

MONTE DE PIEDAD Y CAJA DE AHORROS DE MANILA, PLAINTIFF AND APPELLANT, VS. JOSE FERNANDO RODRIGO, DEFENDANT AND APPELLANT.

G. R. No. 42928. August 18, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

These are two appeals, one taken by the plaintiff company Monte de Piedad y Caja de Ahorros de Manila and the other by the defendant Jose Fernando Rodrigo, from the order of the Court of First Instance of Manila of September 20, 1934, denying the motion of the former praying for the issuance of an alias writ of execution in its favor or in favor of the spouses Luis Izquierdo and Concepcion Cabigao, its alleged assignees; and that of the latter praying that the said Monte de Piedad y Caja de Ahorros de Manila be ordered to return to said defendant Jose Fernando Rodrigo the sum of P6,000, with interest thereon, which said defendant alleges to have paid in excess to said plaintiff company.

In support of its appeal, the appellant Monte de Piedad y Caja de Ahorros de Manila assigns the following alleged errors as committed by the court a quo in its said order, to wit:

- The court a quo erred in declaring that the plaintiff Monte de Piedad considered its credit fully paid when it received the seven thousand pesos and released the third and last mortgaged property.
- The court a quo likewise erred in not holding that the defendant Rodrigo continued to be under obligation to pay to the plaintiff or to the assignees thereof the unpaid balance of his mortgage debt declared in a final judgment.
- The court a quo likewise erred in not granting the motion of the plaintiff and its assignees for the issuance of an alias writ of execution for the unpaid balance of the mortgage debt in question."

The appellant Jose Fernando Rodrigo, in turn, assigns the following alleged errors as committed by the court a quo in its said judgment, to wit:

- The lower court erred in declaring that said appellant did not erroneously make any undue payment.
- The lower court erred in believing that the indivisibility of the mortgage erases the independence of the joint obligation.
- The lower court erred in not ordering the Monte de Piedad y Caja de Ahorros de Manila to return to said defendant-appellant the sum of P6,000 paid by him in excess."

The pertinent facts necessary for the resolution of the questions raised by the parties in their respective briefs, are as follows:

Juana Gatmaitan had obtained a loan of P15,000 from the Monte de Piedad y Caja de Ahorros de Manila. To secure the performance of her obligation she mortgaged to said company all her participation in the real properties

described in certificate of title No. 22559 issued in her favor and of Juana M. Torres. The latter, as coowner, in turn, constituted in the same deed a mortgage on all her right and participation in the real properties described in said certificate of title. Inasmuch as Juana Gatmaitan had transferred all her rights, interest and participation in the properties described in said certificate of title to the defendant-appellant Jose Fernando Rodrigo, the latter assumed Juana Gatmaitan's said obligation in the sum of P15,000 and, together with his co-owner Juana M. Torres, he again mortgaged to the creditor company all the properties described in transfer certificate of title No. 29292 which substituted the former original certificate of title No. 22559. In said mortgage, the appellant Jose Fernando Rodrigo included another real property belonging to him, situated in Bulacan and described in the mortgage deed, Exhibit C, which was registered in the registry of deeds in accordance with Act No. 2837. The payment of the debt having become due and the same not having been paid, the mortgagee Monte de Piedad y Caja de Ahorros de Manila brought the corresponding action for foreclosure against Jose Fernando Rodrigo and Juana M. Torres in the Court of First Instance of Manila, which action was docketed as civil case No. 37165. Juana M. Torres died during the pendency of the action and was substituted by Potenciana Yupangco as judicial administratrix of her estate. On November 18, 1930, the Court of First Instance of Manila rendered judgment therein; the dispositive part of which reads as follows:

"Wherefore, judgment is rendered in favor of the plaintiff, sentencing the defendants to pay to the plaintiff the said sums of P17,481.17, P98 and P1,500, plus the interest on P15,000 at 10 per cent per annum from the 4th of October of this year, until fully paid, with costs. Should the defendants fail to pay the sums in question representing the amount of this judgment within the period of three months, the court will order the sale at public auction of the properties described in Exhibits A, A-1, B and C, as prayed for by the plaintiff in its complaint."

Upon appeal, said case which was docketed under G. R. No. 35132 (Monte de Piedad y Caja de Ahorros de Manila vs. Fernando Rodrigo and De Yupangco, 56 Phil., 310), was affirmed in toto by this court.

