

JESUS DE LA RAMA, PLAINTIFF AND APPELLEE, VS. ANTONIO RI-VERO AND BASILIO BORJA, DEFENDANTS AND APPELLEES. THE PHILIPPINE GUARANTY CO., INC., INTERVENOR AND APPELLANT.

G. R. No. 35926. November 17, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

The plaintiff Jesus de la Rama brought this' action to foreclose a mortgage on the real and personal property described in Appendix B of the complaint, to recover from the defendants Antonio Rivero and Basilio Borja the sum of P99,826.94, with interest at 12 per cent per annum from May 1,1929,' and 10 per cent of said sum as attorney's fees; and to foreclose, six chattel mortgages, which had been assigned to the plaintiff by the Manila Trading & Supply Co., to recover from Antonio Rivero the sum of P30,574.23, with interest at 12 per cent per annum from April 1, 1929, and 33 1/3 per cent of said sum for costs, expenses, and liquidated damages.

The trial judge issued a writ of replevin for the automobiles and motor trucks mortgaged to the plaintiff, and with the consent of the defendant Antonio Rivero ordered the sheriff to sell them at public auction.

In their amended answer to the complaint, the defendants alleged as a special defense that although the defendant Antonio Rivero may have been indebted to the plaintiff in the sum of P125,510.46, said defendant, with the consent of the plaintiff, had executed on February 4, 1929 a document of sale for the purpose of paying all his debts to the plaintiff and delivering to the plaintiff the chattels that had been mortgaged to him; that if the defendant Antonio Rivero had any of the chattels in his possession, it was as a simple lessee.

As a cross-complaint and counterclaim, the defendant Antonio Rivero alleged as a first cause of action that he had sold all the mortgaged property to the plaintiff on February 4, 1929 for P150,000, and that after deducting the indebtedness of Antonio Rivero there was a balance due him of P20,490.54.

As a second cause of action, Antonio Rivero alleged that the plaintiff had collected from him usurious interest ,during the period from January, 1928 to February, 1929, amounting to P27,216.95; that the plaintiff should pay 10 per cent of said sum as attorney's fees.

On August 28, 1929, the Philippine Guaranty Co. was granted leave to intervene in the case. On October 18, 1930 the intervenor filed herein a voluminous amended complaint, wherein it was alleged that on April 9, 1927 the defendant Antonio Rivero entered into a contract with the City of Manila to furnish certain transportation facilities; that to guarantee the performance of his obligations the intervenor executed a bond in favor of the City of Manila for P25,000; that Antonio Rivero and Mariano Gonzaga executed in favor of the intervenor two counterbonds, whereby they bound themselves to pay a premium of 2 per cent per annum on the actual amount of the bond, and to deposit P500 a month to answer for any liability the bonding company might incur; that Antonio Rivero mortgaged to the intervenor all the properties described in schedule A of Appendix B of plaintiff's complaint, and all his interest in a house situated on the land of Benito Legarda on Santa Mesa Street, in Manila, as described in certificate of title No. 10227, and that the said Antonio Rivero also executed in favor of the

intervenor a first mortgage on 19 trucks, 15 carabaos, and 15 carts; that Antonio Rivero and Mariano Gonzaga violated the conditions of said mortgages, and the intervenor filed an action against them (civil case No. 34153 of the Court of First Instance of Manila) ; that up to May 11, 1928 said mortgagors had deposited only P6,000, and that the balance of P19,000 had become due and demandable; that on February 18, 1928 the, intervenor consented that the mortgage of the plaintiff herein on the aforementioned real property be registered as a first mortgage to guarantee an obligation not to exceed P4,500; that on February 20, 1928 it was agreed by the plaintiff and Antonio Rivero that the Manila Trading & Supply Co. was the first mortgagee of the chattels described in schedule A of Appendix B of plaintiff's complaint, the intervenor the second mortgagee, and the plaintiff the third mortgagee of said personal property; that on April 18, 1928 the Manila Trading & Supply Co. conveyed all its interest in said chattel mortgages to the plaintiff Jesus de la Rama for P45,566.88, thereby making the plaintiff the first mortgagee of said chattels; that on September 12, 1930 the Philippine Guaranty Co., by virtue of a writ of execution issued in case No. 34153, garnished and levied upon any right or interest which the defendant Antonio Rivero might have in any judgment rendered in his favor and against the plaintiff Jesus de la Rama in this case; that by virtue of contracts entered into between the plaintiff and the defendant Antonio Rivero the former collected from the latter during the period from January, 1928 to February, 1929 usurious interest amounting to P18,544.81 ; that on September 30, 1930 the plaintiff and the defendant Antonio Rivero entered into an agreement, whereby Jesus de la Rama waived his claim for P17,470.76 as compensation for services rendered to defendant Antonio Rivero, who in turn waived his claim of P18,544.81 for alleged usurious interest; that said agreement was entered into by the plaintiff and the defendant Antonio Rivero to the damage and prejudice of the interest that the intervenor had or might have had in any judgment which the court might have rendered, condemning the plaintiff to pay the defendant Antonio Rivero the sum of P18,544.81 as usurious interest collected by the former from the latter.

