

**AGRICULTURAL AND INDUSTRIAL BANK, PLAINTIFF AND
APPELLEE, VA. MANUEL TAMBUNTING CT AL DEFENDANTS.
MANUEL TAMBUNTING, DEFENDANT AND APPELLANT**

G.R. No. 48207. April 27, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

The question raised in this appeal is the validity of a stipulation in a mortgage contract authorizing the mortgagee to take possession of the mortgaged property upon foreclosure of the mortgage.

It appears that on May 81, 1935, the appellant Manuel Tambunting executed a deed of mortgage on a parcel of land with the buildings and other improvements thereon, situated in the City of Manila, in favor of the Teachers' Retirement and Disability Fund, now under the control and administration of the appellee Agricultural and Industrial Bank, to secure the payment of a loan of P17,000, payable after three years from the date of the mortgage, with interest thereon at the rate of 8 per cent per annum payable monthly. It was stipulated in paragraph 8 of the deed of mortgage "that this mortgage shall, after notice to the mortgagor, be considered automatically foreclosed, without the necessity of any judicial proceedings," upon the failure of the mortgagor to comply with any of the stipulations, terms, and conditions therein agreed upon, among which were the payment by the mortgagor of the monthly interests and the payment of the taxes and insurance premiums on the mortgaged premises. In paragraph 9 of the same deed of mortgage, the following was stipulated:

"9. It is further agreed and stipulated that, when this mortgage is automatically foreclosed for any of the causes or reasons enumerated in the next preceding paragraph, the Mortgagee or its representative is hereby authorized by the Mortgagor to take possession of the property herein mortgaged without the necessity of resorting to any court proceeding, or any other judicial action. In such case and until the property is sold at public auction, the Mortgagee is authorized (a) to hold and retain possession of said property; (b) to collect all rents due on the same; and (c) to perform all other acts of administration and management in the most advantageous manner for the best interest of the Mortgagee. It is further agreed that in the event said property is occupied by the Mortgagor, the latter shall pay rental to the Mortgagee at the rate to be fixed by the Mortgagee."

Paragraph 10 of the mortgage provides that in selling the property at public auction the mortgagee shall follow the procedure provided for in Act No. 3135, the mortgagor in any case to be notified by the mortgagee in writing by registered mail of the date of the sale. All of these stipulations were without prejudice to the right of the mortgagee at its option to institute judicial foreclosure proceedings.

The mortgagor having failed to pay the mortgage after maturity, the mortgagee chose to foreclose it judicially by instituting the corresponding action in the Court of First Instance of Manila on May 15, 1939, it being alleged in the complaint that as of March 31, 1939, the amount due on the mortgage was P19,000.21. The defendant answered with a general denial. On January 15, 1940, the plaintiff, invoking paragraphs 8 and 9 of the mortgage hereinbefore referred to, moved the court to authorize it to take possession of the mortgaged premises, alleging

that the defendant had failed and still failed to pay the real estate taxes and insurance premiums on the mortgaged property, forcing the plaintiff to advance from time to time the necessary amounts in addition to the expenses for repairs of the premises. That motion was granted by the court in an order dated February 8, 1940, from which order the defendant has appealed to this Court.

The only assignment of error made by appellant is the following:

"The trial court erred in holding that the plaintiff, Agricultural and Industrial Bank, is entitled to the possession and administration of the premise in question while the case is still pending trial and before the termination of the foreclosure suit against the defendant-appellant."

In support of that assignment of error, appellant contends that paragraph 9 of the deed of mortgage in question is null and void. He intimates that although such a stipulation is sanctioned by custom and usage in this country it finds no support in our laws.

Such argument is beside the point. In order to establish the nullity of the contractual provision in question appellant must show that it is contrary to law, morals, or public order (article 1255, Civil Code), and this he has failed to do.

Article 1859 of the Civil Code says that the creditor may not appropriate to himself the things given in pledge or mortgage, or dispose of them; and article 1884 of the same Code provides that the nonpayment of the debt within the term agreed upon does not vest the ownership of the property in the creditor and that any stipulation to the contrary shall be void. But the stipulation in question authorizing the mortgagee, for the purposes therein specified, to take possession of the mortgaged premises upon foreclosure of the mortgage is not repugnant to either of these articles. On the other hand, such stipulation is in consonance with or analogous to the provisions of articles 1881 et seq. of the Civil Code regarding antichresis and the provisions of the Rules of Court regarding the appointment of a receiver as a convenient and feasible means of preserving and administering the property in litigation. (See section 1 [e], Rule 61.)

Appellant further contends that the authorization given in paragraph 9 to the mortgagee to take possession of the mortgaged premises refers to the automatic extrajudicial foreclosure of the mortgage and that, since the mortgagee chose to institute judicial foreclosure proceedings, it could not invoke said stipulation. If the mortgagee is authorized to take possession of the mortgaged property without the intervention of the court, the mortgagor has no legitimate cause for complaint on account of the court's intervention, by which his rights may be more fully protected.

We find the stipulation in question to be valid and accordingly affirm the order appealed from, with costs against the appellant. So ordered.

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

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