

A. A. ADDISON, PETITIONER, VS. M. TEAGUE, RESPONDENT.*G.R. No. 46427. November 07, 1939*

Ponente: IMPERIAL, J.

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On August 26, 1930, the Court of First Instance of Rizal rendered a judgment in civil case No. 4291 ordering the herein petitioner, then defendant, to pay to the respondent, then plaintiff, the sum of P5,000, with interest thereon at 12 per cent per annum from April 26, 1927 until fully-paid, plus 15 per cent on both amounts, as attorney's fees, and P48 as rents, and the costs. According to the judgment, all these amounts are to be paid within ninety days from notice thereof, failing which, the mortgaged property will be sold at public auction and the proceeds thereof applied to the satisfaction of the judgment and other costs. The petitioner appealed from the judgment, but this court affirmed it on September 3, 1932, in G. R. No. 34823. Upon the return of the case to the trial court, a writ of execution was issued because of petitioner's failure to pay the amount of the judgment within the time fixed, and on January 18, 1933, the mortgaged property was publicly sold by the sheriff and adjudicated to the respondent, as the highest bidder, for the sum of P9,995.79. This amount included the amount of the judgment with interest on the capital until the aforesaid date. At the public sale the petitioner offered to pay P11,000 for the property, but the offer was rejected because the petitioner had no money to deposit. By the order of January 30, 1933, the court confirmed the sale made by the sheriff. The petitioner again appealed from this order, but this court affirmed it on August 3, 1933. The record was remanded to the trial court and the judgment of this court was entered on August 21st of the same year. On December 6, 1935, the respondent filed a motion in the case asking that the court render a deficiency judgment and order the issuance of a writ of execution against the petitioner for the following amounts of money:

Interest on the amount of P5,000 from January 19, 1933 until August 21, 1933 , at 12 per cent per annum

P353.33

A certain percentage for the sheriff as fees for the sale of the property

62.98

Costs in the Supreme Court in G. E. No. 39285

40.00

Receiver's fees advanced by the plaintiff

170.17

Total

626.48

The petitioner admitted the item of P40 for costs, but objected to the three remaining items. At the hearing of the motion which took place on December 14, 1935, the petitioner did not appear; the respondent offered Exhibits A and B as evidence. On the same date the court entered an order adjudicating to the respondent the balance claimed and directed the issuance of a writ of execution for the sum of P626.48. The petitioner again appealed from this order to the Court of Appeals. In a decision promulgated on September 22, 1938, the Court of Appeals affirmed. The petitioner appealed from the decision of the Court of Appeals by presenting in this court the corresponding petition for certiorari.

The petitioner contends that the respondent is not entitled to interest on the capital from January 19 until August 21, 1933, because the price for which the mortgaged property was adjudicated already included the full amount of the judgment, with interest on the capital, and because the receiver appointed did not render an accounting of his administration, and the income of the property administered was more than sufficient to pay the interest which the respondent seeks to recover. The contention is unsound because the price for which the property was adjudicated to the respondent did not include the interest which the petitioner was to pay under the judgment, corresponding to the period from January 19 to August 21, 1933. The first date was the day following the sale made by the sheriff and the second date was when the clerk of court noted in the record the final judgment rendered by this court in the appeal taken by the petitioner from the order confirming the sale. The interest corresponding to this period of time should be paid by the petitioner because according to the judgment of the trial court, he was under a duty to pay the stipulated interest until the capital is fully paid and this took place only on the date of the final confirmation of the order approving the public sale and the notation by the clerk of court of the judgment of this court in the record. As to the fruits or income of the mortgaged property, the petitioner may not oppose the payment of interest on the ground that the receiver has not rendered an accounting and that the income produced by the mortgaged property was possibly sufficient to pay said interest. If the receiver appointed has; not rendered an accounting, the petitioner should go to the court and ask that said officer be ordered to render an accounting of his administration. Should there be a balance in his favor, the petitioner is entitled to receive it.

The sheriff's fees for the sale of the mortgaged property are impugned by the petitioner because, according to him, said fees should have been included in the price for which the mortgaged property was adjudicated to the respondent. The court which received the respondent's evidence found the item established by the exhibits submitted by said party. We accept the finding of the trial court and hold that said item is duly verified and that the objection of the petitioner is without merit.

The last item of P170.17 as receiver's fees, which the respondent advanced, is likewise verified and was not included in the price of the sale of the property. The item forms a part of the costs which the court adjudicated in favor of the respondent, hence, the latter is entitled to recover the same from the petitioner.

The assigned errors being without merit, the petition interposed by the petitioner is denied, without special pronouncement as to the costs. So ordered.

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

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