

RODOLFO TORRELLA, PLAINTIFF AND APPELLEE, VS. JOSE PEREZ MINGUEZ ET AL., DEFENDANTS. JOSE PEREZ MINGUEZ, APPELLANT.*G. R. No. 39933. February 06, 1934*

Ponente: IMPERIAL, J.

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This is an appeal taken by Jose Perez Minguez, in his capacity as coheir of the deceased Jose Perez Gallego, front the order of the Court of First Instance of Sorsogon, whereby he was granted the period of sixty (60) days within which to repurchase the property sold at public auction pursuant to a writ of execution issued in the principal suit for foreclosure of mortgage, upon payment of the amount of the judgment rendered therein, instead of the purchase price obtained at the judicial sale, as claimed by the herein appellant.

The pertinent facts of the case are as follows:

Rodolfo Torrella, the plaintiff-appellee herein, instituted civil case No. 2722 in the Court of First Instance of Sorsogon to foreclose a mortgage executed in his favor by the deceased Jose Perez Gallego, then represented by his attorney in fact Juan B. Alegre, to secure a loan of P30,000 obtained by the said deceased. The defendants therein were the appellant Jose Perez Minguez, as judicial administrator of the estate of the aforesaid mortgagor, and the judicial administratrix of the estate of the deceased Juan B. Alegre in whose favor a second mortgage on the same property was constituted to secure another loan in the sum of P6,000. After due trial judgment was rendered against said judicial administrator of Jose Perez Gallego, ordering him to pay to the plaintiff the sum of P39,022.50 plus 10 per cent thereof as attorney's fees, within the period of three (3) months. The judgment became final but the amount thereof remained unpaid, whereupon a writ of execution was issued ordering the sale at public auction of all the property covered by the mortgage. At the public auction the property in question was adjudicated to the plaintiff, as the highest bidder, for the sum of P13,000. Sometime later the plaintiff-appellee filed a motion for the confirmation of the sale by the court. The herein appellant, as a coheir of his father Jose Perez Gallego, filed his opposition thereto and requested permission to redeem said property by paying only the purchase price thereof obtained at the public auction, that is, P13,000 plus the judicial expenses. Acting upon both motions, the court issued the order hereinbefore mentioned from which the appellant took this appeal.

Said appellant bases his alleged right entirely on the provisions of sections 464 and 465 of the Code of Civil Procedure. From the former it may be inferred that the successor in interest of a judgment debtor has the right to redeem the property sold, in the manner and upon payment of the sums of money specified in the latter section.

Without expressly resolving that the sections in question are applicable to execution sales in consequence of a foreclosure suit, it is hereby held that the appellant is not entitled to the remedy prayed for on the ground that he did not offer to pay the interest on the amount paid by the plaintiff-appellee as purchase price of the property sold, which interest should be paid pursuant to the provisions of said section 465, taking for granted that it is applicable to execution sales in consequence of a foreclosure suit. That the appellant did not offer to do so is shown by his own motion which is quoted on pages 31, 32 and 33 of the bill of exceptions.

We are likewise of the opinion that the order appealed from cannot be affirmed on the ground that it grants the appellant a period of sixty (60) days within which to repurchase the property sold, a remedy the existence of which in accordance with the law, we doubt very much.

The equitable right of the appellant and his coheirs in this case consists in paying the full amount of the judgment obtained by the plaintiff-appellee, which should be so done before the confirmation of the judicial sale in accordance with the provisions of section 257 of the Code of Civil Procedure.

Wherefore, the present appeal is hereby dismissed, with the costs of this instance against the appellant. So ordered,

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

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