

**HIPOLITA DOLINA CHAPMAN AND LOUIS CHAPMAN, PLAINTIFFS
AND APPELLEES, VS. ONG TO, DEFENDANT. JOSE ONG, INTERVENOR
AND APPELLANT.**

G.R. No. 47115. June 27, 1940

Ponente: MORAN, J.

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MORAN, J.:

This is an action brought by Hipolita Dolina Chapman and Louis Chapman for the foreclosure of a mortgage executed by the defendant Ong To. During the trial of the case, it was made to appear by the defendant that the property mortgaged belonged to Rosalia Enage, who transferred it to Ong Yu, and the latter, to Jose Ong. Three days after final judgment was rendered, Jose Ong filed a motion to intervene, alleging ownership of the property. The motion was denied on the ground that it was presented after trial. Intervenor appealed. Section 121 of Act No. 190 allows no intervention after trial has terminated, but, in the instant case, it was during the trial that the intervenor was made to appear as a necessary party who should be joined as defendant. The trial court, under such circumstance, with or without motion to intervene, should have taken the initiative of ordering the joinder of Jose Ong and suspending the trial in the meantime. The court's theory that the mortgagor was estopped from alleging ownership in behalf of Jose Ong, does not apply in the present case where such allegation should have been taken, not as a defense, but as an information that other party in interest should be joined to avoid multiplicity of suits.

Judgment is reversed and the case remanded to the lower court with the instruction that Jose Ong be ordered joined and a new trial had, with costs against appellees.

Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

Judgment reversed.

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