

MARIA R. ZULUETA, PETITIONER, VS. GERONIMO PAREDES, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, JULIA YNZA AND JOSE YNZA, RESPONDENTS.*G. R. No. 44866. February 19, 1936*

Ponente: IMPERIAL, J.

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The petitioner filed this petition for mandamus to compel the respondent judge to order the cancellation of the mortgage on lot No. 269-C, noted on transfer certificate of title No. 9469 of the registry of deeds of Iloilo.

On February 21, 1935, the petitioner executed two mortgage deeds in favor of Dionisio Ynza. Under the first she mortgaged lot No. 269-C of the Iloilo Cadastre, described in transfer certificate of title No. 9469, to secure a loan of P43,500 obtained by her and the interest thereon; under the second she mortgaged lot No. 269-6 of the Iloilo Cadastre, described in transfer certificate of title No. 9471, to secure another loan of P40,000 obtained by her and the interest thereon. The mortgagee died and after the institution of his testamentary proceedings the two mortgage credits, among other properties, were adjudicated to his heirs, the respondents Julia Ynza and Jose Ynza. Inasmuch as the mortgages had become due without the petitioner having paid the debts and the interest thereon, said two respondents instituted civil case No. 9642 in the Court of First Instance of Iloilo, praying for the foreclosure thereof under two separate causes of action. After due trial the court rendered judgment holding that the petitioner had paid only P35,750 on account of the first mortgage which was the subject matter of the first cause of action, and that she still remained indebted in the sum of P7,750 with interest thereon at 10 per cent per annum from December 1, 1932, which capital and interest must be paid by her within three months, otherwise the mortgaged property would be sold in accordance with law; and that said petitioner had paid nothing on account of the second mortgage which was the subject matter of the second cause of action, and should therefore pay the sum of P40,000 within three months, together with interest thereon at 10 per cent per annum from December 1, 1932, upon failure to do so the mortgaged property would be sold. From the judgment so rendered, the petitioner appealed from the ruling on the second cause of action, abiding by the decision as to the first cause of action. Her appeal was registered in this court under No. 43937 and is still pending. The respondents Ynza did not appeal from the judgment.

At the trial the respondents Ynza contended that the petitioner had paid only P39,200 on account of the two mortgages, which sum was obtained from the insurance policy of the buildings on the mortgaged lands and paid by Filipinas in view of the fact that the policy was indorsed in her name. The petitioner alleged in her special defense that she had paid P35,750 on account of the first mortgage or first cause of action, and that she had paid P39,200, which came from the Filipinas Insurance Company, on account of the second mortgage or second cause of action. The court, after weighing the evidence, declared that the petitioner had made only one payment on account of both mortgages, which payment came from the money obtained from Filipinas, and that after deducting the accrued interest on the two mortgages from the sum of P39,200 and adding thereto the proceeds of a check issued by the petitioner, there remained a net balance of P35,750 which, under article 1174 of the Civil

Code, should be applied to the capital of the first mortgage for being the more burdensome obligation. It held that after applying this payment to the first mortgage the petitioner was still indebted in the sum of P7,750 plus the interest thereon at 10 per cent from December 1, 1932. As to the second mortgage or second cause of action, the court, as already stated, held that the petitioner had made no payment on account of the capital and therefore ordered her to pay the debt of P40,000 with interest thereon at 10 per cent per annum from December 1, 1932.

Pending the aforesaid appeal, the petitioner, on September 24, 1935, deposited the sum of P9,932.91 with the clerk of the Court of First Instance of Iloilo to pay the amount of the judgment rendered against her in connection with the first cause of action, that is P7,750 for the capital and the balance of P2,182.91 for the interest thereon until September 24, 1935, and in a motion prayed the court to order the delivery of all the money to the respondents and consequently to direct the register of deeds to cancel the mortgage noted on transfer certificate of title No. 9469. The court, in an order, granted the motion. Sometime later, the respondents asked for the reconsideration of the order and the court, first, suspended the cancellation ordered and, afterwards, granted the motion for reconsideration, setting aside the order directing the cancellation of the mortgage. The petitioner asked for the reconsideration of the last order but her motion was denied. Finally she instituted these proceedings.

It clearly appears from the facts above stated that the judgment rendered as to the first cause of action or the first mortgage has become final and executory. With respect to the respondents, they, as winners, could ask for the sale at public auction of the mortgaged property if the petitioner failed to pay them or to deposit the balance of the debt together with the interest thereon within three months. With respect to the petitioner, she could ask for the release of the mortgaged property by paying the amount of the judgment within the period fixed therefor. Having chosen the latter course by making the deposit, her right to ask for the cancellation of the mortgage on the property which is the subject matter of the first cause of action becomes inevitable. The ruling laid down in the case of *National Bank vs. Bejasa* (G. R. No. 43978, Sept. 14, 1935 [62 Phil., 957]), is not applicable to this case because it does not involve an indivisible mortgage, but two separate and independent mortgages.

The respondents Ynza contend that the cancellation of the first mortgage is premature because if it should be found in the pending appeal that the petitioner had paid something on account of the second mortgage, said payment would necessarily have to be deducted from the sum of P35,750 which the court applied to the capital of the first mortgage. In our opinion the argument is not convincing because it having been declared by the court that the petitioner made only one payment of P39,200 which came from the insurance policy, which sum was applied to the interest on both mortgages and to the capital of the first mortgage, such facts cannot again be discussed in view of the fact that the finding so made constitutes *res judicata* by consent of the parties.

The execution of a final judgment is a ministerial act (sec. 443, Code of Civil Procedure; *Bonaplata vs. Ambler and McMicking*, 2 Phil., 392; *Findlay & Co. vs. Ambler*, 3 Phil., 690; *Hidalgo vs. Crossfield and De la Peña*, 17 Phil., 466), and the judge of first instance or the clerk of said court, who without just cause refuses to issue it, may be compelled to do so through *mandamus* proceedings (sec. 222 of the Code of Civil Procedure).

For the foregoing considerations, let the writ of *mandamus* applied for be issued ordering the respondent judge to direct the register of deeds of the Province of Iloilo, upon payment of his lawful fees by the petitioner, to cancel the notation of the mortgage on lot No. 269-C of the cadastre of Iloilo appearing on transfer certificate of title No. 9469, with costs to the respondents Ynza. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Recto, JJ., concur.

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