In answer to the intervenor's complaint the plaintiff alleged that the allegations therein did not constitute a cause of action against the plaintiff; that the intervenor was a second mortgagee of the real and personal property which had been first mortgaged to the plaintiff; that the sum of P17,470.76 mentioned in the agreement made by the plaintiff and the defendant Rivero in open court was deducted from the mortgage credit of the plaintiff, which was reduced to P112,930.41, and that the plaintiff has continued to be a first mortgage creditor for said sum, plus interest and attorney's fees, free from all counterclaims and cross-complaints against the plaintiff; that the motor trucks and automobiles which were in the possession of the defendant Antonio Rivero, and on which the plaintiff had a first mortgage, have already been sold by the sheriff of Manila by order of the court; that the plaintiff never collected any usurious interest from the defendant Rivero.

On November 7, 1930, the defendants in answer to the complaint of the intervenor denied all the allegations thereof, and as a special defense alleged that the facts set forth therein did not constitute a cause of action against the defendants; that the agreement mentioned in the amended complaint of the intervenor was the result of a transaction made in open court between the plaintiff and the defendants, and that said transaction was made by the defendants with the approval of the court as being to their best interest; that as a result of said transaction the amount owing by the defendant Rivero to the plaintiff De la Rama as first mortgagee was the sum of P112,930.41 and the interest thereon; that the sum of P17,470.76 mentioned in the agreement made in open court was compensated for by the mortgage credit of the plaintiff so that said mortgage credit was reduced to P112,930.41. ' On January 13, 1931 the plaintiff and the defendants executed and filed in court the following agreement:

"El demandante Jesus de la Rama y los demandados Antonio Rivero y Basilio Borja convienen en lo siguiente:

- ° Que el Sr. Antonio Rivero, en vista del curso tornado ultimamente del asunto, en donde se han demostrado pruebas por el demandante que en cierto "modo han aclarado algunos puntos devista hasta antes de hoy sostenidos por el mismo, y teniendo en cuenta que en compensacion al presente convenio el demandante hace

ciertas renunciaciones a favor del demandado, dicho Sr. Antonio Rivero da por descartado, eliminado y suprimido su primer motivo de accion contenido en la demanda y reconvencion de su escrito de contestacion, que representa la suma de P20,490.54.

- ° Que el Sr. Jesus de la Rama reduce su reclamacion, o sea, su credito hipotecario a la suma de P112,930.41.

- ° Que el Sr. Antonio Rivero da por descartado y eliminado el segundo motivo de accion de la reconvencion contenido en su escrito de contestacion.

- ° Que el demandante sea declarado con derecho a percibir la suma de P112,930.41 en virtud de su credito hipotecario; y de esta cantidad P82,356.18 devengara el interes de 12 por ciento anual desde el 1.° de mayo de 1929 y la cantidad restante de P30,574.23 devengara el interes de 12 por ciento anual desde el 1.° de abril de 1929 hasta que se verifique el pago total de ambas cantidades, sin costas.

- ° Que los demandados por su parte hacen constar ex-presamente su renuncia al plazo concedido por la ley para la venta de los bienes hipotecados y consienten en que tan pronto quede firme la sentencia que se vendan por el Sheriff los bienes hipotecados y su producto sea entregado al demandante.

- " Que se ordene, ademas, al Sheriff de Manila la entrega inmediata al demandante del importe de los bienes muebles vendidos por el en publica subasta segun orden de este Juzgado de fecha 27 de julio de 1929, el cual obra lioy en su poder.

"En su virtud, las partes piden que se apruebe dicho convenio y se dicte sentencia. a tenor del mismo mancomunada y solidariamente contra los demandados Antonio Rivero y Basilio Borja por la suma de P82,356.18 al interes de 12 por ciento anual desde el 1.° de mayo de 1929 y contra el demandado Antonio Rivero solo por la cantidad de P30,574.23 al interest de 12 por ciento anual desde el 1.° de abril de 1929, hasta que se verifique el pago total de ambas cantidades, sin costas."

