

AMADEO MATUTE, PLAINTIFF AND APPELLANT, VS. FRANCISCO BANZALI, DEFENDANT AND APPELLANT.*G.R. No. 39443. October 08, 1935*

Ponente: IMPERIAL, J.

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As a result of the relations, almost commercial in nature, existing between plaintiff and defendant, the former opened a current account for the latter. This account was liquidated on May 1, 1920, and showed the defendant owing P8,612.44. To guarantee this amount, he mortgaged to the plaintiff two parcels of land belonging to him situated in the municipality of Sigaboy, Province of Davao. The defendant undertook to pay interest at 12 per cent per annum from June 1, 1920. He likewise agreed that should the plaintiff resort to the courts to collect his credit, he would pay him the additional sum of P250 as attorney's fees. Apart from said account, the plaintiff opened another one for the defendant which showed the transactions had between them in connection with a contract whereby the defendant bound himself to plant coconuts on plaintiff's lands, the latter to pay the value thereof when the plants reached a certain age. The plaintiff brought suit against the defendant to recover the balance owing, according to him, from the defendant to June 2, 1932, the date when the complaint was docketed, and to foreclose the mortgage. The defendant alleged as special defenses, that he had fully satisfied his indebtedness to the plaintiff and that the latter's action had already prescribed, and, in addition, interposed certain counterclaims. The court rendered judgment ordering the defendant to pay the plaintiff the sum of P10,575.85, plus the costs; from which both parties appealed.

The plaintiff claims that the judgment is erroneous in not considering the action as one for foreclosure of mortgage; in crediting the defendant with the sum of P2,755; in not ordering the defendant to pay the amount of P15,364.39, and in not granting the motion for new trial. The defendant, in turn, assigns the following errors: In adding to his indebtedness the amounts specified in Exhibits D, E, and H; in admitting Exhibit B; in not holding that he had already paid all his indebtedness to the plaintiff; in not sustaining his defense of prescription or in not holding, at least, that the plaintiff had been guilty of laches; in awarding to the plaintiff attorney's fees; in ordering him to pay the sum of P10,575.85, without allowing his counterclaims, and in denying his motion for a new trial.

We shall begin with plaintiff's assignments of error. The real estate mortgage which guaranteed defendant's obligation was registered in the office of the register of deeds of Davao in accordance with Act No. 2837, because the lands were not previously registered in accordance with either the Mortgage Law or the Land Registration Act. For this reason, the court considered the action brought by the plaintiff as an ordinary personal action to collect a credit, instead of one for the foreclosure of mortgage. We hold that this legal conclusion is erroneous. The mortgage here in question was not executed and constituted under the provisions of the Civil Code, and article 1875 which requires that the instrument by which it is created be recorded under the Mortgage Law in order that it may be validly constituted, is not applicable thereto. The deed was registered pursuant to the provisions of Act No. 2837, then in force, and the mortgage was legally valid and should be enforceable. Sections 254 to 261; inclusive, of the Code of Civil Procedure on the foreclosure of mortgages refer to all contracts of this

nature, including mortgages executed under the Civil Code and the Spanish Mortgage Law as well as those constituted under Acts Nos. 496 and 2837, or 3344, the latter being the last amendment to the former, from which it follows that plaintiff's action falls under their provisions and is enforceable. We conclude, therefore, that the first assignment of error is well-founded, and the appealed judgment should have ordered the public sale of the mortgaged property in the event the defendant should fail to pay his indebtedness or to deposit the money within the period which should have been fixed.

The three remaining assignments of error call for a restatement of the accounts of the defendant with the plaintiff.

After considering all the evidence before us, we are of the opinion that the state of said account is as follows:

Mortgage balance

P8,612.44

Accrued interest from June 1, 1920 until December 31, 1931

9,026.55

Payment made by defendant

P119.80

Do

250.00

Do

400.00

Do

350.00

Do

260.00

Do

150.00

Do

150.00

Amount of 2,755 coconut trees delivered to defendant

2,755.00

Amount of defendant's chit (Exhibit D)

1,000.00

Amount of defendant's chit (Exhibit E)

350.00

Amount of defendant's chit (Exhibit H)

105.71

Payment made by the defendant, admitted by the plaintiff in his Exhibit B

121.85

Payment made by the defendant, admitted by the plaintiff in his Exhibit B

37.72

Payment made by the defendant, admitted by the plaintiff in his Exhibit B

245.23

Payment made by the defendant, admitted by the plaintiff in his Exhibit B

400.00

19,094.70

5,239.60

Balance against the defendant

13,855.10

P19,094.70

P19,094.70

The foregoing shows that the defendant is indebted to the plaintiff in the amount of P13,855.10, plus interest at 12 per cent per annum from January 1, 1932, until fully paid.

It should be stated in further explanation of some items that the carabaos turned over by the defendant have been assessed at "P300 and the coconut trees at P2,755, as assessed by the court.

The above liquidation resolves defendant's first, third, and sixth assignments of error. The second is likewise resolved by the admission against the plaintiff of the payments made by the defendant which are accepted by the former as shown by Exhibit B. Although the evidence, strictly speaking, was not admissible, its admission has benefited the defendant and he cannot be heard to complain.

The fourth assignment of error cannot be sustained. It refers to a current account guaranteed by a mortgage executed in a public deed, and the last payment made by the defendant was on September 27, 1925. The

complaint was docketed on June 2, 1932. The prescriptive period of ten years commenced to run from the date of said last payment, and the period had not yet elapsed when the complaint was filed. (Sec. 43 [1], Code of Civil Procedure.) Being a current account and in view of the insistent demands for payment made by the plaintiff, the latter is not guilty of laches in not bringing action before June 2, 1932.

The fifth assignment of error is well-founded. The plaintiff has not claimed in his complaint the attorney's fees which the defendant agreed to pay in the event that the former should find it necessary to resort to the courts. The sum of P250 should be eliminated.

The evidence does not support defendant's counterclaims, and whatever deduction he is entitled to has been credited to him in the above-quoted liquidation.

The appealed judgment is modified, and the defendant is ordered to pay the plaintiff the sum of P13,855.10, with interest thereon at 12 per cent per annum from January 1, 1932, until fully paid. If defendant should fail to pay said sum with its interest to the plaintiff within three months the mortgaged property will be sold at public auction and the proceeds thereof applied to the satisfaction of the judgment. Without special pronouncement as to costs, so ordered.

Malcolm, Villa-Real, Hull, and Goddard, JJ., concur.

Judgment modified.

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