiff the amount of the mortgage debt, and decreeing that the property should be sold and the proceeds of sale applied to the satisfaction of the debt. That an execution was issued on the judgment, and that on December 4, 1924, the following described property was sold by the sheriff to the plaintiff bank:

"1. Half of the parcel of abaca land, tax receipt No. 6961, situated in the sitio of Gigatahñan, Casiguran, Sorsogon, which half measures 32 hectares, 12 ares and 50 centiares, bounded on the north by Soledad de Andia, on the east by Antonio Lahora, on the south by Antero Hondra et al., and on the west by the river and Antonio Lahora.

"2. Half of the other parcel of abaca land, tax receipt No. 6010, situated in San Juan, Casiguran, Sorsogon, which half measures 153 hectares, 12 ares and 50 centiares, bounded on the north by Soledad de Castro, on the east by Antonio Lahora and others, on the south by Taligna Eiver and others, and on the west by the Odiong River, Tranquilino Narvaes and others."

That on August 18, 1925, the bank conveyed its interest therein to the defendant Marino Olondriz, in which among other things it was provided "that Mr. Marino Olondriz binds himself to respect the right of the mortgagor to redeem the property, in accordance with the provisions of section 32 of Act No. 2747, as amended by Act No. 2938." A copy of the deed is attached to, and made a part of, the complaint marked Exhibit A. That on the date of the sale the defendants entered upon and took possession of the property, and ever since have been and now are in possession. It is then alleged that on November 27, 1925, "the plaintiff redeemed the properties described from the Philippine National Bank for the sum of P10,270.53," in consideration of which the bank sold, signed and conveyed the property to the plaintiff, who is one of the heirs of the deceased, the former owner, in which conveyance it was recited that the former conveyance to the defendants on August 18, 1925, was cancelled and set aside. That on November 27, 1925, the bank notified the defendants by letter that the plaintiff had redeemed the property sold under execution, and had deposited with the bank an amount equal to the total payment made by the defendants, together with interest, and requested the defendants to deliver the property to the plaintiff. That on December 3, 1925, the plaintiff telegraphed the defendant Olondriz, notifying him that he had not yet taken possession of the property due to the refusal of the defendant Escudero to deliver possession, and requiring him to

make such delivery as soon as possible to avoid further damage to the plaintiff. That the defendants refused and still refuse to deliver possession.

As a second cause of action, plaintiff alleges that the property in question produces an income of P12,000 per annum. That from August 18, 1925, the time they took possession, they have been receiving the products of such property, but that from November 1, 1925, the defendants being aware of the efforts of the plaintiff to redeem the property, have sought to exploit it, and have left it in a very bad condition. That by reason of such actions and conduct of the defendants, the plaintiff has been damaged in the sum of P15,000.

He prays for the appointment of a receiver to protect the property pendente lite, and that he be decreed the sole and exclusive owner of the property and entitled to its immediate possession. That the defendants be ordered to render a detailed account under oath of the products from August 18, 1925, to November 27, 1925, and that plaintiff have judgment against the defendants for the sum of P15,000 as damages. A copy of the conveyance from the bank to plaintiff is attached to, and made a part of, the complaint marked Exhibit B.

The defendants filed a general demurrer "upon the ground that the complaint does not state facts sufficient to constitute a cause of action."

In a well written opinion, the lower court sustained the demurrer and dismissed the complaint.

From that decision plaintiff appeals and assigns the following errors:

"I. The lower court erred in holding that under the provisions of section 32 of Act No. 2938, the right of redemption granted to the mortgage debtor is not transmissible to his heirs.

"II. The lower court erred in not holding that in view of the absence of a positive allegation in the complaint as to the confirmation of the sale made by the sheriff in favor of the Bank, the payment made by the plaintiff and appellant directly to the Bank should be deemed to have been made for the benefit of the mortgage debtor and in a manner sufficient to release the properties mortgaged from all existing incumbrances.

"III. The lower court erred in sustaining the defendants' demurrer on the ground that the facts alleged in plaintiff's complaint do not constitute a cause of action.

"IV. The lower court erred in dismissing the complaint."