On February 16, 1931 the plaintiff filed a motion praying the court for the reasons stated therein to render judgment immediately in accordance with the compromise agreement that had been admitted by the court on January 13, 1931. On February 19, 1931 the defendant Antonio Rivero filed a motion to the same effect.

When the case was called up on February 25, 1931 for the continuation of the trial, the intervenor filed a re-amended complaint. The amendment appears to consist of the incorporation of the entire compromise agreement in the reamended complaint and the allegation that said agreements were made to defraud the intervenor. The intervenor prayed the court: (a) To sentence the defendant Antonio Rivero to pay the intervenor the sum of P20,200; (b) to order the foreclosure of the above-mentioned mortgage; (c) to order the sale of all the personal property mortgaged to the intervenor; (d) to sentence the defendant to pay the intervenor P2,000 as attorney's fees; (e) to set aside the above-mentioned agreements, and to sentence the plaintiff to pay the defendant P18,544.81; and to grant any other remedy which the court might deem just and equitable.

The plaintiff and the defendants relied on their answers to the amended complaint. The re-amended complaint was admitted without prejudice to the resolution of the motions of the plaintiff and the defendants- praying for the dismissal oi; the action of the intervenor.

On March 24, 1931, the trial judge, C. A. Imperial, dictated a decision in which after setting forth the compromise agreement between the plaintiff and the defendants he said:

"Esta transaccion tiene fuerza de cosa juzgada entre el demandante y los demandados (art. 1816,Codigo Civil).

"La tercerista Philippine Guaranty Co., Inc., insistio sin embargo en la continuacion del litigio sosteniendo que el demandado Antonio Rivero tiene derecho a una sentencia de P18,544.81 contra el demandante por intereses usurarios que dice este percibio de aquel, y que ella tiene derecho a que se pronuncie tal sentencia porque es

acreedora de Rivero y porque la transaction es fraudulenta en cuanto impide que pueda dictarse aquella sentencia.

"La tercerista es acreedora en segunda hipoteca de la casa descrita en el No. 1 del Schedule B del apendice B de la demanda, siendo el demandante el primer acreedor hipotecario.. En 18 de febrero de 1928, la tercerista y el deudor convinieron en limitar el gravamen del primer acreedor hipotecario a P4,500 (Exhibit 112)", pero no constando la conformidad del demandante, dicho acuerdo no puede obligar a este. En cuanto a los demas bienes, muebles e inmuebles, mencionados en la demanda, la tercerista carece de todo interes real en los mismos.

"La tercerista tambien es acreedora del demandado Antonio Rivero y Mariano Gonzaga por la cantidad de P9,900 en virtud de sentencia dictada en el asunto civil No. 34153 de este Juzgado, ahora pendiente en apelacion en el Tribunal Supremo de estas Islas. En el asunto se dicto mandamiento de ejecucion a pesar de la apelacion y a consecuencia de dicho mandamiento se aviso al demandante el embargo de cualesquier creditos que el demandado Antonio Rivero tuviera contra el demandante (Exhibit 110). fiste contesto que el demandado Rivero no tiene credito alguno contra el demandante (Exhibit N). La tercerista no ha probado que sus deudores en la sentencia que se acaba de mencionar (Rivero y Gonzaga) sean insolventes, ni que en el asunto donde se dicto aquella haya tornado infrutuosamente cualesquier otros pasos.

"El demandado Antonio Rivero no ha traspasado a la tercerista los alegados derechos contra el demandante para el reembolso de intereses usurarios alegados. Por otro lado, tales derechos no existen. En primer lugar, porque en la transaccion acordada entre el demandante y el demandado Rivero, la cantidad que se alega que eran intereses usurarios (P17,470.76) se rebajfi del credito que por mayor suma tiene el demandante contra Rivero. De modo que, aiin suponiendo que haya existido el derecho a su reembolso, tal derecho ya esta satisfecho. Es incuestionable que el demandante, siendo acreedor por mayor suma, tiene derecho a la compensacion de cualquiera reclamacion valida que el demandado Rivero, o un sucesor del mismo, pudiera tener contra 61. (Arts. 1195, 1196, 1202, Cod. Civ.; art. 114, C6d. de Proc. Civ.) En segundo lugar es preponderante la prueba de que el demandante no ha 'cobrado' del demandado Rivero 'interes' o 'compensacion' alguna. Todo se ha limitado a asientos de contabilidad. En cada uno de los meses comprendidos en el periodo a que se contrae este litigio el demandante ha hecho un abono en efectivo mayor que la suma de los intereses y compensaci6n que la tercerista pretende que deben sumarse para que resulten intereses usurarios. En tercer lugar, el Juzgado esta persuadido, por la cuenta misma Exhibit G al G-13, o Exhibit 119 al 119-L, que el demandante de hecho actuaba como un administrador o agente especial del demandado, y es evidente que en tal concepto tenia derecho a percibir la compensaci6n estipulada. En cuarto lugar, no hay prueba-bastante de autenticidad de los exhibits 1, 2 y 4, sin los cuales no hay terminos habiles para considerar la pretension de usura.

