

**NATALIO A. ENRIQUEZ, SUSANA GALA, MOISES A. GALA AND
AVELINA ELEAZAR, PLAINTIFFS AND APPELLANTS, VS. COSME
RAEOLA, ADMINISTRATOR OF THE ESTATE OF THE DECEASED
FRUCTUOSA CADIZ, D...**

G. R. No. 40908. September 08, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

The appellants as plaintiffs on September 29, 1932, filed suit in the Court of First Instance of Tayabas against Cosme Ranola as administrator of the estate of Fructuosa Cadiz praying for a personal judgment for P30,000 with interest and the foreclosure of a mortgage securing said debt. This mortgage was a first lien on a parcel of land with improvements described in certificate of title No. 878 of Tayabas and containing an area of 809,609 square meters assessed at P28,150. It is alleged that neither Fructuosa Cadiz in her life time nor her representative since her death has paid the said past due loan or the interest thereon since June 27, 1930, although due demand was made.

The answer of the defendant administrator of the late Fructuosa Cadiz admits all of the allegations of the petitioner but prays to be relieved of the payment of attorneys' fees and costs.

On January 18, 1933, by permission of the court, Pedro Herrera and Martin Mendoza filed a petition of intervention in which it is alleged that the intervenor Herrera has an interest in said land under and by virtue of his purchase thereof at a sheriff's sale which is noted on the back of the said certificate of title No. 878. The intervenor Mendoza claims an interest in said land alleging that the said Fructuosa Cadiz in her life time on January 20, 1930, transferred to the said Mendoza by sale with pacto de retro a portion of said land containing 400 coconut trees for the sum of P3,500.

The intervenors further allege that in 1931 the defendant administrator delivered possession of the said mortgaged property to the plaintiffs by way of antichresis for the remaining portion of the five-year period stated in the original contract of mortgage with the understanding that the plaintiffs should apply the products of the land to the payment of the mortgage debt and interest; that by virtue of said agreement of antichresis there has been a novation of the obligation and the plaintiffs cannot foreclose the mortgage executed by Fructuosa Cadiz before the expiration of five years from the date of the said mortgage, that is to say, June 27, 1935, and hence the action of the plaintiffs is premature. They pray that the contract of mortgage be declared novated by the subsequent contract of antichresis; that the plaintiffs be required to render an account; that the petition of the plaintiffs be dismissed with costs.

On March 7, 1933, the plaintiffs filed their answer to the petition of intervention in which they allege that the plaintiffs are the owners of the land described in said certificate of title No. 878 by virtue of the fact that they purchased the same from Francisco Paulino who in his turn purchased the same at a sheriff's sale under an execution upon a judgment against said Fructuosa Cadiz in case No. 2807 which sale and purchase is registered in

the office of the register of deeds and noted on the back of said certificate No. 878. The answer denies that the intervenors acquired any right under their alleged purchases.

As stated, the defendant administrator of the estate of Frutuosa Cadiz makes no defense to the plaintiffs' demand. Only the intervenors and the plaintiffs have appealed.

The plaintiffs except to that portion of the decision of the trial court which denied the prayer of the plaintiffs for a personal judgment for P30,000 with interest on the debt secured by the mortgage aforesaid. The trial court held that when the plaintiffs acquired through Francisco Paulino the equity of Frutuosa Cadiz in the very same lands conveyed to them as mortgagees, a merger of rights (*confusion de derechos*) took place which had the effect of extinguishing the debt of Frutuosa Cadiz in favor of the plaintiffs, under the provisions of articles 1156 and 1159 of the Civil Code. If that were not true, the plaintiffs would acquire the legal and equitable title to lands assessed at P28,150 for the sum of P857.31 paid by them to Francisco Paulino without giving Frutuosa Cadiz or her estate credit for anything, leaving the said estate still owing the plaintiffs the P30,000, plus interest, for which the lands stood security. This extinction of the obligation and merger of rights by which the plaintiffs became owners of the land, occurred when they acquired the rights of Francisco Paulino, that is to say, on February 24, 1931.

Subsequent thereto, that is to say, on August 31, 1931, the intervenor Herrera at a sheriff's sale purchased all the rights, title and interest that remained in Frutuosa Cadiz in the said land, which, as correctly held by the trial court, were in fact exhausted by the prior conveyances.

As to the intervenor Martin Mendoza, it appears from his Exhibit 1 that Frutuosa Cadiz, on January 20, 1930, executed in his favor a document entitled *venta con pacto de retro* affecting a portion of the land embraced in said certificate of title No. 878; but said document was never registered or noted on the certificate of title in conformity with section 50 of Act No. 496. Hence it could not affect these plaintiffs. Although he appealed, we do not find in the brief for the intervenors any argument challenging the conclusion of the court in this respect.

The intervenors' appeal rests essentially upon the proposition that novation of the contract of mortgage occurred when the plaintiffs agreed that they should take possession of the land before the maturity of the mortgage, and credit the products thereof to the payment of the principal and interest of the debt, thus converting the mortgage to a contract of *antichresis*. The evidence fails entirely to establish said alleged agreement. The defendant administrator, the widower of the deceased Frutuosa Cadiz, makes no such claim. The plaintiffs contend that they did not take possession until after they became owners by virtue of the conveyance from Francisco Paulino, that is to say, toward the end of the month of February, 1932, which was after the year for redemption of Francisco Paulino's purchase by the judgment debtor had expired.

The intervenors in their brief take grave exception to the orders of the trial court suspending the final effect of the judgment in this case in favor of the appellants until they obtained a certificate of title. On October 30, 1933, the plaintiffs notified the court that they had obtained certificate of title No. 7465 upon cancellation of certificate of title No. 878, thus complying with the order of the court of August 21, 1933. Whatever apparent irregularities of procedure there may have been in this connection, we are convinced that the intervenors have not been deprived of any substantial rights by the final decision of the court. The judgment is affirmed with costs to be divided equally between the plaintiffs-appellants and the intervenors-appellants.

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

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