JOHNS, J.:

There is no dispute about any material fact. The demurrer admits all of the material allegations of the complaint: First, that the plaintiff is the legal heir of the deceased Teodoro de Castro y Marcial; second, that the deceased executed a mortgage on the property in question to the Philippine National Bank; that a suit was brought to foreclose that mortgage, a decree was rendered, and the property sold to the bank; that after the purchase the bank conveyed its interest in the property to the defendant Marino Olondriz, who therein bound himself to respect the right of the mortgagor to redeem the property; that on November 27, 1925, "the plaintiff redeemed the properties described from the Philippine National Bank for the sum of P10,270.53." In consideration thereof the bank sold and conveyed the property to the plaintiff, "one of the heirs of the former owner thereof, to his assignees and successors, hereby cancelling the sale executed by the bank in favor of Mr. Marino Olondriz on August 18, 1925, in accordance with the fifth paragraph of the deed of sale in which the defendant bound himself to respect the right of the mortgagor to redeem the property under the provisions of section 32 of Act No. 2747, as amended by Act No. 2938. The property was sold by the sheriff to the bank on December 4, 1924, the conveyance by the bank to the defendant Olondriz was executed on August 18, 1925, and the conveyance by the bank to the plaintiff was made on November 27, 1925.

It is admitted that the defendant Olondriz entered and took possession at the time he received his conveyance from the bank, and that he has been in possession ever since, and refuses to surrender possession to the plaintiff. There is no allegation in the complaint, and there is nothing in the record as to whether or not the sale was ever confirmed.

The clean-cut legal question presented is, first, the legal force and effect of the conveyance by the bank to Olondriz and the interest which he acquired in the property by that conveyance, and, second, whether or not the plaintiff has a legal right to redeem. It should be borne in mind that Olondriz was not the purchaser at the execution sale. That at such sale the property was sold to the bank which made the conveyance to Olondriz, known in the record as Exhibit A, and that the complaint alleges that "the plaintiff redeemed the properties described from the Philippine National Bank." That is to say, there is a specific allegation in the complaint that the plaintiff "redeemed the properties described from the Philippine National Bank," which is admitted by the demurrer. The conveyance to the defendant Olondriz by the bank was made without covenants of title, and was nothing more than an assignment of the bank's interest to Olondriz, and at the time it was made the bank had nothing more than a certificate of sale of the property, and in the very nature of things the sale was made subject to the right of redemption. It is alleged and admitted by the demurrer that the bank recognized the right of redemption of the plaintiff, and for that reason made its subsequent conveyance to acknowledge the right of redemption in the plaintiff, and that in the conveyance to him, the defendant Olondriz bound himself "to respect the right of redemption of the mortgagor or repurchase the property, etc." That is to say, the bank itself from whom Olondriz deraigned title recognized the right of the plaintiff to redeem, but defendant Olondriz denies that plaintiff has that right. The bank having recognized plaintiff's right to redeem, and Olondriz having acquired any title which he may have through the bank, the question is thus presented whether Olondriz is bound by the acts of the bank. It is admitted that at the time of the conveyance to Olondriz, the bank did not have any title to the property. The only title which it had was a certificate of sale, which in legal effect it assigned to Olondriz by the deed of August 18, 1925. Hence, the only interest which Olondriz acquired in the property was the interest of the bank, and the bank has recognized the right of the plaintiff to redeem. Olondriz having accepted his conveyance from the bank upon the terms and conditions therein specified, and the bank having recognized plaintiff's right to redeem, there is ground for contention that Olondriz is bound by the acts of the bank.

Section 32 of Act-No. 2747, as amended by Act No. 2938, is as follows:

"The mortgagor shall have the right, within one year after the sale of real estate as the result of the foreclosure of a mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the Bank by reason of the execution and sale and for the custody of said property."

Construing that section, in the case of *Gonzalez vs. National Bank and Lopez* (48 Phil, 824), this court held:

"The sales of real property by the Philippine National Bank under foreclosure proceedings are more or less *sui generis*. Strange as it may seem, the question of redemption in such cases is separate and distinct from, and unlike, that of any other foreclosure proceeding.

"The law in question was enacted for a special reason, and should not be construed to defeat its purpose and intent. Giving it a liberal construction, it is apparent that in this class of cases, the words 'within one year after the sale of real estate, etc' should be construed to mean within one year after the confirmation of the sale. It is the confirmation only which consummates the sale. Prior to that, the purchaser's bid is nothing more than an executory contract, which may or may not be executed depending, upon the confirmation of the sale. That is the spirit and intent of the law in question."

