

W. S. PRICE, PLAINTIFF AND APPELLEE, VS. CEFERINO YBAÑES ET AL., DEFENDANTS. ALEIDA SAAVEDRA, APPELLANT.*G.R. No. 44974. November 23, 1938*

Ponente: CONCEPCION, J.

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The object of this suit is the foreclosure of a mortgage. The facts may be stated as follows:

Defendants Ceferino Ybañes and Aleida Saavedra are husband and wife, with children. They lived separately. Aleida Saavedra brought an action in the Court of First Instance of Cebu against her husband for alimony for herself and their children. Judgment having been rendered in her favor on her complaint, Aleida Saavedra, nevertheless, appealed from the decision of the court by reason of the inadequacy of the alimony granted. While the appeal was pending, her husband sold to defendant Rafael Martinez a big parcel of land belonging to the marriage, situated in the barrio of Tibayla, municipality of San Isidro, Leyte, with other personal and real property, for the sum of P45,000, of which P30,000 was paid immediately by the vendee, who executed a mortgage on the land so sold for the balance of P15,000 in favor of the vendor Ceferino Ybañes. Some days later, Rafael Martinez obtained a loan in the amount of P15,000 from plaintiff W. S. Price with which he paid Ceferino Ybañes the balance of the price payment of which was deferred. The land was mortgaged to the plaintiff for the said sum of P15,000. On learning of the sale made in favor of Rafael Martinez by Ceferino Ybañes and of the mortgage of the land executed by the former to the herein plaintiff for the sum of P15,000, Aleida Saavedra and her children filed a complaint against the vendor Ceferino Ybañes, the vendee Rafael Martinez and the mortgage creditor, the herein plaintiff W. S. Price, for the annulment of the aforesaid sale and mortgage as being illegal and fraudulent. The court rendered judgment against defendants, who appealed to this court which, in deciding the appeal, held in the dispositive part of its decision (G. R. No. 37854, November 17, 1933, 58 Phil., 767), the following:

"Wherefore, the judgment appealed from is hereby modified to the effect that the deed of sale, Exhibit C, executed by Ceferino Ibañes in favor of Rafael Martinez is declared rescinded and without force and effect, and the register of deeds of Leyte is hereby ordered to cancel transfer certificate of title No. 294 issued in favor of the said Martinez, and to issue, in lieu thereof, another transfer certificate of title in favor of Ceferino Ibañes and his wife, Aleida Saavedra, with a notation thereon of (1) the mortgage constituted in favor of W. S. Price to secure the payment of the sum of P15,000 and (2) the judgment rendered by this court in case G. R. No. 33795 (56 Phil., 33), civil case No. 7957 of the Court of First Instance of Cebu; without prejudice to any right of action which Rafael Martinez may have against Ceferino Ibañes in accordance with the law. As thus modified, the judgment appealed from is hereby affirmed in all other respects, with the costs of both instances against Ceferino Ibañes and Rafael Martinez."

By virtue of the foregoing decision, the register of deeds of the Province of Leyte cancelled transfer certificate of title No. 294 issued in favor of Rafael Martinez, and in its stead, issued another on December 27, 1933 bearing No. 395 in the name of the spouses Ceferino Ybañes and Aleida Saavedra, noting in the new transfer certificate of title as preferred encumbrance the mortgage of P15,000 in favor of plaintiff and, thereafter the judgment by this

court in favor of Aleida Saavedra in her capacity as wife and creditor of her husband Ceferino Ybañes for alimony for herself and their children. On February 23, 1935 by virtue of the writ of execution issued in the action for alimony against Ceferino Ybañes, all the latter's right, title and interest which said Ceferino Ybañes might have in the land in question was sold at public auction, and his wife Aleida Saavedra bought the same, becoming thereby the sole owner of the land.

The obligation having become due, plaintiff, herein appellee, foreclosed his mortgage credit of P15,000 against the spouses Ceferino Ybañes and Aleida Saavedra and against Rafael Martinez. Judgment was rendered in favor of plaintiff and against defendants for the sum of P15,000 with six per cent legal interest from January 16, 1934, the date of the filing of the complaint, until complete payment which must be made within the period of three months from the date of the judgment, the mortgaged land to be sold to satisfy the judgment in case of nonpayment. From said judgment, Aleida Saavedra appealed.

Ceferino Ybañes and Rafael Martinez not having appealed, as to them the judgment has become final and executory. In her brief Aleida Saavedra contends: First, that the court erred in sentencing all the defendants to pay the sum of P15,000 secured by the mortgaged land in question; and second, that the court likewise erred in ordering payment of legal interest of six per cent per annum on said principal sum from the filing of the complaint.

As to the first error, we believe that the contention of the appellant should be sustained for the reason that she has not received a single centavo of the aforesaid sum of P15,000. Defendant Rafael Martinez alone contracted the debt with plaintiff and should be the only one responsible for its payment.

