

THE GOVERNMENT OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE RAMON Y VASQUEZ ET AL., DEFENDANTS. OLIVIA VASQUEZ AND MIGUEL LIEBONA, APPELLANTS.

G.R. No. 47769. September 11, 1942

Ponente: PARAS, J.

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PARAS, J.:

In Civil Case No. 48278 of the Court of First Instance of Manila, for the foreclosure of a mortgage, judgment was rendered with the following dispositive part:

"Wherefore, judgment is hereby rendered, sentencing the defendants Jose Ramon y Vasquez and Olivia Vasquez y Arias to pay to plaintiff, within three (3) months from the date of judgment, the sum of P10,451.53 representing the principal and interest due thereon up to March 16, 1938, plus interest at ten per cent per annum on the P9,000 computed quarterly from March 16, 1938 until fully paid, together with the interest on all unpaid quarterly interest from said date until paid; to pay the sum of P2,661.22 representing the total amount advanced by plaintiff for taxes, repairs and insurance premiums, and the interest due thereon after March 15, 1938, together with the interest at the rate of ten per centum of P2,327.22 from March 16, 1938 until fully paid; to pay the sum of P900 for costs, expenses and attorney's fees, as stipulated in the promissory note in question; and also to pay for whatever amount the plaintiff might advance for taxes, insurance premiums, or expenses of repair on the mortgaged properties up to the execution of this judgment. In default of the payment of the above amounts within the period above fixed, the ft property described in the complaint, together with all the buildings and improvements thereon, shall be sold according to law, and the proceeds of the sale applied to the payment of the sums of money due to plaintiff."

Pursuant to a writ of execution issued in due course the mortgaged property was sold at public auction to the plaintiff for the price of P6,000, with the result that there remained, as of April 7, 1940, a deficiency judgment in the sum of P9,742.31. After an unsuccessful attempt of the parties to arrive at an amicable settlement of this deficiency, whereby the defendant Olivia Vasquez offered to pay to the plaintiff one-half thereof, the latter ultimately obtained an alias writ of execution under which the provincial sheriff of Nueva Ecija levied upon certain properties belonging to the aforesaid defendant. The latter thereupon filed a motion, alleging that her liability under the judgment was merely joint, and not solidary, offering to pay one-half of the unpaid balance thereof, and praying for the release of her attached properties. This was followed by the deposit in court of the sum of P4,871.15, representing one-half of P9,742.31. On June 8, 1940, the Court of First Instance of Manila issued an order denying the defendant's motion and directing the immediate issuance of a writ for the execution of the entire deficiency judgment against her property. This order is the subject of the present appeal in which the question raised is whether or not the judgment sought to be executed makes the defendant Olivia Vasquez liable jointly and severally.

All issues raised in the pleadings of a case relating to the nature or interpretation of any contractual obligation are definitely determined and settled in the judgment, which becomes the new obligation of the losing party. In other words, the final judgment supersedes any and all litigated obligations. The judgment or fallo is found in the

dispositive part of the decision.

It is contended by the plaintiff that, although the dispositive part of the judgment in this case does not require the defendant to pay jointly and severally, it should be interpreted in the latter sense, for the reason that the mortgage contract, which was the basis of the action and referred to in the judgment as Exhibit A, expressly provided that the obligation of the mortgagees (defendants herein) is joint and several. The contention may be correct if there is any ambiguity in the dispositive part. Otherwise, as in the present case, the fallo must be construed and followed without reference to matters extraneous therefrom. It is true that judgment may sometimes be erroneous or in conflict with the pleadings and the evidence; but the remedy in such cases is to ask for a correction of the judgments or to seasonably appeal therefrom. Failure on the part of the party concerned to avail himself of such protective measures must redound to his prejudice. In this connection, we find no reason for overruling or modifying the following doctrine of this Court in the case of *Oriental Commercial Co. vs. Abeto and Mabanag* (60 Phil. 723)

"It is already a well-settled doctrine in this jurisdiction that, when it is not provided in a judgment that the defendants are liable to pay jointly and severally a certain sum of money, none of them may be compelled to satisfy in full said judgment. It is of no consequence that, under the contract of *Itietyahip* executed by the parties, the obligation contracted by the sureties was joint and several in character. The *Anal* judgment, which superseded the action for the enforcement of said contract, declared the obligation to be merely joint, and the same cannot be executed otherwise."

Inasmuch as the dispositive part of the judgment, as hereinbefore quoted, makes the defendant *Olivia Vasquez* merely jointly liable, she should be required to pay only one-half of the amount of the deficiency judgment. Modified in this sense, the appealed order will therefore be, and the same is hereby, affirmed without costs.

Yulo, C. J., Moran, Ozaeta, and Bocobo, JJ., concur.

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