

PEOPLES BANK & TRUST CO., PLAINTIFF AND APPELLEE, VS. MANUEL OLONDRIZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 45046. November 23, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Manuel Olondriz et al. from the judgment rendered by the Court of First Instance of Sorsogon, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered sentencing the defendant Manuel Olondriz, as judicial administrator of the estate of the deceased Carlos M. Olondriz, and individually and jointly with his coheirs, the defendants Socorro, Salud and Puy surnamed Olondriz, to pay to the plaintiff the sum of P15,400, with interest thereon at the rate of 10 per cent per annum from January 1, 1931, until fully paid, plus the sum of P500 as attorney's fees, and ordering said defendants to pay the total amount of this judgment in the office of the clerk of this court within the period of three (3) months from the date of this decision, upon failure to do which, the land described in the instrument of mortgage, Exhibit A, shall be sold at public auction to pay said debt, it being understood that, should the proceeds of the sale be insufficient to cover the amount of the indebtedness declared in this judgment, the defendant Manuel Olondriz, individually, and the other defendants Socorro, Salud and Puy Olondriz shall not answer for the unpaid balance of the debt, with the costs to the defendant Manuel Olondriz, as administrator of the estate of Carlos M. Olondriz. It is so ordered."

In support of their appeal, the appellants assign the following alleged errors as committed by the court a quo in its judgment in question, to wit:

"1. The lower court erred in holding that the defendants herein, Manuel Olondriz, in his individual capacity, and Socorro Olondriz, Salud Olondriz, and Puy Olondriz, have been duly notified of the assignment made by Juan B. Alegre to the People's Bank and Trust Co.

"2. The lower court erred in ordering the foreclosure of the entire property described in the complaint and in not exempting therefrom the undivided half of said property as pertaining to the heirs, Manuel Olondriz, Socorro Olondriz, Salud Olondriz, and Puy Olondriz."

To decide the questions of law raised in the present appeal, this court can consider only the facts found by the trial judge as having been proven in his judgment, which are as follows:

"According to the verification of the balance, Exhibit D, signed by Carlos M. Olondriz, the latter, on January 1, 1931, had a debit balance of P15,400 in favor of the deceased Juan B. Alegre. Prior to the above-stated date, or to be more exact, on July 15, 1929, Carlos M. Olondriz executed a mortgage instrument (Exhibit A) in favor of the deceased Juan B. Alegre, over the parcel of abaca land described in paragraph 2 of the complaint, to secure the payment to said Juan B. Alegre of a debt of P14,000, with interest thereon at the rate of 10 per cent per annum, for the period of two years from the date of the instrument, with the express stipulation that Juan B. Alegre could sell, convey and assign his rights to the mortgage. It has likewise been stipulated in said instrument that, should a judicial action be necessary for the collection of the amount secured by the mortgage

in question, the mortgage debtor Carlos M. Olondriz bound himself to pay the sum of P500 as attorney's fees. It seems that after the constitution of the mortgage Carlos M. Olondriz had been taking various sums from Juan B. Alegre, thereby resulting in a balance against him in the sum of P15,400 on January 1, 1931.

"On May 2, 1931, original certificate of title No. 679 of the mortgaged land was issued in the name of Carlos M. Olondriz as to one-half thereof, and in the name of his children Manuel Olondriz y Gutierrez, Socorro Olondriz y Gutierrez, Salud Olondriz y Gutierrez and Puy Olondriz y Gutierrez as to the other half, it appearing in said original certificate of title that the property is subject to a first, mortgage in favor of Juan B. Alegre, for the sum of P14,000, with interest thereon at the rate of 10 per cent per annum from the date of the instrument, according to an instrument dated July 15, 1929.

"Juan B. Alegre, by means of the instrument of assignment, Exhibit B, transferred to the plaintiff, among other accounts, the debt of Carlos M. Olondriz, which on the date of said assignment was P14,000. On May 20, 1931, Juan B. Alegre turned over to the plaintiff Exhibit C, which is a list of accounts substituting and amplifying the list of account of Carlos M. Olondriz increased to P15,400. This assignment has been confirmed and approved by the Court of First Instance of Manila, and notice thereof was likewise served upon the debtors whose accounts have been transferred to the plaintiff. In spite of the various demands made by the plaintiff, the defendant administrator has to this date failed to pay the debt of Carlos M. Olondriz."

The first question to be decided in the present appeal is that raised in the first assignment of alleged error, consisting in whether or not the court a quo erred in holding that the defendants herein, Manuel Olondriz in his individual capacity, and Socorro Olondriz, Salud Olondriz, and Puy Olondriz, have been duly notified of the assignment made by Juan B. Alegre to the Peoples Bank and Trust Co. of the mortgage constituted in his favor by the deceased Carlos M. Olondriz, father of said defendants.

It is inferred from the above-stated facts, which were found by the court a quo as proven during the trial, that the land under consideration herein belonged to the conjugal partnership of Carlos M. Olondriz and his wife, when the former mortgaged it to Juan B. Alegre to secure the payment of a debt in the sum of P14,000 with interest thereon at the rate of 10 per cent per annum for a period of two years from the date of the instrument, that is, June 15, 1929. The fact that upon the issuance of original certificate of title No. 679 of the mortgaged land on May 2, 1935, one-half thereof was placed in the name of Carlos M. Olondriz and the other half in the name of his children Manuel Olondriz y Gutierrez, Socorro Olondriz y Gutierrez, Salud Olondriz y Gutierrez, and Puy Olondriz y Gutierrez, did not alter the juridical relation established between Carlos M. Olondriz and Juan B. Alegre by virtue of said instrument of mortgage executed by the former in favor of the latter, with Carlos M. Olondriz as the only debtor, as stated in the decree for the issuance of certificate of title No. 679, and did not make his said children mortgage debtors of Juan B. Alegre by virtue of the above-stated instrument of mortgage, because, since Carlos M. Olondriz, as the legal administrator of the conjugal property (art. 1412, Civil Code), has the power to mortgage the same (art. 1413, Civil Code), the obligation contracted by the husband constituted a lien on the entire property, although said defendants had later acquired title of ownership over an undivided half thereof. Therefore, as Carlos M. Olondriz is the only mortgage debtor by virtue of the instrument of mortgage, he alone was entitled to be notified of the assignment of the mortgage credit in favor of the herein plaintiff Peoples Bank & Trust Co., and the court a quo did not commit the first error alleged to have been committed by it in its judgment.

With respect to the second assignment of alleged error, the same, being a consequence of the first one, has been decided with the resolution of the former.

The appealed judgment, however, orders the defendant Manuel Olondriz, as judicial administrator of the estate of the deceased Carlos M. Olondriz, to pay individually and jointly with his coheirs the sum of P15,400 with interest thereon at the rate of 10 per cent per annum from January 1, 1931, until fully paid, although the amount secured

by the mortgage is merely P14,000 with interest thereon at the rate of 10 per cent per annum, payable within two years from the date of the instrument, plus the sum of P500 as attorney's fees.

In view of the foregoing considerations, this court is of the opinion and so holds that when a husband puts up as security a real property belonging to the conjugal partnership, and one-half of said property is later adjudicated to said husband and the other half to his children, the entire property in question answers for the payment of the mortgage debt, and the said husband, as the sole mortgage debtor, is alone entitled to be notified of the assignment of the mortgage, in accordance with the provisions of section 152 of the Mortgage Law.

Wherefore, and with the sole modification that it be understood that the amount of the mortgage debt, which the defendants-appellants should pay by virtue of the appealed judgment, is P14,000, said judgment is affirmed in all other respects, with the costs to the defendants. So ordered.

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

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