It is argued that Rafael Martinez delivered the entire sum of P15,000 to defendant Ceferino Ybañes. If this could alter the obligation of Rafael Martinez, then Ceferino Ybañes is the one who should pay the debt, not the appellant, who precisely obtained judgment declaring null and void the sale of the land made by her husband in favor of Rafael Martinez. Appellant Aleida Saavedra would be constrained to pay plaintiff the said sum of P15,000 only in case neither Rafael Martinez nor Ceferino Ybañes should have paid it, and she would do so to keep her ownership over the mortgaged land which now belongs to her. However, the payment which she might make would be an act of her own free will and not in compliance with an obligation as the judgment appealed from attempts to impose on her.

Concerning the payment of six per cent legal interest, we believe that the contention of the appellant is also correct and according to law. The obligation secured by the mortgage in favor of plaintiff is solely and exclusively the payment of the sum of P15,000. No interest whatsoever was stipulated when the obligation was executed. The mortgage which this court allowed to remain as a charge on the land, respecting thereby the right of the plaintiff creditor, cannot be extended further than the obligation secured by said encumbrance. It is true that according to the provisions of section 256 of the Code of Civil Procedure, the court shall, upon trial in an action for foreclosure of mortgage, ascertain the amount of the debt including interest and costs; but these legal provisions of course presuppose a case where the parties had stipulated as to the interest.

In the brief filed by defendant Rafael Martinez, he contends that "in accordance with the facts of this case, the juridical relation resulting from the annulment of the sale executed by Ybañes, as vendor, in favor of Martinez, as vendee, is, with respect to the mortgage executed by the latter in favor of Price, more of that of principal and agent than of surety and principal." We believe that this contention is not supported by the facts nor by the law.

The judgment appealed from is modified and Rafael Martinez and Ceferino Ybañes are ordered to pay the sum of P15,000 to plaintiff within the period of ninety days to be counted from the date this decision becomes final, without pronouncements to costs. So ordered.

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

DISSENTING IN PART

DIAZ, J.:

I dissent from the opinion of the majority in so far as it declares Rafael Martinez liable and orders him to pay together with Ceferino Ybañes the sum of P15,000 to plaintiff and appellee, Walter S. Price. It is true that it was Rafael Martinez who obtained the aforesaid sum from W. S. Price, mortgaging for that purpose the land described in certificate of title No. 294; but it is no less true that he immediately delivered the amount to Ceferino Ybañes in order to complete the price of the sale (P45,000) of the land agreed upon between them.

In the decision of this court rendered in case G. R. No. S7854, the dispositive part of which is transcribed in the opinion of the majority, it clearly appears that in the suit between Aleida Saavedra on one side, and her husband Ceferino Ybañes from whom she was and still is separated, and Rafael Martinez. W. S. Price, and Ceferino Ybañes on the other, the real position of the first four with respect to the land in question was determined in a manner which left no room for doubt, to wit: the sale made by Ceferino Ybañes to Rafael Martinez was annulled, but the mortgage executed by the latter in favor of W. S. Price, creating an encumbrance on said land and an obligation against Ybañes, was left subsisting, because, as was conclusively proven in the trial, the sum of P15,000 which Martinez had obtained from Price, and in consideration of which he executed the said mortgage, was delivered to Ybañes. The annulment of the sale carried with it, as it could not but do so, the annulment of the mortgage made by Martinez, and, consequently, his release from all obligations with W. S. Price, because after he had been deprived of his title to the mortgaged property, he could not legally continue to be a mortgage debtor. As a matter of fact, the court considered the mortgage to have been executed by Ceferino Ybañes because it was he, in reality, who, as manager of the conjugal partnership formed by him and his wife Aleida Saavedra, received and made use of the P15,000 which were the price and consideration of the mortgage. It is to be presumed that in so doing, he was not ignorant of the fact that the essential condition of every contract of mortgage is that one who executes it must not and cannot be other than the owner of the thing mortgaged; and it is a well known fact that a mortgage is not a mere accessory contract of guarantee, but a real right which subjects the mortgaged immovable property to the payment of the debt with which it has become charged.

It cannot be stated that the reservation made in the decision of this court in the case aforesaid in favor of Rafael Martinez to exercise any right of action which he might have against Ceferino Ybañes, refers to his recovering from the latter what he might pay in case he would have to pay all or part of the P15,000 to the payment of which he is sentenced in this case because said reservation, as may be clearly gathered from the decision, refers to the exercise of the right of action given him to recover the P30,000 which constitutes the first payment which he made in order to buy from Ybañes the land in question. If it were not so, this court would not have expressly declared in its said decision that the land in question which now appears to be inscribed in the register of deeds in the name of said Ybañes and his wife Aleida Saavedra, may answer precisely for the payment of the aforesaid sum. Strictly speaking, the action brought in this case is and cannot be more than a foreclosure of mortgage. And I firmly believe that if it was error to include Rafael Martinez in the complaint as primarily liable to the same extent as Ceferino Ybañes, it is a greater error to hold him so by completely overlooking what has been finally decided in case G. R. No. 37854, to which the interested parties in this case were not strangers. Rafael Martinez should have been absolved from the complaint. In this sense, I express my vote.

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