

SEBASTIANA RODRIGUEZ, PLAINTIFF AND APPELLEE, VS. IRINEA CAOIBES, DEFENDANT AND APPELLANT.

G.R. No. 43147. September 24, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant Irinea Caoibes from the order of the Court of First Instance of Batangas of December 14, 1934, denying the motion of said defendant-appellant of September 25, 1934, asking that the order of the said court of September 10, 1934, be set aside, and that the sale made by the sheriff and the deed executed thereunder be disapproved. The order of September 10, 1934, is as follows:

"Upon submission of the plaintiff's motion of August 2, 1934, asking for the approval of the sale made by the sheriff to the plaintiff of the properties which are the subject of this case, and the opposition to the approval of said sale, the said opposition is overruled, and the deed of sale of July 27, 1934, made by the sheriff, ratified before the notary public, N. U. Babao, and registered on page 34 of his notarial book No. 2, as document No. 137, series of 1934, is approved. So ordered.

"Batangas, Batangas, September 10, 1934.

(Sgd.) "PEDRO MA. SISON, Judge"

In support of her appeal, the defendant-appellant assigns the following alleged errors committed by the trial court in its judgment, namely:

"1. In amending the judgment of this Honorable Supreme Court by converting an ordinary judgment to pay a sum of money into a foreclosure of a mortgage indebtedness, and in executing it as such.

"2. In confirming the sale by the provincial sheriff without trial or notice of trial to the parties in order that they may be fully heard, and notwithstanding the fact (1) That the final judgment rendered in the case was not for the foreclosure of a mortgage but an ordinary judgment to pay a sum of money; (2) that the bidding being by parcels, the award was for a lump sum; (3) that there has been included in the notice of public sale interest from November 9, 1931, whereas it should be only from the date of the decision of this Honorable Supreme Court, November 22, 1933, when the account was liquidated, thereby unduly increasing the amount of the advertised debit to P1,183.64; (4) that there has been included in the deed 'fees and publication P219.12', without justification and, apparently, exaggerated, there being no right to charge interest.

"3. In ordering the issuance of a writ of possession in favor of the plaintiff of the properties foreclosed."

The order to which the defendant-appellant's first alleged assignment of error refers is not that of September 14, 1934, to which she excepted and from which she announced her intention to appeal, but that of March 12, 1934, which reads:

"Motion granted: the defendant is ordered to pay the plaintiff, within three months, the sum of P10,180.97, with legal interest from the date of the complaint, and the costs, and in the event said payment is not made

within the period fixed, the properties will be sold in accordance with law in order to make good said amount. So ordered.

"Given in open court, Batangas, Batangas, March 12, 1934.

(Sgd.) "FERNANDO JUGO, Judge"

The defendant neither excepted to nor appealed from this last order. The question raised by the defendant-appellant in the said first alleged error assigned is the jurisdiction of the trial court to amend the decision of this court rendered in this same case on the former appeal (G. R. No. 39044, Nov. 22, 1933 [58 Phil., 977]), the dispositive part of which is as follows:

"Wherefore, the appealed judgment is reversed, and the defendant-appellee Irinea Caoibes is ordered to pay the plaintiff-appellant Sebastiana Rodriguez the sum of P10,180.97, with legal interest and costs. So ordered"

Section 256 of the Code of Civil Procedure, as amended by Act No. 2640, provides:

"Sec. 256. Trial and judgment in foreclosure suits.—If upon trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment for the sum so found due and order that the same be paid into court within a period of not less than three months from and after the date on which the order was made, and that in default of such payment the land shall be sold to realize the mortgage debt and costs."

In Soriano vs. Enriquez (24 Phil., 584), this court' enunciated the following doctrine:

"4. ID.; ID.; JUDGMENT UNDER CODE OF CIVIL PROCEDURE.—Section 256 of the Code of Civil Procedure requires a judgment to be rendered for a specific amount, and that an order be made requiring that the amount for which judgment is rendered be paid into court within a specified time. Section 260 requires the rendition of a judgment for the deficiency against the defendant, who shall be personally liable to the plaintiff, and execution may issue thereon at once."

The case at hand is for the foreclosure of a mortgage. It was tried as such in the Court of First Instance of Batangas as well as in this court on appeal. In reversing the appealed decision, by an involuntary omission it was not ordered to deposit the amount of the judgment with the clerk of the court of origin, within a period of not less than three months, and, in default thereof, to sell the mortgaged properties to pay the mortgage indebtedness and the costs. This involuntary omission of an imperative mandate of section 256 of the Code of Civil Procedure, above quoted, cannot alter the nature of the action, and the amendment of the decision may be asked to correct the defect, inasmuch as said provision is a necessary part hereof.

On this point the American jurisprudence has laid down the following doctrine:

"A judgment or decree of foreclosure may be corrected after its rendition in respect of an error or omission, so as to make it conform to the intention of the court or the facts of the case, * * *." (42 Corpus Juris, 158.)

