

YSIDRA COJUANGCO, PLAINTIFF-APPELLEE, VS. FRANCISCO BATANGAN, DEFENDANT-APPELLANT.*G.R. No. 48980. September 27, 1943*

Ponente: OZAETA, J.

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On September 26, 1938, appellee commenced this action to foreclose a real-estate mortgage executed by appellant in her favor on August 7, 1933, and which fell due on April 15, 1934. On October 20, 1938, appellant answered the complaint with a mere general denial. After several postponements of the trial made at the instance of appellant, the case was finally submitted by the parties for decision on November 4, 1940, upon a written compromise agreement wherein appellant admitted and recognized that there was due from him to appellee under the mortgage in question the sum of P1,318.80; "that this amount of P1,318.80 is to be paid on or before February 28, 1941, and in case the defendant shall fail to pay the same within the period above mentioned, the decision to be rendered in accordance with this agreement of compromise shall be considered final on February 28, 1941, and the plaintiff shall then be entitled to ask for a writ of execution for the sale of the mortgaged property and in which case the amount of P1,318.80 is to bear interest at 10% [1] from March 1, 1941, until its full payment. " That agreement was approved by the court and judgment was entered then and there in accordance therewith.

Appellant never complied with said agreement. On May 5, 1941, appellee, without any opposition on the part of appellant, moved the court for the issuance of a writ of execution, which motion was granted on May 14, 1941.

Thereafter, and on June 5, 1941, appellant for the first time filed a motion to set aside the judgment entered on November 4, 1940, upon the pretext that when he signed the compromise agreement he was made to understand that appellee would wait one year from February 28, 1941, before asking for a writ of execution. He further alleged for the first time that the deed of mortgage did not express the true intention of the parties because instead of the P1,000 therein mentioned he received only P900, and because altho the interest stated in the contract was only 12% per annum the real agreement was for him to pay 22% per annum. The court denied that motion to set aside the judgment. Appellant attempted to appeal from the order of denial, but the lower court disapproved the bill of exceptions, and this Court, in G. R. No. 48443, dismissed for lack of merit the petition for mandamus to compel the judge to approve and certify said bill of exceptions.

On July 22, 1941, pursuant to the writ of execution, the sheriff advertised and sold the mortgaged property at public auction, adjudicating it to the appellee as the highest bidder for the sum of P1,508.28. That sale was subsequently confirmed by the court over the objection of appellant, and from the order of confirmation appellant perfected the present appeal.

In his first assignment of error appellant assails the order of the court denying his motion to set aside the judgment of foreclosure. His attempt to appeal from said order having failed, said assignment of error cannot properly be considered in the present appeal. But in any event said order is manifestly correct, for the sixty-day period mentioned in section 3 of Rule 38 begins from the date the petitioner learns of the judgment and not from the date

he claims to have discovered the alleged mistake or fraud upon which he bases the motion to set aside the judgment. (*Ng Hieng vs. Diaz and Boncan*, G. R. No. 49017.)

We find the imputation of deceit against counsel for the appellee in appellant's second assignment of error to be absurd and absolutely unwarranted. After defaulting in the fulfilment of his obligation for more than four years before appellee commenced this action; after succeeding in having the trial of the case delayed for more than two years; after failing for more than one year to pay the judgment entered against him in accordance with his written compromise agreement with the appellee—after all these delays in favor of appellant and to the prejudice of appellee—the former's imputation that the attorney for the latter had resorted to deceit in order to accelerate the execution of the judgment would but seem to add insult to injury. We cannot refrain from expressing our condemnation of such unfair and reprehensible tactics of a bad debtor.

Section 2 of Rule 70, providing for the payment into court within ninety days of the amount of the judgment, is not applicable to the judgment in question, which merely approved a compromise agreement of the parties as to the term of payment. Moreover, more than ninety days elapsed from the entry of the judgment without appellant's ever having offered to pay into court the amount of said judgment. So he cannot be heard to complain on that account.

The sale of the mortgaged property cannot be annulled on the ground of the alleged inadequacy of the price (1) because there is no evidence as to the real market value of the land sold and (2) because there is" no showing that another purchaser was ready to offer a higher price than that for which it was adjudicated by the sheriff to the appellee. (*Cu Unjieng e Hijos vs. Mabalacat Sugar Co.*, 58 Phil., 439, and *La Urbana vs. Belando*, 54 Phil., 930.)

Appellant has no right to redeem the property sold pursuant to the foreclosure of the mortgage thereon.[2] Under section 3 of Rule 70, such sale when confirmed by an order of the court shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, "subject to such rights of redemption as may be allowed by law." The saving clause quoted refers to the rights of redemption expressly authorized by special laws, such as Acts Nos. 2747 and 2938, known as the charter of the Philippine National Bank, and Commonwealth Act No. 459 creating the Agricultural and Industrial Bank, which allow the redemption in the foreclosure of mortgages executed in favor of said banks. The mortgage here in question was not executed under any of said special laws, and its foreclosure therefore does not come within the purview of the said saving clause.

The order appealed from is affirmed, with costs.

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

[1]The interest stipulated in the mortgage was 12% per annum.

[2] Nevertheless, appellee makes this statement in her brief (pp. 18-19):

"In order to impress the appellant that appellee is not interested in owning the mortgaged property and that she was only forced for lack of another buyer to acquire it in the auction sale, she is willing to resell the property to him for the same amount in which it was purchased at the auction sale, that is, for P1,508.28, provided it be paid in cash."

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