

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. GABINO BARRETO ET AL., DEFENDANTS. GABINO BARRETO, APPELLANT.*G.R. No. 30073. February 21, 1929*

Ponente: VILLAMOR, J.

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The defendant Gabino Barreto executed a mortgage on a property situated in the City of Manila in favor of the plaintiff in order to secure any sum which he or the partnership Gabino Barreto & Co., Ltd., might owe the plaintiff (Exhibit B). The debt of the partnership Gabino Barreto & Co., Ltd., and of defendants Gabino Barreto Po E, Jap, and Po E. Soon not having been paid in due time, said plaintiff-appellee filed a complaint with the Court of First instance of Manila for the foreclosure of the mortgage. The Court of First Instance of Manila ordered the defendants to pay the plaintiff jointly and severally the sum of 5P273,294.13, with 12 per cent interest thereon from October 1, 1323, until fully paid. Upon failure to pay that sum or any part thereof within ninety days from the date of the judgment, the trial court ordered that the property mortgaged to plaintiff be sold at public auction to satisfy said obligation, subject to the first mortgage upon said property in favor of the Postal Bank and the remainder would be applied to the payment of this judgment. And should the proceeds of the sale not be sufficient to pay the whole amount of this judgment, it was ordered that execution be levied on any property of the defendants not exempt from execution. The defendants were further ordered to pay the costs and attorney's fees in a sum equal to 12 per cent of the debt. As this judgment was not appealed from it became final and subject to execution.

The object of the instant action is to collect the amount of 9319,813.00; which is the balance of the judgment rendered jointly and severally against the defendant Gabino Barreto and his solidary co-defendants in civil case No. 25280 of the Court of First Instance of Manila, out of the realty situated in Tacloban, Leyte, mortgaged by the defendant Gabino Barreto Po E. Jap to the National Bank, according to Exhibit A.

In the present action Po Tecsi and M. H. Limjengco were included as defendants: Po Tecsi, because the mortgaged property which is the subject matter of this foreclosure proceeding was sold to him during the trial by the mortgagor Gabino Barreto, with the consent of the plaintiff bank; and Limjengco because of being the holder of a second mortgage upon the same property to the value of P140,000.

It is alleged in the complaint that Gabino Barreto Po E. Jap, together with his solidary codefendants in civil case No. 25280 of the Court of First Instance of Manila, owed the following amounts' to the plaintiff National Bank on April 3, 1925 by reason of said judgment Exhibit B:

Amount expressly mentioned in judgment P273,294.13

Twelve per cent interest on said amount from Oct. 1 to April 3, 1925 49,417.56

Attorney's fees equal to twelve per cent of P273,294.13 32,795.28

Court costs 135.72

355,642.69

Adding to this last amount the expenses of the sale at public auction, P170.36, the whole debt amounts to P355,813.05. On the other hand, deducting from the total debt the P30,000 which was the selling price of the property, plus the P6,000 which the defendant Gabino Barreto Po E. Jap had on deposit with the Philippine National Bank, leaves a balance of P319,813.05, which is the amount sought to be collected out of Gabino Barreto's property mortgaged to plaintiff in Exhibit A.

The case was prosecuted as usual in the Court of First Instance of Leyte. The defendants filed their answers, cross-complaints, and counter-claims. Demurrers now filed to the answer. Defendant Barreto's answer was amended. An answer was filed to the cross-complaint and counter-claim until finally, when the case came up for trial, it was found that some evidence of the plaintiff and of the defendant Gabino Barreto was still in Manila and could not be presented in the Court of Leyte for causes beyond the control of the parties. The trial of the case was then suspended with respect to Gabino Barreto Po E. Jap, and the clerk of the Court of First Instance of Manila was appointed to receive the evidence of said plaintiff and defendant, and the case was submitted for the decision of the court as to the defendant Po Tecsi, independently of the evidence that might be presented by the plaintiff and the defendant Po E. Jap before the commissioner in Manila.

The ease with respect to Po Tecsi was decided on October 6, 1927, the court holding that the contract Exhibit A was null and void in so far as it extended the mortgage on the property in Tacloban to the amount of P819,813.05, which is the balance of the judgment rendered in the aforesaid civil case of Manila No. 25280, and absolving the defendant Po Tecsi from the complaint, with costs against the plaintiff. This judgment was appealed from by the plaintiff Bank and its appeal is the subject matter of case G. E. No. 29196 decided by this Court on December 29, 1928.[1] The judgment of this Court, with the opinion written by Mr. Justice Ostrand, reversed the judgment of the lower court and held that the mortgage in question was valid up to P60,000 only, plus interest at 7 per cent per annum from the date of the complaint in the instant case, and that unless the defendant paid the plaintiff the sum of P60,000 plus 7 per cent annual interest from August 6, 1925, within four months from notice of the judgment, the mortgaged property would be sold in accordance with section 257 of the Code of Civil Procedure, without special pronouncement as to costs.

