

JACINTO MESINA, PLAINTIFF AND APPELLANT, VS. PETRA DELINO, ADMINISTRATRIX OF THE INTESTATE OF ANGEL EVANGELISTA, DEFENDANT AND APPELLEE.*G.R. No. 45318. May 12, 1939*

Ponente: IMPERIAL, J.

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This appeal was taken by the plaintiff from the order of the Court of First Instance of Rizal of May 29, 1936, which sustained the motion for reconsideration filed by the defendant and set aside the order of April 18, 1936 approving the sale made by the sheriff of the parcel of land which is the subject matter of the foreclosure suit.

On September 5, 1935, the plaintiff filed his amended complaint wherein it is alleged that the deceased Angel Evangelista, of whose properties the defendant is the judicial administratrix, executed in his favor on January 14, 1932, a deed of mortgage of the parcel of land described in transfer certificate of title No. 10657 of the registry of deeds of the Province of Rizal, to secure the sum of P500 which the said deceased owed and bound himself to pay to him in monthly installments of P50; that the deceased had paid on account of the indebtedness only the sum of P138.60, leaving a balance of P361.40 which, together with the stipulated penalty of P100, made a total of P461.40 which the defendant, as administratrix, had refused to pay notwithstanding the maturity of the obligation and the demand for its payment; with the prayer that judgment be rendered for the said balance, and in case of failure to pay the same within the period fixed by law, that the mortgaged property be sold. After trial, the court on September 19, 1935 rendered a decision ordering the defendant, as administratrix of the intestate of the deceased, to pay the plaintiff within ninety days the sum of P209, and in default thereof, to sell the mortgaged property at public auction in accordance with law. The decision became final and the defendant did not make payment within the period fixed, whereupon, at the instance of the plaintiff, the judgment was executed and the sheriff sold the mortgaged property at public auction to the plaintiff, as the highest bidder, on April 4, 1936, for the sum of P240, aside from the expenses of publication and sheriff's fees. This price is the same amount for which the real property was assessed. On April 6, 1936, the plaintiff moved for the approval of the sheriff's sale and copy of the motion was served upon the attorney for the defendant together with the notice of the trial. On the 18th of the same month the court issued an order approving the sale on the ground that it was made in accordance with law and that there was no objection to its approval. On May 4, 1936 the defendant, represented by another counsel, filed a motion for reconsideration of the order approving the sale on the ground that it was illegal because the sheriff could not sell the mortgaged property which was in custodia legis. The plaintiff opposed this motion, but the court by another order of May 29th of the same year, granted the motion for reconsideration and set aside the order approving the sale on the ground that the mortgaged property was in custodia legis, wherefore, it could not be sold by the officer of the court in settlement of the amount of the judgment obtained by the plaintiff. The latter appealed from this last order.

The plaintiff-appellant attributes three errors to the appealed order, which can be resolved by a determination of whether a mortgaged real property, which is under judicial administration because of the death of its owner who is

the mortgagor, may be sold at public auction by the sheriff in satisfaction of the judgment rendered in the foreclosure suit, notwithstanding the fact that the said property is thus in custodia legis.

The court and the appellee were of the opinion that the legal question raised should be answered in the negative, and in the appealed order it is maintained that the mortgaged property, being in custodial legis, could not be sold at public auction, to make good the amount of the judgment obtained by the plaintiff; and the appellee cites in support of this theory the ruling in *Piliin vs. Jocson and Agoncillo* (41 Phil, 26).

We hold that this conclusion of the court is not countenanced by section 708 of the Code of Civil Procedure and that the ruling in *Piliin vs. Jocson and Agoncillo*, supra, has been erroneously invoked and applied. Said section provides that a creditor holding a claim against the deceased, secured by mortgage or other collateral security, has three remedies open to him: he may abandon the mortgage or security and file his claim with the committee appointed by the court in the testate or intestate proceedings; he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant, in which case, if there is a judgment for a deficiency, after the sale of the mortgaged premises, he may prove the same before the committee on claims; or he may rely upon his mortgage or other security alone, and foreclose the same at any time, within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate. Pursuant to section 708, the plaintiff elected to foreclose his mortgage and it is logical that on the public sale of the mortgaged property for failure of the defendant to pay the debt of the deceased within ninety days granted to her, the sale be effected under the provisions of section 257 of the said Code of Civil Procedure to the effect that the sale should be made in the manner and under the regulations that govern sales of real estate under execution. It matters not that the property sold was in custodia legis on the date of the sale, because the law allows in these cases that the officer of the court make the sale in the same manner that other properties are sold in satisfaction of a writ of execution issued in an ordinary case. The ruling in *Piliin vs. Jocson and Agoncillo*, supra, cannot be applied to this case because it had to do with an ordinary sale made by the sheriff in execution of a judgment rendered in an ordinary case.

We find no merit in defendant's insistence, based upon equity, that the order approving the sale be reversed. She contends that the land had a market value of P2,000 and that it is not fair for the sheriff to sell the same in payment of plaintiff's credit which then amounted to P51 only. It is not true that the property was sold for this relatively insignificant amount; it was sold and adjudicated to the plaintiff for the sum of P240 which was the value of the property and its improvements according to the tax declaration made by the deceased himself. Moreover, the plaintiff defrayed the expenses of publication and the sheriff's fees, and, finally, the price offered by him was the highest and most advantageous for the administration inasmuch as no better offer was made. If the defendant believed, as she alleges, that the property was worth more, she could have attended the public sale and offered a better price, or she could have redeemed the property by paying to the plaintiff the amount of the judgment. She neither did all this nor even objected to the approval of the sale when the court heard the motion filed by the plaintiff for this purpose.

In view of the foregoing, the appealed order is reversed and the other order confirming and approving the sheriff's sale is put in full force, without special pronouncement as to the costs in this, instance. So ordered.

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

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