

GENOVEVA FERNANDEZ, PLAINTIFF AND APPELLANT, VS. PEDRO ANINIAS, DEFENDANT AND APPELLEE.

G. R. No. 36739. December 17, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff Genoveva Fernandez from the following order of the Court of First Instance of Tayabas:

"After a portion of the evidence has been adduced in this case, the court, considering the objection filed by the counsel for 'the defendant with respect to the mis-joinder of party defendant, and this court's lack of jurisdiction over hands, finds' that, according to the evidence, the late Cipriano Aninias, and not the present defendant, is indebted to the plaintiff. The allegation that the defendant inherited the property supposed to have been mortgaged by said deceased to the plaintiff, does not render section 708 of the Code of Civil Procedure inefficacious, according to which the action must be brought either against the committee on claims and appraisal of Cipriano Aninias' estate, or against the executor or administrator. In cases like the present, the law does not establish a special proceeding even where the mortgaged property is in the heir's possession, and unless counsel for the plaintiff can show authority to that effect, the provision of the law of procedure must be followed.

"Wherefore, the plaintiff is hereby granted ten days within which to present an amended complaint in accordance with law, if he so desires, and if within that period such amended complaint is not filed, this cause shall be understood as dismissed, without costs. So ordered."

In support of her appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

- The trial court erred in holding that the action instituted by the complaint is not in accordance with section 708 of Act No. 190.
- The trial court also erred in dismissing the complaint unless amended in accordance with the court's order, making party defendant the executor or administrator of the intestate estate of Cipriano Aninias."

The following facts were proved at the trial:

The late Cipriano Aninias mortgaged the property described in paragraph II of the complaint to the plaintiff-appellant for P2,200, with interest at 12 per cent per annum from September 19, 1928 and in conformity to the conditions set forth in the mortgage deed, Exhibit A.

When Cipriano Aninias died, his heirs (among whom was the defendant-appellee) instituted the intestate proceedings No. 1882 of the Court of First Instance of Tayabas, submitting a plan of partition of the estate, Exhibit C which was approved by the court on June 15, 1929, subject to any claim filed within the period of two years, in accordance with section 598 of the Code of Civil Procedure, adjudicating to the defendant-appellee Pedro Aninias the following- Property adjudicated in favor of Pedro Aninias is that one that is described and

specified under No. 6 or Certificate of Title No. 2918, in the inventory." Certificate of title No. 2918 here mentioned bears the following annotation on the reverse side: "Mortgage of all property described in this certificate for P2,200, payable within two (2) years from the date of the instrument, at the rate of 12 percent annual interest thereon, subject to all conditions in the instrument." (Exhibit B.)

On September 19, 1930 the period for the payment of the debt secured by said mortgage expired without anyone paying it. In view of this breach of the obligation, and the violation of the other conditions set forth in the mortgage deed Exhibit A, the plaintiff-appellant filed the complaint which started the present cause, with the following prayer:

"By virtue whereof, the plaintiff prays the court to order the defendant to pay the plaintiff the amount of P2,200 with accrued interest at 12 per cent per annum from September 19, 1929 until fully paid, plus the sum of P200 as attorney's fees and the costs of the trial, and that, if these amounts be not paid within the period prescribed by law, it be provided in the decision that the mortgaged property be sold at public auction, applying the proceeds thereof to such payment.

"It is also prayed that the court grant the plaintiff any, other proper legal remedy."

In answer to the complaint, the defendant denied all and every one of the allegations contained therein, and by way of special defense, alleged that the mortgage deed upon which the complaint is based does not express the real intention of the parties in that it conceals a usurious contract with interest at 24 per cent per annum; that the plaintiff extended the period, for the payment of said loan to two years, which has not yet expired, and that, for the purpose of defrauding said defendant, the plaintiff gave him to understand that she would dismiss her complaint if he would execute a contract, which he did on May 30, 1931, whereby he would surrender the lands in question if within the period of two years he failed to pay the principal and the usurious interest; and by way of counterclaim, he asks damages in the sum of P1,000.

While the parties were presenting their evidence, the trial court suspended the hearing, and issued the order from which the present appeal is taken,

The only question to decide in this appeal is whether, inasmuch as the late Cipriano Aninias is the real mortgagor, the claim ought to have been filed either with the committee on claims and appraisal, or in the form of an action against the executor or administrator of the decedent's estate.

Section 708 of the Code of Civil Procedure provides the following:

"SEC. 708. Mortgage debt due from estate.—A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the committee, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant; and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may prove his deficiency judgment before the committee against the estate of the deceased; or he may rely upon his mortgage or other security alone, and foreclose the same at any time, within the period of the statute of limitations, and In that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made."

The law provides three means whereby a mortgagee may collect his claim against a deceased mortgagor, to wit: (1) To file his claim with the committee on claims and appraisal for a share in the general distribution of the assets

of the estate, abandoning his security; (2) to foreclose the mortgage making the executor or administrator a party defendant, with the right to present to the committee on claims and appraisal any deficiency judgment which might result from the sale of the mortgaged property; and (3) to rely upon his mortgage alone and foreclose it at any time within the period of the statute of limitations, but he shall not receive any share in the distribution of the other assets of the estate.

If the mortgagee chooses the second means, that is, to foreclose his mortgage, and should the proceeds of the public auction sale be not enough to cover his credit, and he desires to share in the distribution of the assets of the estate to the amount of such deficiency, he must file his action either against the executor or administrator if still in office, or against all the heirs if the estate has already been distributed among them, for it must answer for the payment of such deficiency; but if the mortgagee relies solely upon his mortgage for the collection of his claim, and the estate has already been distributed among the heirs, he need not sue either the executor or administrator, or the heirs, but only that particular heir who has received the mortgaged property as his portion; for inasmuch as the mortgagee's right to the property is a right in rem, the action to foreclose must also be in rem or quasi in rem, and whoever holds or owns the property must directly answer for the fulfillment of the obligation secured by it (art. 1876, Civil Code; and art. 105, Mortgage Law), and the action may be taken against a third person who holds it, if he does not pay or surrender the property (art. 126, Mortgage Law).

In the case at bar, Cipriano Aninias' estate was summarily distributed among his heirs with the approval of the court; and the property he had mortgaged to secure the payment of his debt to the plaintiff-appellant, Genoveva Fernandez, evidenced by an endorsement upon the Torrens title, was allotted to the defendant-appellee, Pedro Aninias. Genoveva Fernandez relies wholly upon her mortgage for the payment of, her claim. As there is no executor or administrator to sue, and as the estate of the mortgagor has been distributed, there is no need to institute proceedings for the settlement thereof, and the foreclosure proceedings may be taken against the heir who received the mortgaged property securing the payment of the claim, and this the mortgagee has done, bringing the action against said defendant-appellee.

In view of the foregoing, we are of opinion and so hold that when a mortgagee relies wholly upon his mortgage for the payment of his claim, and the mortgagor's estate has been distributed summarily among his heirs, and the mortgaged property given to one of them as his portion, no action need be taken against the executor or administrator, or the other heirs, but only against the heir to whom said property has been allotted".

Wherefore, the judgment appealed from is reversed, and it is ordered that the case be remanded to the Court of First Instance where it originated, for further proceedings, with costs against the appellee. So ordered.

Avanceña, C. J., Street, Abad Santos, Hull, Vickers, and Butte, JJ., concur.

DISSENTING

IMPERIAL, J.:

I dissent. I am of the opinion that the deceased debtor's legal representative should be included herein in order to give him the opportunity to pay the principal obligation guaranteed by the mortgage.

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