"If anything has been omitted from the judgment which is necessarily or properly a part of it, and which was intended and understood to be a part of it, but failed to be incorporated in it through the negligence or inadvertence of the court or counsel, or the clerk, the omission may be supplied by an amendment even after the term. * * -" (34 Corpus Juris, 235.)

As to whether or not the herein plaintiff-appellee had waived her right to foreclose the mortgage in the first appeal, it was held in Hijos de I. de la Rama vs. Sajo (45 Phil, 703), cited by said plaintiff-appellee, that:

"ACTION; MORTGAGE, FORECLOSURE OF.—In the absence of statutory provisions to the contrary, the mortgagee may waive his right to foreclose a mortgage, and maintain a personal action for the recovery of his

indebtedness. He may also obtain an attachment when the property of the defendant is in danger of being disposed of or lost."

In said case there was a waiver from the commencement of the action to foreclose the mortgage, the mortgagee having merely brought a personal suit to recover a sum of money. In the present case, there was no such waiver because, as has been said, the case was tried as an action to foreclose a mortgage in the Court of First Instance as well as in this court, and the mere fact that in her brief in the first appeal the herein plaintiff-appellee only asked that the appealed judgment be reversed and another be rendered ordering the defendant-appellant to pay to said plaintiff-appellee the sum of ₱10,180.97, with legal interest and the costs in both instances, does not constitute a waiver of the action to foreclose the mortgage which had already been commenced and tried in first and second instances.

While the order of the Court of First Instance of Batangas of March 12, 1934, above quoted, is more comprehensive than the dispositive part of the judgment of this court, and while the proper thing to do would have been to file a motion with this court asking the amendment of said dispositive part and supplying the omission, the aforesaid amendatory order not being prejudicial, we do not believe it necessary to reverse the same, it being sufficient that we adopt the amplification as we do hereby.

As to the second alleged error assigned, it appears from the bill of exceptions that the defendant-appellant, on August 9, 1934, filed an opposition to the motion of the plaintiff-appellee wherein the latter asked for the confirmation of the sale of the mortgaged properties made by the sheriff, setting forth reasons in support of her opposition and asking that the aforesaid sale be disapproved. The order confirming the aforesaid sale from which the defendant-appellant has taken the instant appeal has been entered after considering the plaintiff's motion and the defendant's opposition thereto, and this is sufficient compliance with the law inasmuch as the defendant-appellant has had the opportunity, through her opposition, to set out her grounds against the confirmation of said sale, consisting in that the prices for which the different lots were sold were inadequate in the light of their market value.

As to the sale of the mortgaged properties, the record shows that said properties consist of several lots and these were sold to the purchaser as the highest bidder for each lot, but when the sheriff issued the deed of sale he did so for all the lots as a whole and for the total price thereof. While section 463 of the Code of Civil Procedure requires that the certificate of sale to be furnished by the sheriff to the purchaser should specify the price paid for each lot, the omission to make this specification in the certificate of sale is not a sufficient ground to annul the sale, the purchaser being entitled, if she so desires, to ask for the amendment of said certificate of sale.

As to the question of the date from which interest should be paid on the amount of the judgment, which is the amount of the indebtedness, the same should be the date of the filing of the complaint to recover the mortgage indebtedness and to foreclose the mortgage, because the defendant-appellant was legally in default and the amount owing already liquidated from said date. (*Veloso vs. Fontanosa*, 13 Phil, 79; *De la Peña vs. Hidalgo*, 16 Phil, 450.)

The challenge as to the sum of ₱219.12 which the sheriff charged for fees and expenses of publication is no ground for the disapproval of the sale.

The points raised in the second alleged error assigned are, therefore, without merit.

Passing on to the third alleged error assigned, the fact that a real property is undivided is no bar to placing the purchaser in possession of the property owned in common by various co-owners in order to take the place of the vendor as to his undivided share. The holding in *Pabico vs. Ong Pauco* (43 Phil., 572), was that the purchaser of land at a public sale under an ordinary execution is not entitled to the possession of the land sold before the

expiration of the period of one year for the consolidation of the sale. (See also *Powell vs. National Bank*, 54 Phil., 54.) The case at hand being for the judicial foreclosure of a mortgage, there is no right of redemption and the purchaser acquires full ownership of the land sold as soon as the sale is confirmed. (*Benedicto vs. Yulo*, 26 Phil., 160.)

For the foregoing considerations, we are of the opinion and so hold: (1) That the omission to state in the dispositive part of a judgment, rendered in a case for the foreclosure of a mortgage, that the mortgagor should pay the amount of the judgment to the court within a period of not less than three months, as provided in section 256 of the Code of Civil Procedure, may be corrected even after the said judgment had become final; and (2) that the filing of a written opposition to a motion to approve a sale of mortgaged properties is sufficient compliance with the requirement that the confirmation of the sale be made upon hearing the parties.

Wherefore, the appealed order being in accordance with law, it is hereby affirmed in all its parts, with the costs to the appellant. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Order affirmed.

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