

THE INSULAR LIFE ASSURANCE CO., PLAINTIFF. ANGEL VARELA CALDERON AND PAULA VARELA CALDERON, APPELLEES, VS. MIGUEL VARELA CALDERON, DEFENDANT AND APPELLANT.

G.R. No. 47677. April 22, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

On April 22, 1938, the Insular Life Assurance Co., Ltd., filed an action in the Court of First Instance of Manila for the foreclosure of a mortgage constituted by the defendant-appellant herein, Miguel Varela Calderon, on the properties described in the complaint. Included as co-defendants in the complaint were the herein plaintiff-appellees, Angel Varela Calderon and Paula Varela Calderon, who, it appears were subsequent lienholders on the properties thus mortgaged. On August 5, 1938, and during the pendency of the foreclosure suit, the Insular Life Assurance Co., Ltd., transferred its credit, including the mortgage, and the corresponding right of action against Miguel Varela Calderon to his said co-defendants therein, and on September 19, 1938, upon their own motion, said transferees, Angel Varela Calderon and Paula Varela Calderon, were allowed by the court to substitute as plaintiffs in substitution filed a supplementary complaint, which was admitted by the court in its order of October 18, 1938. After due hearing, judgment was rendered by the Court of First Instance of Manila condemning the defendant-appellant to pay the amount sought in the complaint originally filed by the Insular Life Assurance Co., Ltd., and decreeing the foreclosure of the mortgage and sale of the mortgaged properties upon his failure to satisfy the judgment within three months from the entry thereof.

The defendant-appellant now appeals to this court from the above judgment of the Court of First Instance of Manila and assigns the following as errors allegedly committed by the said court"

"1. The lower court erred in allowing the substitution of Angel Varela Calderon and Paula Varela Calderon as party plaintiffs.

"2. The lower court erred in not dismissing the original complaint of the Insular Life Assurance Co., Ltd., before proceeding with the trial of the case and in admitting the supplementary complaint presented by Angel Varela Calderon and Paula Varela Calderon who were co-defendants in the original complaint presented by the Insular Life Assurance Co., Ltd."

It is the theory of the defendant-appellant that the court below should have first dismissed the complaint originally filed by the Insular Life Assurance Co., Ltd., and the transferees required to institute an independent action for the same cause. This view is untenable. Litigation should be conducted in the name of the real party in interest, and the proceeding ought to be instituted originally in the name of the assignee where an assignable right has been transferred before action is brought; but where such assignment is effected pendente lite, it is proper to have the assignee substituted for the original plaintiff. (*OriaHer manos y Compafiiia v, Gutierrez Hermanos*, 52 Phil. 156, 163).

It appearing that, in the present case, the right of the original plaintiff was transferred to the herein

plaintiff-appellees during the pendency of the foreclosure suit, we hold that the court below was not in error in having allowed the substitution now complained of. Neither did the said court err in having admitted the supplementary complaint, the same having been filed to recover from the defendant-appellant the amount of land taxes paid by the plaintiffs- appellees on the mortgaged properties after the institution of the original action, and which should have been paid by the defendant-appellant under the terms and conditions of the mortgage.

The judgment appealed from is, therefore, hereby affirmed, without pronouncement as to costs. So ordered.

Imperial, Diaz, Moran and Horrilleno, JJ., concur.

Judgment affirmed.

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