

**CU UNJIENG E HIJOS, PLAINTIFFS AND APPELLEES, VS. THE
MABALACAT SUGAR COMPANY ET AL., DEFENDANTS. THE
MABALACAT SUGAR COMPANY, APPELLANT.**

G.R. No. 37206. September 22, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant, the Mabalacat Sugar Company from the order of the Court of First Instance of Pampanga confirming the sale of the properties of the defendant entity, made by the sheriff of the said province, by virtue of the writ of execution, issued by the Court of First Instance of Pampanga, upon the judgment rendered by this court confirming that of the trial court in this case.

In support of its appeal, the appellant assigns 19 alleged errors as committed by the trial court in the aforesaid order, which we shall discuss in the body of this decision.

The first question to decide in this appeal, raised in the first, second and third assignments of error, is whether or not it is proper to order the sale at public auction of the mortgaged properties in the hands of the receiver appointed by the same court which tried the action for foreclosure of said mortgage.

The placing of the mortgaged properties in the hands of a receiver during the pendency of an action for foreclosure is for no other purpose than to secure the income and products of the same to cover expected deficit and to preserve them from deterioration. Although it is true that after paying the expenses and obligations incurred by the receiver, the balance of the properties under receivership is used to satisfy the mortgage debt, applying it first to the payment of the interest thereon and then of the capital, in case there is a pronouncement to that effect or a deficiency judgment, and, therefore, it is indispensable that the receiver first render an accounting of his receivership before the sale at public auction of the mortgaged properties takes place, in order to know whether the assets, if there be any in the hands of the receiver, are sufficient to satisfy the amount of the judgment, however, inasmuch as this court has already decided in the certiorari proceedings with a petition for a writ of preliminary injunction, that the sale of the mortgaged properties could take place notwithstanding the fact that the accounts of the receiver contained in his report which this court found satisfactory are still pending approval, it is now unnecessary to discuss the propriety of ordering the execution sale of the mortgaged properties pending the final approval of the accounts of the receiver and the termination of the receivership.

The fact that the mortgaged properties are in the hands of a receiver appointed by the court which tried the foreclosure suit does not prevent the same court from ordering the sale of the aforesaid mortgaged properties, inasmuch as although the said properties are in custodia legis by virtue of the judicial receivership, there cannot be any conflict of jurisdiction therein because the court that ordered the sale thereof is the same which ordered that they be placed under receivership.

The second question to decide is whether or not the sheriff committed an irregularity by including in the sale certain machinery and accessories alleged not to have been included in the mortgage nor in the notice of sale at

public auction.

The machinery and accessories which were the subject matter of a third party claim were acquired by the Mabalacat Sugar Company and installed in the sugar mill known as Mabalacat Sugar Central after the mortgage had already been constituted in favor of Cu Unjieng e Hijos on April 23, 1926. The aforesaid mortgage was constituted on the following properties of the Mabalacat Sugar Company: "Two (2) parcels of land with all the buildings, improvements, sugar-cane mill, railway, telephone installations, apparatus, utensils, and everything forming part or necessary to complete the said sugar-cane mill, railway, or telephone installation, actually existing or that may later exist on the said lots, belonging exclusively to the mortgage debtor, the Mabalacat Sugar Company, by virtue of an order of the Court of First Instance of Pampanga, free from all liens¹ and incumbrances, and more particularly described as follows:" Therefore, the machinery and accessories in question, are included in the aforesaid mortgage.

Furthermore, article 1877 of the Civil Code provides as follows:

"ART. 1877. A mortgage includes all natural accessions, improvements, growing fruits, and rents not collected when the obligation falls due, and the amount of any indemnities paid or due the owner by the insurers of the mortgaged property or by virtue of the exercise of the power of eminent domain, with the declarations, amplifications, and limitations established by law, whether the estate continues in the possession of the person who mortgaged it or whether it passes into the hands of a third person."

In the case of *Bischoff vs. Pomar and Compañia General de Tabacos* (12 Phil., 690), this court, interpreting the provision of law cited above, laid down the following doctrine:

"1. REALTY; MORTGAGE OF REAL ESTATE INCLUDES IMPROVEMENTS AND FIXTURES.—It is a rule, established by the Civil Code and also by the Mortgage Law, with which the decisions of the Courts of the United States are in accord, that in a mortgage of real estate, the improvements on the same are included; therefore, all objects permanently attached to a mortgaged building or land, although they may have been placed there after the mortgage was constituted, are also included. (Arts. 110 and 111 of the Mortgage Law, and 1877 of the Civil Code. Decision of the United States Supreme Court in the matter of *Royal Insurance Co. vs. R. Miller*, liquidator, and *Amadeo* (26 Sup. Ct. Rep., 46; 199 U. S., 353).

