

WILLIAM ANDERSON AND MAMERTO DE MESA, PETITIONERS, VS. HERMOGENES REYES, JUDGE OF FIRST INSTANCE OF PAMPANGA, AND JOSE MARIA GUTIERREZ SAENZ, RESPONDENTS.*G.R. No. 33852. September 23, 1930*

Ponente: AVANCEÑA, C.J.

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On May 15, 1929, the applicant filed an action for the foreclosure of a mortgage held against Jose Maria Gutierrez Saenz in the Court of First Instance of Pampanga. On September 21st the court rendered judgment in favor of the applicant in the amount set forth in the complaint, to be paid within three months, and in case of non-payment within the time specified, the mortgaged property shall be sold. Jose Maria Gutierrez failed to make the payment, and the court issued writ of execution addressed to the provincial sheriff of Pampanga for the sale of the mortgaged property at public auction. After complying with the legal requirements, the provincial sheriff auctioned off the property on March 24, 1930, issuing the proper certificate to the highest bidder, who was the applicant himself, on the following day.' On the 1st of April next, the applicant asked for the confirmation of the sale, and on the same day Jose Maria Gutierrez offered him the amount of the judgment. On the 3d of April, before the sale had been confirmed, the applicant transferred to Mamerto de Mesa all his rights to the property subject to the confirmation of the sale made to him. On June 14th the court heard both parties on the petition for confirmation and on June 17th, considering the price paid inadequate,—though not unconscionably so,—and in view of the offer to pay the amount of the judgment made by Jose Maria Gutierrez, granted the latter an inextendible period of ten days from notice thereof within which to place the amount of the judgment, together with court fees and costs of publication, in the hands of the clerk or the sheriff, and that upon failure to do so, the sale should be deemed confirmed.

William Anderson and Mamerto de Mesa thereupon applied for a writ of certiorari against Judge Hermogenes Reyes and Jose Maria Gutierrez Saenz. They allege that the Court of First Instance lacked or exceeded its jurisdiction in granting Jose Maria Gutierrez Saenz an opportunity to pay the amount of the judgment, instead of confirming the sale of the mortgaged property.

The whole question, then, is whether, after the sale of mortgaged property, and before its confirmation, the court may grant the judgment debtor an opportunity to pay the amount of the judgment executed and withhold confirmation of the sale. If so, this application must be dismissed.

This court has hitherto held that before the confirmation of the sale pursuant to a judgment for the foreclosure of a mortgage, the title to the land sold does not vest in the purchaser (*Raymundo vs. Sunico*, 25 Phil., 365). Therefore, the fact that the petitioner had already sold or conveyed the property he purchased to his copetitioner, Mamerto de Mesa, does not make the sale to himself more effective, and cannot influence the action of the court upon the petition for confirmation.

In *Grimalt vs. Velazquez and Sy Quio* (36 Phil., 936), this court had occasion to hold that after the sale and before

its confirmation by the court, the latter could still grant the judgment debtor an opportunity to pay the amount of the execution. This doctrine has been recently reiterated in (La Urbana vs. Belando, G. R. No. 32737.)[1]

Wherefore, petition is denied with costs against the petitioner. So ordered.

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

[1] Page 930, ante.

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