

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SALUD ALDEGUER VIUDA DE ROMERO SALAS, DEFENDANT AND APPELLANT.

G.R. No. 45185. April 28, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In civil case No. 46913 of the Court of First Instance of the City of Manila, entitled the Government of the Philippine Islands, plaintiff, vs. Salud Aldeguer Viuda de Romero Salas, defendant, the latter acquiesced in the complaint and merely asked that, for equity's sake, she be given six months to pay her debt and interest thereon instead of three months ordinarily given in cases of this nature. In view of this admission and of the evidence adduced by the plaintiff, the court rendered judgment on March 30, 1935, ordering the defendant to pay to the plaintiff the total sum of P26,132.35, with interest at 9 per cent per annum on the amount of P19,000, payable semi-annually from March 16, 1935, until fully paid; plus 9 per cent on semi-annual interest due and unpaid and those maturing semi-annually from the indicated date until fully paid; plus 9 per cent interest per annum on the amount of P1,059.35, representing advances by the Philippine Postal Savings Bank for insurance premium, land taxes and expenses for publication, from March 16, 1935, until fully paid; plus whatever amount the said bank may advance for land taxes, insurance premium and repair of the mortgaged properties. It was also ordered that should the defendant fail to pay to the plaintiff all the amounts indicated or to deposit the same with the clerk of court within six months from the date the decision becomes final, the sheriff would sell at public auction in accordance with law all the mortgaged properties, together with all the buildings and improvements thereon and the proceeds thereof would be applied in satisfaction of the amount of the judgment, the defendant to pay any balance which might be found owing to the plaintiff. The decision became final on the same date not only because the defendant did not appeal but because of her admission or confession of judgment. On August 21, 1935, the plaintiff filed a motion asking for the execution of judgment. The court did not act upon it until November 22d of the same year when it decreed the execution of judgment and ordered the public sale of the mortgaged properties together with the buildings and other improvements thereon. On December 20, 1935, the sheriff complied with the writ of execution and sold at public auction the mortgaged properties described in original certificate of title No. 3916 to the Postal Savings Bank for P15,000, the latter being the highest bidder. On January 2, 1936, the plaintiff, through the Solicitor-General, filed a motion asking that the court approve the sale of the properties effected by the sheriff. On February 11, 1936, the court approved the aforesaid public sale. On March 11th of the same year the defendant moved for a new trial on the ground that the order of approval was illegal and unsupported by the facts. This petition was denied by order of March 14, 1936, and the defendant excepted and filed the corresponding bill of exceptions.

The defendant-appellant contends that the court erred:

(1)

in not denying the plaintiff's motion of August 21, 1935 , for the execution of judgment on the ground that it was premature; (2) in approving the public sale of the properties which was irregular and illegal; and (3) in denying her motion for new trial.

The defendant argues that the order of execution of the judgment was illegal because the motion to that effect was filed before the expiration of the six months granted her to pay the amount of the judgment or to deposit the same with the clerk of court. It is true that the motion was presented before the lapse of the six months, but the writ of execution was issued after the said period had long expired. The defendant cannot successfully invoke the premature filing of the motion for the execution of judgment because such irregularity has not affected the writ of execution which, at all events, was issued after the lapse of the six months.

The second alleged error being made to rest on the confirmation of the sale because of the supposed irregularity thereof, and it appearing that the mortgaged properties were sold in accordance with law, the said error is utterly devoid of merit.

The third and last assignment of error is likewise baseless because the court correctly denied the defendant's motion for new trial.

The defendant also asks in her brief that the writ of execution issued on November 22, 1935, be revoked. Aside from the foregoing, the defendant cannot question or assail this order or writ because she neither excepted thereto nor appealed therefrom.

For the foregoing considerations, the orders of execution of judgment and of confirmation of the sale, dated November 22, 1935, and February 11, 1936, respectively, are affirmed, with the costs of this instance to the defendant-appellant. So ordered.

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

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