

JOAQUIN NAVARRO, PLAINTIFF AND APPELLEE, VS. FERNANDO AGUILA AND JUANITA AGUILA VIUDA DE REYES, DEFENDANTS AND APPELLANTS.

G.R. No. 44683. November 28, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants, Fernando Aguila and Juanita Aguila Viuda de Reyes, from the decision of the Court of First Instance of Manila, the dispositive part of which reads:

"Wherefore, the court renders judgment ordering, as it hereby orders, the defendant Fernando Aguila to pay to the plaintiff Joaquin Navarro: (1) the sum of two thousand five hundred pesos (P2,500), Philippine currency, with interest thereon at the rate of 12 per cent per annum from February 26, 1934 until fully paid; (2) the sum of three hundred seventy-five pesos (P375) as penalties for attorney's fees; and (3) the costs of the suit. It is ordered that the said amounts be deposited with this court within the period of ninety days (90) from this date, to be paid to the plaintiff, and should the said deposit not be made within the said period, that the mortgaged properties be sold at public auction in accordance with law in satisfaction of this judgment, turning over any balance, should there be any, to the defendant Fernando Aguila. The defendant Juanita Aguila Viuda de Reyes is also ordered to pay subsidiarily the amounts aforesaid, but judgment will not be executed with respect to said defendant until after the sale of the properties of the principal debtor Fernando Aguila. So ordered."

As grounds of their appeal, the appellants assign the following alleged errors committed by the trial court in its aforesaid decision, to wit:

"1. The trial court erred in overruling the contention of the defendants to the effect that the said court was without jurisdiction over the subject matter of the suit, hence, it likewise lacked jurisdiction to take cognizance of this case.

"2. The trial court erred in not declaring void, illegal and without effect the last clause of paragraph (c) of appendix A of the complaint, which states: "and, provided, however, that the action for the collection or execution of this mortgage credit may be filed in the Court of First Instance of Manila, to whose jurisdiction I hereby submit."

"3. The trial court erred in rendering judgment in favor of the plaintiff and against the defendants, ordering the latter to pay the amount claimed in the complaint, despite the fact that said court was without jurisdiction to render said judgment."

The only facts which we can take into account in order to resolve the legal questions raised in this appeal are those which the trial court sets out in its decision as proven at the trial and those which are shown by the documentary evidence of record which form a part of its findings.

The lower court in its decision states the following:

"Passing to the merits of the case, the court finds the following proven facts: That on February 26, 1934 the

defendants executed the deed Exhibit A whereby Fernando Aguila acknowledged being indebted to the plaintiff in the amount of P2,500, binding himself to pay said amount to the plaintiff within the period of one year from said date, with interest at the rate of 12 per cent per annum and under the other conditions set out in the said document; that, to secure the payment of the aforesaid sum of P2,500, with interest thereon, and in compliance with the other conditions of the aforesaid loan, the defendant Fernando Aguila constituted a first mortgage on two (2) parcels of land belonging to him and described in the said deed Exhibit A; that the original of the aforesaid mortgage deed Exhibit A was seasonably registered in the office of the register of deeds of the Province of Batangas; that the defendants have failed to pay the stipulated interest from February 26, 1934, notwithstanding repeated demands to pay made by the plaintiff; that the defendant Juanita Aguila Viuda de Reyes became a subsidiary guarantor of her co-defendant; and that, in accordance with the same deed Exhibit A, for non-compliance or violation of any of the conditions of said mortgage and for failure to pay the interest corresponding to three consecutive months, the said mortgage obligation became due and demandable."

At the close of paragraph (c) of the mortgage deed Exhibit A, mentioned by the trial court in its decision, is found the following condition:

"* * * and, provided, however, that the action for the collection or execution of this mortgage credit may be filed in the Court of First Instance of Manila, to whose jurisdiction I hereby submit."

The principal question to be decided in the present appeal is whether or not the contracting parties in a mortgage contract may agree to submit themselves to the jurisdiction of a court other than that of the place where the mortgaged property is situated.

Section 254 of the Code of Civil Procedure provides as follows:

"Sec. 254. Where action for foreclosure of real estate mortgage must be instituted.—An action for the foreclosure of a mortgage or other incumbrance upon real estate, or an interest therein, must be brought in the Court of First Instance for the province in which the land or some part thereof lies."

In the case of *Manila Railroad Co. vs. Attorney-General* (20 Phil., 523), this court laid down the following doctrine:

"4. Id.; Id.; Id.; Id.; Id.; LAYING OF VENUE IS PROCEDURAL.—The laying of the venue is procedural rather than substantive. It relates to the jurisdiction of the court over the person rather than the subject matter. Provisions of law relating to the same were not intended to take anything from the power of the court but, rather, to grant something to one or both of the parties. They establish a relation, not between the court and the subject matter, but between the plaintiff and the defendant.

* * * * *

"7. Id. ; Id. ; Id. ; Id. ; VENUE NOT CONNECTED WITH JURISDICTION; WAIVER BY PARTIES.—Venue is not connected with jurisdiction over the subject matter; and the defendants' rights in respect thereto, as they are conferred by section 377 above referred to, may be waived expressly or by implication. Act No. 136 before referred to having conferred the fullest and completest jurisdiction possible upon Courts of First Instance relative to the real estate of the Islands, section 377 referred to will not be held or construed to restrict or limit that jurisdiction, it not containing express provisions to that end."

In providing in section 254 of the Code of Civil Procedure above-quoted, that actions for the foreclosure of real estate mortgages must be brought in the Court of First Instance for the province in which the mortgaged real property or a part thereof lies, it was undoubtedly the purpose of the legislator to protect the interest of the mortgagors, by having the sales of mortgaged properties carried out in the province where they are found and where the said mortgagors are known to the end that there be the most number of bidders and that the highest bid

possible be obtained for the benefit of said mortgagors. The fact that the action for the foreclosure of a mortgage is brought in a Court of First Instance other than that of the province where the mortgaged property is found and the foreclosure of which is sought, does not defeat said purpose, because the sale has to be made in the province where the property is situated and by the sheriff of said province, after compliance with the requisites marked out by law (secs. 445, 449, Act No. 190). It being the personal right of the parties to bring an action in one or another court, they can stipulate as to the place where the action is to be brought, even in the case of a foreclosure suit, as long as the court of the place agreed upon has jurisdiction over the subject matter of the litigation.

For the foregoing considerations, we are of the opinion and so hold that, the provision of section 254 of the Code of Civil Procedure to the effect that the action to foreclose a mortgage be brought in the Court of First Instance of the place where all or a part of the mortgaged property is found, being in favor of the mortgagor, said mortgagor may waive the same and stipulate that the action be brought in a place other than that in which the mortgaged real estate are found.

Wherefore, not finding any error in the appealed judgment, the same is affirmed in all its parts, with the costs to the appellants. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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