"2. ID.; ID.; INCLUSION OR EXCLUSION OF MACHINERY, ETC.—In order that it may be understood that the machinery and other objects placed upon and used in connection with a mortgaged estate are excluded from the mortgage, when it was stated in the mortgage that the improvements, buildings, and machinery that existed thereon were also comprehended, it is indispensable that the exclusion thereof be stipulated between the contracting parties."

(See also *Manresa*, Commentaries on the Civil Code, 3d edition, vol. 12, pp. 528, 529.)

As to whether or not the machinery and accessories in question were included in the notice of sale at public auction, inasmuch as the sheriff stated therein that he would sell all the properties belonging to the Mabalacat Sugar Central and said machinery and accessories are integral parts of said sugar central, they were included in the notice in question, following the principle of law that the accessory follows the principal.

Another irregularity alleged to have been committed by the sheriff in the sale at public auction of the mortgaged properties is that he sold them at an absolutely inadequate price.

B. A. Green, president of the defendant entity, the Mabalacat Sugar Company, testified that the mortgaged properties were worth from P300,000 to P400,000, and that the price of P177,000 for which they were auctioned is absolutely inadequate.

On the other hand, Wyllie, manager of the Luzon Sugar Company, testified that the properties sold at public auction were worth only P143,388, and Renton Hind, well known sugar centrals expert, testified that said properties were worth only P130,000.

In the case of *Bank of the Philippine Islands vs. Green* (52 Phil., 491), this court said:

"Inasmuch as the opposition to the confirmation of the sale made by the sheriff pursuant to the execution only alleged as a ground that the price for which the mortgaged property was sold was absolutely inadequate and unreasonable, and whereas it has heretofore been held by this court that a smaller price, for which the same property was sold at the first auction, notwithstanding that it was inadequate, was not sufficient by itself alone to annul the order confirming the sale (which was annulled for a different reason); therefore, the fact that the opponent was not given an opportunity to present evidence in support of the allegations of his opposition does not constitute a prejudicial error which would nullify the order confirming the sale made by the sheriff."

Furthermore, at no time during or after the sale at public auction has it been claimed, and neither is it now claimed, that there was any purchaser ready to offer an amount greater than that offered by the plaintiffs, for which the mortgaged properties were adjudicated to them.

It has been intimated, but not proven, that the sheriff prevented a purchaser from bidding at the auction. It has not been claimed, however, and neither is it now claimed, that said purchaser, if any, is at present ready to offer a greater sum.

It is also pointed out that the sheriff committed the alleged irregularity of not selling the mortgaged properties by lots or piece by piece.

Speaking of a sugar central, it is of value only when sold in its entirety, inasmuch as the pieces of which it is composed, if sold separately, lose their intrinsic value and can only be sold as second hand articles at a very cheap price. Therefore, the manner in which the mortgaged properties were sold by the sheriff was the most advantageous to the creditors as well as to the mortgage-debtors.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That a mortgage constituted on a sugar central includes not only the land on which it is built but also the buildings, machinery, and accessories installed at the time the mortgage was constituted as well as the buildings, machinery and accessories belonging to the mortgagor, installed after the constitution thereof (*Bischoff vs. Pomar and Compañia General de Tabacos*, 12 Phil., 690); (2) that the notice announcing the sale at public auction of all the properties of a sugar central extends to the machinery and accessories acquired and installed in its mill after the constitution of the mortgage; (3) that the court, that has ordered the placing of the mortgaged properties in the hands of a receiver in a foreclosure suit, has jurisdiction to order the sale at public auction of the said mortgaged properties even before the termination of the receivership; and (4) that the fact that the price at which the mortgaged properties were sold at public auction is inadequate, is not in itself sufficient to justify the annulment of the sale.

Wherefore, finding no error in the order appealed from it is hereby affirmed in toto, with costs against the appellant. So ordered.

Malcolm, Abad Santos, Hull, and Imperial, JJ., concur.

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