Whatever may have been the old rule by all of the modern authorities, it is the policy of the courts to assist rather

than to defeat the right of redemption. To give section 32 the narrow and limited construction for which the appellees contend would be to deny the right of the estate of a deceased mortgagor to redeem the property sold at a sheriff's sale to satisfy a mortgage in favor of the Philippine National Bank. The mortgagor himself cannot redeem, for the simple reason that he is dead, and it is admitted that the plaintiff is the legal heir of the deceased mortgagor. It is also admitted that he has deposited with the Philippine National Bank the full amount of money required to redeem the property from the sale. In other words, the bank has received and now has in its possession the full amount which it paid for the property at the sheriff's sale, together with the accrued interest and costs, and it is able, ready and willing to repay the defendant Olondriz the amount which he paid the bank for the property.

The complaint alleges, and that is admitted by the demurrer, that the property in question has an annual income of P12,000, which is more than the whole amount required to redeem the property. In other words, if the plaintiff, as the legal heir of the deceased, does not have the legal right to redeem, the defendant will acquire title to property for P10,300 which has an annual income of P12,000, and this, under section 32 of the statute in question which allows one year for redemption, and as construed in the case of *Gonzalez vs. National Bank and Lopez*, supra, is one year after the confirmation of the sale. And in the instant case it does not appear when, if ever, the sale was confirmed. The right of redemption is a property right, and may often be, as in this case, a valuable right. In the case of *Lichauco vs. Olegario and Olegario* (43 Phil., 540), this court held that:

"The execution debtor may legally sell his right of redemption, as already declared by this court in repeated decisions based on the precepts contained in sections 463 and 464, and other sections related thereto, of the Code of Civil Procedure."

The lower court held that the word "mortgagor," as used in section 32 of Act No. 2938, should be given a restricted meaning, and that the right of redemption is confined and limited to the mortgagor and the mortgagor only. That would defeat and nullify the purpose and intent of the statute. Under that construction, in many cases, as in this one, upon the death of the mortgagor, the right of redemption would be forever lost, and, if the mortgagor should die before the property is sold, no person would have the legal right to redeem. The intent of the Legislature was to enact a law to favor and extend the right of redemption in this class of cases where the mortgage was executed to the Philippine National Bank to secure an agricultural loan. It is true that the section could have been made more specific, but the intent of the Legislature is very apparent, and it must be given force and effect.

Suppose that, in the instant case, the mortgagor had died the day after the mortgage was executed, and later the property was sold to satisfy the mortgage. Under the theory of the lower court, it would be sold without the right of redemption. The law does not mean that. In construing any statute, you must look for its purpose and intent and the reason why it was enacted. Here, the intent of section 32 was to extend and enlarge rather than to limit and narrow the right of redemption. Giving it that construction, the word "mortgagor," as used in section 32, should at least be construed so as to give both the estate of the deceased mortgagor or his heirs the right to redeem upon the terms and conditions therein specified. It may be that in the first instance the estate itself would have the prior right to redeem, but its failure to exercise that right would not divest an heir of the deceased of his right to redeem. In legal effect when a redemption is made by the estate or an heir of the deceased, it is made for and on behalf of, and by a legal representative of, the deceased mortgagor. In the very nature of things, such a redemption could not be thus made during the life of the mortgagor, but upon his death, he then acts and speaks by and through the administrator of his estate or his legal heirs. This construction harmonizes the statute and gives it the force, meaning and intent of the Legislature.

In the instant case, no attempt was made by the estate to redeem, and for that reason plaintiff sought to redeem as the legal heir of the deceased. We are not now dealing with the legal force and effect of such a redemption or the

conditions under which the plaintiff will hold the title after the redemption. Suffice it to say that upon the facts alleged in the complaint, the plaintiff has the legal right to redeem and to an accounting from the defendants and to recover any damages which they may have done to the property while in their possession.

The demurrer to the complaint is overruled, the judgment of the lower court is reversed and remanded, with leave to the defendants to answer, and if an answer is filed, then for the lower court to try and decide the case on its merits, and for such other and further proceedings as are not inconsistent with this opinion, with costs in favor of the appellant. So ordered.

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

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