After the evidence was taken in Manila and the case was submitted to the decision of the Court of First Instance of Leyte, the latter rendered judgment on June 26, 1928, denying the plaintiff's petition that the property be sold at public auction in order to apply the proceeds to the payment of the amount due; and crediting in favor of the defendant Gabino Barreto Po E. Jap the value of 90 shares, P9,000, of said defendant deposited in the National Bank, plus P800 as the value of three sampans of the defendant sold to the firm "Viuda de Hijos de E. Escano" ordered the defendant Gabino Barreto Po E. Jap to pay the plaintiff the sum of P310,013.05 with interest thereon at the rate of 12 per cent per annum from April 3, 1925 until fully paid. The trial court absolved the plaintiff from the cross-complaint and the counter-claim of defendant Gabino Barreto Po E. Jap, and dismissed the case with respect to the other defendant Antonio M. H. Limjengco, with costs against the defendant Gabino Barreto.

The defendant Gabino Barreto appealed from the judgment and in his brief assigns the following errors as committed by the trial court: (a) In not holding itself without jurisdiction to try the present case; (b) in not upholding the defendant Gabino Barreto's special defense; (c) in not upholding the causes of defendant Gabino Barreto's counter-claim; (d) in not upholding the defendant's cross-complaint; and (e) in ordering the defendant Gabino Barreto to pay the plaintiff the sum of P310,013.05, the balance of the judgment rendered in civil case No.

25280 of the Court of First Instance of Manila and in absolving the plaintiff from said defendant's counter-claim and cross-complaint.

The appellant alleges that the Court of First Instance of Leyte has no jurisdiction to try this case in view of the fact that its object is to collect the balance of the judgment rendered in civil case No. 25280 of the Court of First Instance of Manila. This allegation is untenable. According to section 254 of the Code of Civil Procedure, the action for the foreclosure of a mortgage should be instituted in the Court of First Instance of the province in which all or a part of the mortgaged property is located. And since this is an action for the foreclosure of a mortgage on property situated in Tacloban, Leyte, it is evident that the Court of First Instance of that province has jurisdiction to try the instant case.

The appellant sets up by way of special defense that the judgment against him and his solidary co-debtors in civil case No. 25280 of the Court of First Instance of Manila, has been fully paid by virtue of several payments made to the plaintiff and not credited to the defendant-appellant. This contention of the appellant's is likewise untenable. The existence of the debt of the defendant-appellant in favor of the plaintiff-appellee claimed in this case is *res adjudicata* in civil case No. 25280 of the Court of First Instance of Manila, and cannot be the subject of controversy, in view of the express provision of section 306 of the Code of Civil Procedure, which states:

"SEC. 306. Effect of judgment.—The effect of a judgment or final order in an action or special proceeding before a court or judge of the Philippine Islands or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, may be as follows:

* * * * *

"2. In other cases the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." (*Peñalosa vs. Tuason*, 22 Phil, 303; *Chereau vs. Fuentebella*, 43 Phil., 216.)

"Statement and General Consideration of Doctrine.—The doctrine of *res judicata* is a principle of universal jurisprudence forming part of the legal systems of all civilized nations. It may be said to inhere in them all as an obvious rule of expediency and justice. Briefly stated, this doctrine is that an existing final judgment or decree rendered upon the merits, and without fraud or collusion, by a court of competent jurisdiction, upon a matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions, or suits in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue in the first suit." (15 R. C. L., 949-951.)

"Basis of Doctrine.—The foundation principle upon which the doctrine of *res judicata* rests is that parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties, and those in privity with them in law or estate. It is considered that a judgment presents evidence of the facts of so high a nature that nothing which could be proved by evidence aliunde would, be sufficient to overcome it; and therefore it would be useless for a party against whom it can be properly applied to adduce any such evidence, and accordingly he is estopped or precluded by law from doing so. Such is the character of an estoppel by matter of record, as in case of an issue on a question of fact, judicially tried and decided." (15 R. C. L., 953', 954.)

"Conclusiveness of Judgment as to Defenses Not Pledged; In General.—The defendant in an action is ordinarily required to set up all his defenses which do not constitute separate causes of action, and if he neglects to do so is concluded by the judgment rendered in such action. The judgment operates as *res judicata*, not only in regard to the existence of the plaintiff's cause of action, but as to the nonexistence of the defense which was not

pleaded. The reason for this rule lies in the principle that there must be an end to litigation, and, Where a party .has an opportunity to present his defense and neglects to do so, the demands of the law require that he should take the consequences. A defendant cannot split up his defenses when they are indivisible and present them by piecemeal in successive suits growing out of the same transaction. The rule has been laid down broadly that a judgment for the plaintiff sweeps away every defense that should have been raised against the action, and this for the purpose of every subsequent suit, whether founded upon the same or a different cause." (15 R. C. L., 969, 970.)

There is no doubt, therefore, that by virtue of the judgment of the Court of First Instance of Manila, the defendant is indebted to the plaintiff in the sum of P319,813.05, which has been reduced to P310,013.05 by crediting the defendant with the value of 90 shares which he had deposited in the National Bank, and the price of three of the defendant's sampanes which were sold to the firm "Viuda de Hijos de E. Escano."

The judgment appealed from being in accordance with the law, should be, and is hereby affirmed, with costs against the appellant. So ordered.

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

[1] National Bank vs. Barreto Po E. Jap, not reported.

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