

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. PABLO ROCHA, DEFENDANT. MAGIN RIOSA, INTERVENOR AND APPELLANT, AND CONSOLACION RIOSA, DEFENDANT IN INTERVENTION AND AP...

G.R. No. 32260. December 29, 1930

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The plaintiff has brought this action to foreclose a mortgage against the defendant Pablo Rocha. Magin Riosa and Consolacion Riosa intervened as third-party claimants. The lower court sentenced the defendant to pay the plaintiff the sum due, and in default thereof, the mortgaged property described in the first cause of action should be sold at public auction and the proceeds applied to the amount of the judgment; provided, that said mortgaged property shall be subject to the reserved right of Magin Riosa and Consolacion Riosa, and any person who may acquire said property shall do so subject to this lien. Both the plaintiff and the intervenors Magin Riosa and Consolacion Riosa appealed from this judgment.

The present case is related to that of Riosa vs. Rocha, decided by this court on February 18, 1926 (48 Phil., 737).

Maria Corral was married only once, and her husband was the late Mariano Riosa, by whom she had three children, named Santiago, Jose, and Severina. The last named died during infancy, while the other two survived their father Mariano Riosa. Santiago Riosa, now deceased, married Francisca Villanueva, who bore him two children, named Magin Riosa and Consolacion Riosa. Jose Riosa, also deceased, married Marcelina Casas, who bore him a son who died before him without leaving any heir.

The lands mortgaged to the plaintiff originally belonged to Mariano Riosa and upon his death, they were inherited by will by his son Jose Riosa. When the latter died, his mother, Maria Corral, inherited the lands, and the court adjudicated them to her by the resolution of November 12, 1920, in the probate proceedings of Jose Riosa's will.

In the case of Riosa vs. Rocha mentioned above, this court held that the lands in question having been inherited by Maria Corral from her son Jose Riosa, who had received them gratuitously from his father Mariano Riosa, were reservable in favor of Magin Riosa and Consolacion Riosa, being the relatives within the third degree belonging to the line from which such property came.

On the 26th of October, 1920, Maria Corral sold that property to Marcelina Casas, who, on November 3d, of the same year, transferred it to Pablo Rocha. Therefore, when Maria Corral sold this property to Marcelina Casas, and when the latter transferred it to Pablo Rocha, it had not yet been adjudicated to Maria Corral and she was not yet the owner thereof.

On November 6, 1920, the defendant Pablo Rocha mortgaged this property to the plaintiff, and the mortgage was registered, under Act No. 2837, on the 10th of the same month and this mortgage constitutes the cause of the present action. According to this, the mortgage of said property was executed by Pablo Rocha in favor of the

plaintiff before the property passed to the ownership of Maria Corral, and when the latter had no right as yet to dispose of it to Marcelina Casas, nor the latter to transfer it to Pablo Rocha. Wherefore, the mortgage of the property to the bank was executed by one who was not the owner thereof at the time, and the mortgage is, for that reason, without legal existence.

It is true that Maria Corral having afterwards acquired the property, her sale thereof to Marcelina Casas, and the latter's transfer to Pablo Rocha, as well as the mortgage executed by Rocha in favor of the plaintiff, were all ratified; nevertheless, this should be understood, in connection With the extent and condition in which the acquisition was effected. Since Maria Corral acquired the property subject to the reservation in favor of Magin Riosa and Consolacion Riosa, said property passed first to Marcelina Casas and later to Pablo Rocha, as reservable property, and, consequently, the mortgage thereof to the bank must also be subject to the same reservation. In this sense we find the judgment appealed from to be correct, in so far as it is ordered that should Pablo Rocha be unable to pay his debt to the plaintiff, this property was to be sold subject to this reservation.

But since Maria Corral has died, the property has, in consequence of this reservation, passed to the full and absolute ownership of Magin Riosa and Consolacion Riosa, and can no longer be sold to satisfy the judgment rendered against Pablo Rocha in favor of the plaintiff.

We find no merit in the plaintiff's contention that Consolacion Riosa is under estoppel in this case, on account of having opposed, as defendant, in the case of Riosa vs. Rocha, the holding that this property was subject to reservation ; for, if it is true that such an answer was indeed filed in that case, Consolacion Riosa denied that she had authorized it, and her statement has not been contradicted. Furthermore, while she was included as defendant in that case, it was precisely for the purpose of having the holding of reservation extend to her in the proper proportion.

Neither do we find any merit in the contention that said Consolacion Riosa shared in P7,000 of the P20,000 received by Pablo Rocha from the plaintiff, for we find that while she received this amount, she did so not as a share, but as a deposit, having returned it to Maria Corral, according to receipts signed by the latter, which we consider genuine.

It has been proved that the plaintiff paid the land tax upon the property in question in the amount of P2,698.22. This amount was paid for the benefit of the property, which otherwise would have been forfeited. The intervenors Magin Riosa and Consolacion Riosa must reimburse the plaintiff for this sum.

In view of the stand we have taken in deciding this case, we deem it unnecessary to pass upon the other questions raised by both parties on appeal.

For the foregoing, the judgment appealed from is modified, and it is held that in case of failure to satisfy the amount of the judgment rendered against Pablo Rocha in favor of the plaintiff, the mortgaged property cannot be sold. The intervenors Magin Riosa and Consolacion Riosa are hereby ordered to reimburse the plaintiff in the amount of P2,698.22, and it is held that this obligation is a lien upon the property in question. We make no special pronouncement as to costs. So ordered.

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

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