

MANUEL URQUICO, PLAINTIFF AND APPELLEE, VS. FRANCISCO B. PUNO ET AT., DEFENDANTS. MIGUELA ANTONIO, APPELLANT.

G.R. No. 35263. July 20, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant Miguela Antonio from the judgment of the Court of First Instance of Tarlac, the dispositive part of which is as follows:

"Wherefore the court orders the defendants to pay the plaintiff jointly and severally the sum of P8,300 with interest at the rate of twelve per cent (12%) per annum from February 14, 1921 until fully paid, besides the costs of this instance. Provided, that if within ninety days from notice hereof they shall have failed to make such payment, the property described in paragraph II of the complaint shall be sold at public auction and the proceeds applied to the present judgment."

In support of her appeal> the appellant contends that the trial court committed an error:

"1. In overruling the demurrer to this complaint.

"2. In designating Exhibit C of the plaintiff as a 'mortgage deed', instead of rejecting it on the ground that it does not constitute evidence against the appellant.

"3. In ordering the appellant to pay interest solely upon the strength of the aforementioned Exhibit C, and without taking into account Exhibit A, as evidence for the appellant."

The complaint in this case was filed by plaintiff Manuel Urquico to collect a mortgage credit of P8,300 with interest stipulated at 12 per cent per annum from February 4, 1921 until fully paid, or else to foreclose the mortgage given by the debtors, defendants herein, as security for the payment of said credit.

After her demurrer had been overruled, defendant Miguela Antonio filed an answer denying each and every one of the allegations of the complaint, and by way of special defense alleged that the plaintiff was not entitled to interest of any kind from her, and that the presentation of said complaint has damaged her in the amount of P8,300, which she seeks to recover of the plaintiff.

The relevant facts necessary for a solution of the questions raised in the present appeal are the following:

On February 14, 1921 Francisco B. Puno and his brother Rustico B. Puno and his sister Rita B. Puno, obtained from the plaintiff a loan of P8,300 payable in the month of March, 1921, mortgaging the personal property described in the complaint. The mortgage debtors not having paid their debt upon the date stipulated, on February 25, 1925 they obtained an extension of time for making payment until the month of March, 1925, with interest at 12 per cent per annum from February 4, 1921 until fully paid, and to that end executed the proper deed wherein they ratified the first, mortgage deed.

About the beginning of 1923, Miguela Antonio filed a complaint against her husband Rustico B. Puno, one of the

mortgagors, to compel him to comply with the obligation he had incurred in a contract of separation to pay her alimony for her support and that of her daughter. Judgment was rendered against the husband, Rustico B. Puno, and as he was unable to satisfy it, his property, consisting of one-half of that described in the complaint was levied upon, sold at public auction, and adjudicated to the herein defendant-appellant Miguela Antonio, subject to the mortgage lien mentioned above. As she was already the owner of an undivided half of the mortgaged property, Miguela Antonio required her husband and her brother-in-law Francisco B. Puno to deliver the aforesaid other half. The latter refused to do so, and she brought the proper action in the Court of First Instance of Tarlac, wherein the plaintiff herein filed a third-party claim for his mortgage credit of P8,300 at the same time claiming interest at 12 per cent per annum, so that the total credit amounted to P12,815. The case was decided in favor of Miguela Antonio and upon appeal this court affirmed the judgment,[1] holding:

"The lien in favor of Manuel Urquico affects all the property described in the complaint. The plaintiff having been substituted as the owner of said property in place of Rustico B. Puno, the same continues subject to that lien as well as the property corresponding to the other defendant, Francisco B. Puno."

In that judgment, although the credit of the herein plaintiff-appellee was recognized, no pronouncement was made with reference to the interest.

There can be no doubt that as half of the property in question, that belonging to Rustico B. Puno, was mortgaged to secure the payment of the mortgage debt obtained by him and his brothers from the herein plaintiff-appellee Manuel Urquico, when the herein defendant-appellant Miguela Antonio acquired the rights and interests of said Rustico B. Puno in said property, she also acquired the obligations of the same, the fulfillment of which had been secured with said property, as stated in the decision of this court in adjudicating to her the half of the mortgaged property belonging to her husband.

The fact that in the case filed by the herein defendant-appellant Miguela Antonio against her husband Rustico B. Puno and her brother-in-law Francisco B. Puno, wherein the plaintiff-appellee herein, Manuel Urquico filed a third-party claim alleging a preferential right to the property which was the subject of the action in that case, no pronouncement was made with reference to interest, is no bar to a claim of such interest in the present foreclosure proceedings, inasmuch as the third-party claim of said plaintiff-appellee was not for the purpose of collecting the mortgage credit against the defendants in that case, but simply to protect the lien he had on the property affected by the action.

In view of the foregoing considerations, and finding no error in the judgment appealed from, the same is hereby affirmed in its entirety with costs against the appellant. So ordered.

Street, Malcolm, Villamor, Abad Santos, Vickers, and Imperial, JJ., concur.

[1] G. R. No. 31885. Antonio vs. Puno, promulgated February 20, 1930, not reported.

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