

VICENTE ARDOSA, PLAINTIFF AND APPELLEE, VS. ESTEBAN DE LA RAMA ET AL., DEFENDANTS. EL HOGAR FILIPINO, APPELLANT.

G.R. No. 30513. March 19, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Although there are two lots, among other property, dealt with in the present case of foreclosure of mortgage, nevertheless, only lot No. 212 is the subject matter of this appeal, because only in it does the appellant show any interest, holding, that it validly acquired it, and that it also validly transferred the same to defendant Esteban de la Rama, who did not appeal from the judgment of the court below.

The plaintiff is the creditor of the defendant spouses Emeterio Jarde and Aniceta Ardosa for P14,800 and to secure the payment of said amount, it obtained a mortgage on several properties, among them the lands later designated by Nos. 167 and 212 in cadastral proceedings of the municipality of Manapla of the Province of Occidental Negros.

When the mortgage was executed, that is, on May 31, 1922, this parcel of land now known as lot No. 212, was not yet registered under the Land Registration Law, Act No. 496, and the said mortgage had to be registered under the provisions of Act No. 2837. This registration took place on June 16, 1922.

On June 2, 1923, the certificate of title to lot No. 212 was issued in favor of the debtor Aniceta Ardosa, under Act No. 496.

On October 8, 1924, El Hogar Filipino obtained the adjudication of said lot 212 to itself, as the highest bidder in an extrajudicial auction, held by said entity, believing itself entitled to do so by virtue of the terms of the mortgage deed executed in its favor by the said spouses Emeterio Jarde and Aniceta Ardosa, thus succeeding in procuring the transfer of the proper certificate of title to it. This action of El Hogar Filipino is based on the contention that lot 212 is one of the properties mortgaged to it by the said spouses. But such is not the case. Lot 212 was never in any way mortgaged to El Hogar Filipino, but only to plaintiff Vicente Ardosa.

As the sale of this lot 212 in the aforesaid extrajudicial auction was effected in the mistaken belief that said lot was one of the parcels of land included in the mortgage authorizing the sale of the lands therein encumbered, if the debtors violated certain conditions agreed upon, it goes without saying that such a transfer, by reason of said sale based on mistake, is null and void and, therefore, the transfer of the certificate of title, made by virtue of such invalid sale, is also null and void before the law.

The circumstance that no encumbrance appears in the original title to the lot, does not preclude this conclusion. What caused the nullity of such sale at the extrajudicial auction is not the mortgage of said lot to the herein plaintiff, but the fact that it is not included in the mortgage in favor of El Hogar Filipino. And whether the lot was unencumbered or not, upon the face of the certificate of title to lot 212, it was not and could not have been legally affected by said sale at the extrajudicial auction, because said lot was not the subject matter of the contract

between El Hogar Filipino and its aforementioned debtors.

From this it follows that both the transfer of this lot No. 212 to Esteban de la Rama, and the lien herein appearing in favor of El Hogar Filipino are null and void, because the person who transferred it and in whose favor the lien appears to be, could not make the transfer, and he who received said transfer could not encumber the lot, because he did not receive any right thereto.

We cannot and should not discuss the effect of the registration of the mortgage in favor of the plaintiff inasmuch as this question is not duly raised before us. The ones who could have questioned said registration were the spouses, the mortgagors, but they did not appeal from the lower court's judgment. And in view of the conclusion we have reached that El Hogar Filipino has no legal right to or interest in the lot in question, neither can said corporation derive any benefit from discussing the effectiveness of the registration of the mortgage executed by the aforesaid debtor spouses in favor of the plaintiff, because, even supposing for a moment that such registration were ineffective and therefore that there never was a valid mortgage, such a hypothetical conclusion would not avail El Hogar Filipino anything, the latter not being the owner of the lot and having no right or interest therein.

As to the first assignment of error, we find it groundless, inasmuch as El Hogar Filipino certainly claims rights to the land under the certificate of transfer in its favor, and the certificate of transfer in favor of Esteban de la Rama, where such corporation appears as a mortgagee; and under the provisions of section 1J4 of the Code of Civil Procedure, it had to be included as a defendant in the litigation.

The appealed judgment is affirmed with the costs of this instance against the appellant. So ordered.

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

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