

NIEVES E. SAÑGA, PLAINTIFF AND APPELLEE, VS. SEGUNDO ZABALLERO AND FILOMENA SANTOS, DEFENDANTS AND APPELLANTS.

G.R. No. 39008. December 12, 1933

Ponente: MALCOLM, J.

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MALCOLM, J.:

Appealing from the adverse judgment of the Court of First Instance of Tayabas:

"1.º Condenando a los demandados a pagar a la demandante los catorce (14) plazos de la hipoteca vencidos y no pagados correspondientes a los meses de Julio de 1931 a julio de 1932, con excepcion de la cantidad de P350 cobrada por la demandante de los demandados por cuenta del primero de dichos plazos (junio de 1931), o sea la cantidad de P8,050, cuya cantidad debiera descomponerse en catorce (14) meses, de los cuales el primero es de P250 y todos los restantes de P600, debiendo dichos plazos devengar interes a razon de 6 por ciento al ano, a partir del dia 11 de junio de 1931 en lo que respecta al primer plazo no pagado en parte, y en lo que respecta a los demas a partir del 10 de cada uno de los meses sucesivos de julio de 1931 a julio de 1932, durante los cuales fueron venciendo los referidos plazos de la hipoteca; y

"2.º Condenando a los demandados al pago de los sucesivos plazos mensuales de P600, a partir del mes de agosto de 1932 que vayan venciendo hasta que todos los plazos que integran la referida hipoteca por P22,000, otorgada por los demandados a favor de la demandante, hayan quedado satisfechos.

"Se ordena a los demandados que para los efectos de esta decision, depositen en la Escribania de este Juzgado o paguen a la demandante, dentro del plazo de 90 dias, la expresada cantidad de P8,050 con sus intereses legales, coraputados como se ha dicho, y las costas del presente juicio, ordenandose que en caso de que los demandados dejaren de hacerlo asi, se vendan en publica subasta las fincas hipotecadas para hacer efectivas dicha cantidad y sus intereses; y

"Se absuelve a la demandante de la contrademanda de los demandados."

the defendants make the following assignments of error:

"1. That the lower court erred in not declaring that the defendants-appellants are entitled to the reduction of P5,540, from the purchase price of the sale in question.

"2. That the lower court erred in declaring that the defendants-appellants had only paid the plaintiff-appellee, the sum of P8,750 out of the mortgage price of P22,000, instead of P10,200.

"3. That the lower court erred in declaring that the mortgage executed by the defendants-appellants in favor of the plaintiff-appellee could be foreclosed upon failure to pay some of the installments due, in spite of the absence of any expressed stipulation, and in spite of the fact that the total indebtedness is not yet due upon the commencement of the said action."

By a public instrument dated March 11, 1930, Nieves E. Sanga sold two parcels of land to Mr. and Mrs. Segundo

Zaballero for the sum of P32,000. By the terms of the agreement, the purchasers were to make payment of P10,000 on the filing of the document in the registry of property and were to pay the balance by installments at the rate of P600 a month. The same instrument included a mortgage in favor of the vendor for the sum of P22,000. On the failure of the vendees to make good some of the installments, action was begun in the lower court for the foreclosure of the mortgage with the result as above indicated.

- It is the contention under the first specified error that, since the land did not contain the stipulated number of coconut trees, that is, 3,000, but only 2,446, the vendees are entitled to a proportionate reduction of P5,540. There is no merit in this argument. The vendees have not received less land than they bargained for. The fact that within the perimeter of the land there happened to be not as many coconut trees as was estimated gives no ground for rescission, complete or partial, when the evidence shows that the parties all live in the same neighborhood and had identical opportunities to inspect the land. Where the means of knowledge are at hand and equally available to both parties, the buyer will not be heard to say that he has been deceived. And if any act is done by the complaining party after discovering the alleged fraud or mutual mistake toward carrying out the contract, it shows an irrevocable election to abide by the contract.

- The trial judge declared that the payments made by the vendees came to P8,750. Counsel for the appellee concedes that this was error, and that the amount should have been P9,500. Counsel for the appellants insists that the sum should be even more, or P10,200. The arithmetical addition of the exhibits confirms the statement made for the appellants. Inasmuch as the plaintiff admits that her estimate is merely a calculation, since her records have been burned, even in the face of certain corrections in the receipts we think that we will have to abide by the figures appearing therein, which means that the defendants have paid on their debt P10,200, leaving a balance due from them of P11,800.

- The more important question before the court relates to the right of the plaintiff to foreclose the mortgage upon failure to pay some of the installments, before the debt has become entirely due. In this connection, it is pointed out that the mortgage contained no acceleration clause. Although not cited by either party, the answer to the question is found in the provisions of section 259 of the Code of Civil Procedure. This section regulates fully the proceedings in cases where the mortgage debt is payable in installments.

The generally accepted rule is, that where the secured debt is payable in installments, default in the payment of any installment gives the mortgagee a right to foreclose as to such installments without waiting for the maturity of the whole debt. We can rely the more assuredly on this rule because section 259 of the Code of Civil Procedure was derived from California, and California is one of the states adhering to that rule. So much to sustain the action of the trial court in ordering the foreclosure of the mortgage for the installments due; but its action in providing for future contingencies can also be sustained, because by codal section 259, as often as more of the debt becomes due for principal or interest, the court may, on motion, order more property to be sold. It lies within the power of the plaintiff to present the matter by motion to the trial court. (41 C. J., p. 856; Grattan vs. Wiggins, [1863], 23 Cal., 16; Diaz vs. Foote [1920], 28 P. R., 131; Banzon and Rosauro vs. Sellner, 58 Phil., 453.)

In résumé, therefore, we overrule the first specified error, we sustain the second specified error, and we overrule, with explanation, the third specified error. Agreeable to these pronouncements, the judgment will be affirmed, with the modification that instead of the sum of P8,750, it will be understood that the defendants have paid P10,200 on the mortgage, and with the right conceded to the plaintiff, by motion, to ask for foreclosure for the installments not due when the action was instituted but which have accrued during the pendency of the action. So ordered, without special pronouncement as to costs in this instance.

Villa-Real, Hull, Imperial, and Diaz, JJ., concur.

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