"Por otro lado, no se ha probado la alegada fraudulencia de la transaccion. Esta surgio en la sesion de 30 de septiembre de 1930 cuando el demandado Rivero no pudo negar la autenticidad y verdad de los exhibits L y M. Estos exhibits demuestran que es insostenible la posicion en que el demandado Trivero se habia colocado. El Juzgado esta convencido que la transaccion se ha hecho' de buena fe. La misma tercerista dio muestras de haber entendido asi, cuando en dicha sesion trato de sostener que el Exhibit M era solo una proposicion no aceptada. De hecho, la ter cerista no alego fraude sino sino en la ultima vista de este asunto celebrada el 25 de febrero de 1921, despuss de varios incidentes suscitados por el demandante basados en que la tercerista no alegaba fraude. Por otro lado, no cabe imputarse fraude por los intereses usurarios, pues, de hecho, el demandado Rivero lo gano al obtener su descuento de la reclamacion por mayor suma del demandante.

"La tercerista formula otras reclamaciones, pero estas no son material propio de una terciaria sino mas Men de acciones separadas contra el demandado Rivero exclusivamente.

"Los muebles hipotecados al demandante se vendieron por el Sheriff de Manila en P4,753.20. De esta suma los P2,829.43 se hallan en poder del Tesorero de la Ciudad de Manila, depositados por el Sheriff a las resultas de

este asunto. Los P1,850 se hallan a cargo del demandante, por haber sido el que pujo por ciertos muebles. El resto de P74.77 se aplico al pago de los honorarios del Sheriff. De conformidad con la transaccion las cantidades que estan en poder del Tesorero de la Ciudad y del demandante pertenecen a este como pago parcial de la sentencia a que tiene derecho.

"Por tanto, se dicta sentencia, de conformidad con dicho convenio transcrito, condenando a los demandados Antonio Rivero y Basilio Borja a pagar mancomunada y solidariamente al demandante Jesus de la Rama la suma de P82,356.18, con intereses a razon de 12 por ciento anual desde el 1.º de mayo de 1929, y condenando al demandado Antonio Rivero a pagar al demandante la suma de P30,574.23 con intereses al 12 por ciento anual desde el 1.º de abril de 1929.

"Habiendo los deudores renunciado al plazo de pago que concede la ley, procedase inmediatamente a la venta de los bienes inmuebles hipotecados para la satisfaccion de esta sentencia.

"La cantidad de P2,829.43 que se halla depositada por el Sheriff de Manila en la Tesoreria de la Ciudad pertenece al demandante y se ordena, por tanto, a dicho funcionario entregue inmediatamente al demandante dicha suma. Esta, asi como la de. P1,850 que se halla a cargo del demandante, deben acreditarse al pago de esta sentencia.

"Se declara sin valor ni efecto la escritura Exhibit 112 de fecha 18 de febrero de 1928 en cuanto limita el derecho del demandante como primer acreedor hipotecario a la suma de P4,500, y se declara que la finca responde en primer termino al credito hipotecario del damandante y, en lo que sobrare, al crodito hipotecario de la tercerista.

"Se absuelve al demandante de la demanda de terceria y se sobresee esta, sin perjuicio de la action o acciones que la tercerista tenga separadamente contra el demandado Antonio Rivero.

"Nadie recobrara costas."

From that decision the intervenor appealed to this court, and now makes the following assignment of errors:

"I. The trial court erred in declaring that there is no sufficient evidence as to the authenticity of the contract of purchase and sale, between Rivero and De la Rama, dated February 3, 1929. "II. The trial court erred in not declaring that by virtue of the said contract of purchase and sale executed by Rivero in favor of De la Rama, the latter became indebted to Rivero in the total sum of thirty-seven thousand sixty-nine pesos and fifty-nine centavos (P37,069.59). "III. The trial court erred in not holding that Exhibit M is invalid:

" (a) Exhibit M is invalid because the same is a fictitious letter fabricated by the parties to defraud intervenor in this case; and "(b) Even admitting for the sake of argument that Exhibit M is not fictitious, nevertheless, it is invalid because it amounts to a sale or a donation on the part of Rivero of a certain credit which he had against De la Rama, which sale or donation is in fraud of Rivero's creditors.