As neither the defendant Jose Fernando Rodrigo nor his co-guarantor Juana M. Torres had not paid the mortgage debt within the period fixed in the judgment, the corresponding writ of execution was issued and two of the mortgaged parcels of land, the ones described in Exhibits A, A-1 and B, were sold at public auction for the sum of P10,000 to the plaintiff company, having been the highest bidder.

One of said two parcels was the common property of the defendants and the other parcel, which is situated in Manila and assessed at P20,000 in the land tax registry, exclusively belongs to the defendant Jose Fernando Rodrigo.

To avoid a similar attachment and sale at public auction of the third mortgaged real property situated in Bulacan (Exhibit C), which exclusively belonged to Jose Fernando Rodrigo, the latter, on November 4, 1932, made a compromise with the plaintiff by negotiating and having the Luzon Surety Co., Inc., which was his surety during the pendency of said cause on appeal, pay to the plaintiff company, for the release of the said property in Bulacan from the mortgage, the proceeds of the bond amounting to P5,000, plus the sum of P2,000, or a total of P7,000, which the plaintiff company acknowledged to have received.

On January 31, 1933, the defendant-appellant Jose Fernando Rodrigo brought an action in the Court of First Instance of Bulacan against the spouses Luis Izquierdo and Concepcion Cabigao for the recovery of a sum of money, which action was docketed as civil case No. 4258 of said court, judgment having been rendered therein ordering the defendants to pay to the plaintiff the sum of P2,500. Upon appeal, this court affirmed said judgment in a decision of December 21, 1933 (Fernando Rodrigo vs. Cabigao and Izquierdo, 59 Phil., 187).

On March 13, 1934, the plaintiff-appellant Monte de Piedad y Caja de Ahorros de Manila, in a public instrument,

assigned to the spouses Luis Izquierdo and Concepcion Cabigao an alleged balance in its favor in the sum of P6,401.50.

As a writ of execution had been issued against the spouses Luis Izquierdo and Concepcion Cabigao in favor of Jose Fernando Rodrigo in said civil case No. 4258, said spouses, on March 16, 1934, filed a motion praying that the judgment rendered in favor of Jose Fernando Rodrigo be declared paid, compensated and satisfied with an amount from the proceeds of the judgment assigned to them by the Monte de Piedad y Caja de Ahorros de Manila against said Jose Fernando Rodrigo, sufficient to cover the amount of the judgment in favor of the defendant-appellant.

In an order of March 26, 1934, the Court of First Instance of Bulacan, then presided over by Judge Buenaventura Ocampo, denied said motion, having found it not well founded.

From said order Luis Izquierdo and Concepcion Gabigao appealed to this court (G. R. No. 42147, Feb. 11, 1935 [61 Phil., 1023]) and a division of three thereof rendered judgment the dispositive part of which reads:

"Without deciding whether or not the motion in question was properly presented in this case it is clear that under the above facts the trial court did not err in denying that motion. The orders appealed from should be and are hereby affirmed with costs in this instance against the defendants-appellants."

In view of said denial and to collect the balance in question, the spouses Luis Izquierdo and Concepcion Cabigao, together with the Monte de Piedad y Caja de Ahorros de Manila, filed a petition on April 9, 1934, praying for the issuance of an alias writ of execution in accordance with section 260 of the Code of Civil Procedure.

Said petition was opposed by the defendant-appellant Jose Fernando Rodrigo who, in turn, demanded the return of the sum of P6,000 with interest thereon, which he claims to have paid in excess to said plaintiff company.

The first question to be decided in this appeal is that raised by the defendant-appellant Jose Fernando Rodrigo in his first assignment of alleged error, consisting in that the court a quo erred in holding that said defendant-appellant made no undue payment.

It is claimed by the defendant-appellant Jose Fernando-Rodrigo that, as the total amount of the judgment rendered in civil case No. 37165 of the Court of First Instance of Manila, wherein the Monte de Piedad y Caja de Ahorros de Manila was plaintiff and he (Jose Fernando Rodrigo) and Juana M. Torres were defendants, was P22,000, and he had paid the sum of P17,000 consisting of P10,000 representing the proceeds of the sale at public auction of two of the three mortgaged parcels of land, and P7,000 paid by the Luzon Surety Co., Inc., he unduly paid an excess of P6,000 because, as he and his co-defendant Juana M. Torres had been ordered in said judgment to pay the amount thereof, their obligation was joint and he should have paid only P1,000 of the amount of said judgment, the payment of P11,000 representing the other half devolving upon his codefendant Juana M. Torres.

