

LA PREVISORA FILIPINA, MUTUAL BUILDING AND LOAN ASSOCIATION, PETITIONER AND APPELLEE, VS. FELIX Z. LEDDA, RESPONDENT AND APPELLANT

G.R. No. 44834. November 26, 1938

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-44834/>

IMPERIAL, J.:

On July 21, 1928 the respondent executed in favor of the petitioner a mortgage deed securing his indebtedness with the land described in certificate of title No. 22133 issued by the register of deeds for the City of Manila. On January 23, 1929 said respondent executed in favor of the petitioner another deed of loan wherein he acknowledged another additional indebtedness. In the mortgage deed it was stipulated, among others, that the respondent authorized the petitioner to sell at public auction the mortgaged land in accordance with the provisions of Act No. 3135, in case the respondent should fail to pay his indebtedness within the period agreed upon, or to comply with the other conditions stipulated therein. As the respondent was unable to pay his indebtedness or the interest thereon and violated the stipulated conditions, the petitioner availed of his right and asked the sheriff to sell publicly and extrajudicially the mortgaged real property. The sheriff, after proper proceedings, sold said property on May 24, 1935, awarded the same to the petitioner for P5,336.05, as the highest bidder, and delivered to the latter the corresponding deed of transfer. On June 28, 1935 the petitioner filed a motion praying that possession of said real property purchased by him be delivered to him although the period of one year fixed by law for redemption had not yet elapsed. On July 12th of the same year the trial court granted *ex parte* the said motion and ordered that possession of the real property in question be delivered to the petitioner upon the filing of a bond in the sum of P600. The respondent was notified of this order when he was required by the sheriff to deliver possession of said land to the petitioner, whereupon, he immediately filed a motion for reconsideration praying, upon the grounds therein alleged, that the sale be set aside and the possession applied for be denied. After trial the court, in its order of September 10, 1935, denied the motion for reconsideration. The respondent excepted thereto, interposed this appeal and still later filed his bill of exceptions which was approved and certified.

The second, third, fourth and fifth assignments of error, in synthesis, raise the following questions of law: First, whether Act No. 3135, under which the deeds of mortgage and additional loan were executed, authorize possession by the petitioner of the mortgaged property during the period fixed for redemption; second, whether Act No. 4118 amending Act No. 3135 and authorizing possession during the period for redemption is applicable, in spite of the fact that it went into effect after said contracts had been executed; and, third, whether Act No. 4118, in so far as it permits possession through summary proceeding and upon motion *ex parte*, and not through an ordinary action, is valid and constitutional.

- Portions of the two acts read as follows:

Act No. 3135

"Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the

debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act."

Act No. 4118

"Sec. 1. Section six of Act Numbered Thirty-one hundred and thirty-five, entitled 'An Act to regulate the sale of property under special powers inserted in or annexed to real estate mortgages', is hereby amended to read as follows:

" 'Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.'

"Sec. 2. The following three sections are hereby inserted after section six of said Act Numbered Thirty-one hundred and thirty-five:

" 'Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

" 'Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

" 'Sec. 9. When the property is redeemed after the purchaser has been given possession, the redeemer shall be entitled to deduct from the price of redemption any rentals that said purchaser may have collected in case the property or any part thereof was rented; if the purchaser occupied the property as his own dwelling, it being town property, or used it gainfully, it being rural property, the redeemer may deduct from the price the interest

of one per centum per month provided for in section four hundred and sixty-five of the Code of Civil Procedure.' "

An examination of both laws show that Act No. 3135 did not allow possession of the property mortgaged and sold at public auction during the period of one year fixed for redemption. The only thing that it sanctioned was the extrajudicial public sale of the property in case this is stipulated by the parties in the mortgage deed. It is clear, therefore, that under said law the trial court could not issue the writ of possession in favor of the petitioner.

- The mortgage contract was executed on July 21, 1928 and the contract for additional loan on January 23, 1929. On said dates only Act No. 3135 was in force, inasmuch as Act No. 4113 was approved and went into effect only on December 7, 1933. It is a principle generally recognized that civil laws have no retroactive effect unless it is otherwise provided therein (article 3, Civil Code; Manila Trading & Supply Co. vs. Santos, G. R. No. 43861). Act No. 4118 does not state that its provisions shall have retroactive effect, wherefore, it follows, as it is hereby declared, that it is not applicable to the contracts entered into by the parties and, hence, the trial court erred in granting possession to the petitioner.

The petitioner contends that said law is applicable because when the property in question was sold at public auction said law was already in force. This contention is in our opinion untenable. The date which should be taken into account in order to determine the applicability of the law is the date when the contracts were entered into by the parties and not the date of the public sale, because the latter is a mere incident of the former and may only exist if so stipulated by the parties.

- The constitutionality and validity of Act No. 4118 need not be decided after it has been found inapplicable to the present case.

- In the first assignment of error the respondent impugns the granting ex parte of the motion praying for writ of possession and alleges that the law which authorizes issuance of the same is likewise void and unconstitutional. Having ruled that Act No. 4118 is not herein applicable, it is needless to discuss this assignment of error.

- In the sixth and last assignment of error, the respondent claims that the trial court erred in not awarding him the indemnity of P1,000 prayed for in his opposition. In his brief he did not adduce any ground upon which he should be given such indemnity. It is admitted that he never lost possession of the real property because he timely filed reconsideration of the order directing that the petitioner be placed in possession of the same. If the respondent did not lose such possession he is doubtless not entitled to be indemnified.

In view of the foregoing considerations the order appealed from is hereby reversed and it is held that the petitioner is not entitled to take possession of the mortgaged real property during the period for redemption, with the costs of this instance against the said petitioner-appellee. So ordered.

Avanceña, C. J., Villa-Real, Diaz, and Laurel, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.