"IV. The trial court erred in not holding that the com-promise entered into between De la Rama and Antonio Rivero on September 29, 1930 cannot in any way prejudice the rights and interests which the intervenor had acquired previous to the said compromise by virtue of an attachment levied by the said intervenor prior to the said compromise upon any judgment which the court may enter in this case against De la Rama and in favor of Rivero.

"V. The trial court erred in not rendering judgment in this case in favor of Rivero and against De la Rama in the sum of thirty-seven thousand sixty-nine pesos and fifty-nine centavos (P37,069.59), with the proviso that the said judgment should be enforced only to the extent of the claim which the intervenor has against Rivero. "VI. The trial court erred in not declaring that by virtue of the sale of the property at Santa Mesa which was subject to a second mortgage in favor of the intervenor, sale which was made by its owner Rivero in favor of the first mortgagee De la Rama, the said purchaser ceased to be a first mortgagee over the said property and became the owner thereof, subject to the mortgage in favor of the intervenor which thereby acquired the condition of a first

mortgagee. "VII. The trial court erred in not holding that, even admitting that the alleged offer contained in Exhibit M is not fictitious was actually made by Rivero to De la Rama on the said date, that the same cannot prejudice the condition of first mortgagee of the property at Santa Mesa previously acquired by the intervenor. "VIII. Admitting, for the sake of argument, that the intervenor's right on the said property are those merely of a second mortgagee, the trial court erred in declaring that the first mortgage held by De la Rama is not subject to the limitation imposed by the intervenor when the latter consented that the mortgage in favor of De la Rama which is of subsequent date to that executed in favor of the intervenor, should only guaranty a maximum obligation of four thousand five hundred pesos (P4,500). "IX. The trial court erred in not foreclosing the mortgage executed by Rivero in favor of the Philippine Guaranty Co., Inc., on the property at Santa Mesa."

In some respects the appellant's assignments of error appear to be in conflict with the prayer of the complaint. Briefly, the present contention of the appellant is that Rivero sold the mortgaged property to De la Rama for P150,000, and since Rivero's indebtedness to De la Rama was finally reduced to P112,930.41, De la Rama now owes Rivero the difference of P37,069.59; that a judgment in favor of Rivero and against the plaintiff should be entered for that amount, and be enforced to the extent of the intervenor's claim against Rivero by virtue of the intervenor's attachment of any judgment that might be rendered in favor of Rivero; that by reason of the said sale the intervenor's second mortgage on the house in Santa Mesa became a first mortgage.

The whole contention of the appellant is based on the assumption that Rivero sold the mortgaged property to De la Rama for P150,000, and that Rivero owed the plaintiff only P112,930.41. The trial judge found that the proposed sale was never consummated, and that by the mutual agreement of the parties it was abandoned. In our opinion the evidence fully sustains the findings of the lower court. This practically disposes of the case.

We find no merit in the contention of the appellant that the abandonment of the proposed sale by Rivero was in fraud of his creditors. No fraud has been proved. Exhibit M fully explains why the proposed sale could not be consummated. It is a novel doctrine that because a man is indebted to two persons he cannot give up the proposed sale of his property to one of them, because the sale would have redounded to the benefit of the other creditor.

Appellant's fourth assignment of error is also without merit. The intervenor could not attach a judgment that did not exist. If there had been a credit balance in favor of Rivero, the intervenor could have garnished it in case No. 34153; but there was no credit balance in favor of Rivero. The trial court found that the plaintiff never collected any usurious interest from Rivero, and the evidence sustains that finding; but even if it were true that Rivero had a valid counterclaim against the plaintiff, it would not be subject to garnishment so long as Rivero was indebted to the plaintiff in a sum greater than the counterclaim.

With respect to the other assignments of error relating to the house in Santa Mesa, wherein it is contended that the trial court erred in not finding that the mortgage of the plaintiff was limited to P4,500, and in not ordering the foreclosure of the intervenor's mortgage on this property, it is sufficient to say that the plaintiff had a first mortgage on this property, and it appears that it has been sold by the sheriff, together with another property, in pursuance of the judgment in this case, for P1,000.

The contention of the appellant has become a moot question, and the appellant has not been prejudiced. The trial court probably refrained from ordering the foreclosure of the intervenor's mortgage on the house because the intervenor had sued Rivero on the same bond in another case, No. 34153, which was pending when this case was decided.

The decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, and Butte, JJ., concur.

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