The plaintiff company Monte de Piedad y Caja de Ahorros de Manila, in civil case No. 37165 of the Court of First Instance of Manila, tacitly agreed to the dispositive part of the judgment rendered therein, ordering the defendants Jose Fernando Rodrigo and Juana M. Torres to pay the amount of the judgment without specifying the manner of making the payment, not only because it had failed to ask for the amendment of the judgment but also because it had asked for the execution thereof, the mortgaged properties having been sold at public auction. The defendant-appellant Jose Fernando Rodrigo, however, cannot claim to have unduly paid the sum of P6,000. Article 1895 of the Civil Code considers as undue payment that which is erroneously made to a person who is not entitled to collect. In this case the defendants Jose Fernando Rodrigo and Juana M. Torres owed by judgment the amount of P22,000, consisting of the original debt of P15,000 and the interest thereon, to the plaintiff company Monte de Piedad y Caja de Ahorros de Manila. Therefore in paying the sum of P17,000, Jose Fernando Rodrigo

thereby fully settled his obligation under said judgment and partially paid that of his co-defendant Juana M. Torres under the same judgment. This is not a payment unduly made but a payment for the account of a debtor in the performance of whose obligation he was interested she being his co-surety (article 1158, Civil Code).

The second question to be decided is that raised by the plaintiff-appellant Monte de Piedad y Caja de Ahorros de Manila, consisting in that the court a quo erred in declaring that it considered its credit fully paid when it received the P7,000 and released the third and last mortgaged property.

As stated above, after two of the three mortgaged parcels of land had been sold at public auction* for the sum of P10,000, the parties agreed to suspend the sale of the third parcel situated in the Province of Bulacan, exclusively belonging to the defendant-appellant Jose Fernando Rodrigo, because there was paid in lieu thereof the amount of P7,000, of which P5,000 were the proceeds of the bond subscribed by the Luzon Surety Co., Inc., in civil case No. 37165 of the Court of First Instance of Manila, with which sum the obligation contracted by said Luzon Surety Co., Inc., in connection with said bond was cancelled, and P2,000 were paid by said Luzon Surety Co., Inc., to cancel the mortgage lien on the third parcel in question. Although the release of one of the mortgaged parcels does not ordinarily settle the unpaid balance of a mortgage debt, the agreement of the parties in this case must have been to the contrary, taking into consideration the fact that one of the real properties sold at public auction, the one situated in Manila and acquired by the plaintiff-appellant as the highest bidder, was assessed for land tax purposes at P20,000, and that said plaintiff-appellant did not assign its rights to the sum of P6,401.50, representing the unpaid balance of its judgment credit after the execution of said judgment, to the spouses Luis Izquierdo and Concepcion Cabigao prior to November 4, 1932, but on March 13, 1934, or ask for the issuance of an alias writ of execution until April 9, 1934, or about 17 months after the first execution. It is unreasonable to suppose that the defendant-appellant Jose Fernando Rodrigo had to pay the sum of P7,000 to release the real property in Bulacan from the mortgage lien without asking for the cancellation of the entire debt, considering the fact that as there was an unpaid balance of the judgment credit, the latter may be executed upon the released property. All these considerations convince us that with the release of the real property situated in Bulacan exclusively belonging to the defendant-appellant Jose Fernando Rodrigo, through the payment of the sum of P7,000, the entire amount of the judgment rendered in favor of the plaintiff-appellant against the defendant-appellant was paid.

In view of the foregoing considerations, we are of the opinion and so hold that the payment made by a joint judgment debtor in excess of what he should pay, for the benefit of his co-debtor and co-surety, cannot be considered as a payment unduly made under article 1895 of the Civil Code but as a payment made by a person interested in the performance of the obligation in accordance with the provision of article 1158 of said Code.

Wherefore, not finding any error in the judgment appealed from, it is affirmed in toto, with the costs to the plaintiff company Monte de Piedad y Caja de Ahorros de Manila. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Recto, and Laurel, JJ., concur.

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