

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. GREGORIO NIEVA AND MARIA A. DE NIEVA, DEFENDANTS. MARIA A. DE NIEVA, APPELLANT.

G.R. No. 29416. October 27, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The dispositive part of the judgment appealed from is as follows:

"Therefore, the defendants Gregorio Nieva and his wife Maria A. de Nieva are hereby sentenced to pay plaintiff the sum of P164,000 with interest at six per cent per annum from January 14, 1927, the date of the filing of the complaint, plus the sum of P16,400 as attorney's fees, collection charges, and other disbursements and the costs of action; the liability of the defendant Maria A. de Nieva being limited to the land described in the mortgage deed, Exhibit A. It is ordered that said defendants deposit with the clerk of the Court of First Instance of Mindoro, or pay to the plaintiff the sums aforementioned, within the period of three (3) months from this date, and in default thereof, let a writ of execution issue for the sale of the property described in the deed Exhibit A, schedule A, said writ to be issued against the defendant Gregorio Nieva's property only, for the balance of the mortgage debt remaining unsatisfied after the sale of the mortgaged property.

"So ordered."

The error assigned in this judgment is that of having sentenced Maria A. de Nieva to pay the plaintiff bank the sum of P164,000 with interest, attorney's fees, and costs; because, appellant's counsel contends, she did not subscribe to the obligation of her codefendant and husband, nor assumed nor guaranteed, over her signature, the payment thereof, having confined herself mortgaging certain property of hers to answer for such obligation.

In the mortgage contract on which the present action is based, there is this express limitation of the obligation contracted by the appellant:

"It is the understanding that the responsibility of Maria A. de Nieva alone shall not extend further than the value of the mortgaged property."

And this was taken into account by the trial court which, in the dispositive part of its judgment, as may be seen in the paragraph copied in this decision, thus expressed it:

"* * * the liability of the defendant Maria A. de Nieva being limited to the land described in the mortgage deed, Exhibit A. * * * let a writ of execution issue for the sale of the property described in the deed Exhibit A, schedule A, said writ to be issued against the defendant Gregorio Nieva's property only, for the balance of the mortgage debt remaining unsatisfied after the sale of the mortgaged property."

It is therefore clear that the appellant cannot be compelled to pay any amount to the plaintiff bank; and although in the beginning of the dispositive part quoted above she is jointly sentenced with her husband to pay the sum adjudged in the decision, such order is explained, qualified, and limited in the remaining portion of the paragraph

to deliver the mortgaged property for its sale under execution in case her husband and codefendant should not satisfy the sum awarded in the judgment.

The judgment appealed from should be so understood, and thus taken, it does not contain the error assigned to it.

The same is therefore hereby affirmed with costs against the appellant. So ordered.

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

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