

ANAK-PAWIS SANTA ROSA, PLAINTIFF AND APPELLANT VS. MATILDE DE GUZMAN ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 48533. January 30, 1943

Ponente: BOCOBO, J.

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BOCOBO, J.:

The plaintiff-appellant, Anak-Pawis Santa Rosa, a corporation, brings an action for the foreclosure of a mortgage executed by the deceased Vicente de Guzman in favor of plaintiff-appellant as a security for two promissory notes, one for P850 and the other for P300. The defendants are legal heirs of the mortgage debtor.

On July 25, 1927, Vicente de Guzman executed a deed of mortgage (Exhibit A) upon lot No. 677 of the Subdivision of the Hacienda de Santa Rosa to secure the payment of two promissory notes as above indicated. After the debtor's death on June 25, 1928, the creditor instituted special proceedings No. 3029 (Intestate Estate of Vicente de Guzman). The corresponding administrator and committee on claims and appraisals were appointed by the court. The Anak-Pawis Santa Rosa presented its claim before said committee based on the two promissory notes. The committee on July 14, 1938, submitted its report stating that this claim had been disallowed. On appeal to the Court of First Instance from this action of the committee, the court dismissed the appeal on the ground that the claimant had failed to file a complaint reproducing its claim in accordance with section 776 of the Code of Civil Procedure as amended by Act No. 4229. A motion for reconsideration was denied by the court on December 14, 1938. The project of partition in the intestate proceedings was approved by the court on February 15 1939 the Court ordering that said proceedings be closed and the record filed.

The trial court held that the plaintiff by presenting its claim before the committee on claims had forfeited its right to bring the present action for the foreclosure of the mortgage, inasmuch as under Rule 87, section 7, of the Rules of Court, a creditor may either file his claim before the committee on claims or foreclose the mortgage in an ordinary action in court, but he can not avail himself of both remedies.

The decision of the trial court was in accordance with law. Said Rule 87, section 7 of the Rules of Court provides:

"SEC. 7. Mortgage debt due from estate.—A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in Court making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceedings to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor and shall receive no share in the distribution of the other assets of the estate: but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the Court, if the Court shall adjudge it to be for the best interest of the estate that such redemption shall be made."

Plaintiff-appellant, however, contends that its petition before the committee on claims was for the foreclosure of the mortgage, and it therefore did not abandon the security. Said petition asked for: (1) the admission of the claim; and (2) the sale of the property and the application of the proceeds to said claim. However, inasmuch as the committee on claims had no power to order the foreclosure of the mortgage—such an order being proper only in an ordinary action in court for the foreclosure of the mortgage—the prayer for the sale of the lot was not in order and should be disregarded. By going before committee on claims, this creditor irrevocably Signified its desire to share in the general distribution of the assets of the estate, instead of foreclosing its mortgage by ordinary action in court.

The judgment appealed from is hereby affirmed, with costs against the plaintiff-appellant. So ordered.

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

Paras, J., I concur in the result.

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