

**WARNER, BARNES & CO., LIMITED, PLAINTIFF AND APPELLEE,
VS. RAMON F. SANTOS, DEFENDANT AND APPELLANT.**

G.R. No. 4932. November 16, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that the plaintiff brought an action against the defendant in the Court of First Instance of the Province of Albay, on the 18th of August, 1906, for the purpose of foreclosing a mortgage which he held upon various parcels of land belonging to the defendant. The defendant was duly notified, and failing to appear within the time prescribed by law, a judgment by default was rendered against him on the 14th of September, 1906. Later the cause was brought on for trial, and after hearing the evidence adduced during the trial, the lower court rendered a judgment in favor of the plaintiff and against the defendant for the sum of P11,928.77, with interest at the rate of 10 per cent annually, to be liquidated monthly from the month of June, 1906, and also a judgment for P1,500 as attorney's fees. The judgment of the lower court further provided that if the defendant failed to pay the amount of said judgment on or before the first day of the following term of court, that an execution might issue against the property covered by the said mortgage, for the purpose of satisfying the said judgment.

On the 6th day of March, 1908, upon the petition of the plaintiff, the amount of said judgment not having been paid, the Hon. Grant Trent, judge of said court, issued an order of execution, directing the sheriff to sell the property covered by the said mortgage. The mortgaged property, under said execution, was duly sold on the 10th day of April, 1908.

On the 14th of April, 1908, the plaintiff presented a motion in the lower court, asking that the said sale of the mortgaged property be affirmed.

On the 21st day of April, 1908, the defendant appeared in court and objected to the confirmation of the sale upon the ground that there was another person who would pay the sum of P5,500 for the property sold. The return of the sheriff shows that he sold the property for the sum of P4,715. The defendant in said motion requested that the property be put up and sold again. It will be noticed that the defendant appeared and objected to the confirmation of the sale eleven days after the sale had been consummated, and so far as the record discloses this was his first appearance during the pendency of the cause in the lower court.

On the 21st day of April, 1908, after duly considering the objection made by the defendant, the lower court over-ruled the said objection and confirmed the sale of said property.

To this ruling of the lower court the defendant duly excepted and later presented his bill of exceptions in this court.

In this court the appellant made the following assignments of error:

First. That the court committed an error in confirming the sale of the mortgaged property; and

Second. That the lower court committed an error in adjudicating the said property to the purchaser.

These two assignments of error may be considered as one, to wit: that the lower court committed an error in confirming the sale of said mortgaged property.

Sections 254 to 261 of the Code of Procedure in Civil Actions provide the method of foreclosing a mortgage upon real estate or the interest thereon.

Section 256 provides for trial and judgment in such actions. Section 257 provides for the sale of the mortgaged property in case the lower court renders a judgment ordering the sale. After the sale has been made by the sheriff, under the provisions of said last-named section, it is necessary to secure a decree of the court confirming such sale. Said section also provides that "should the court decline to confirm the sale for good cause shown, and should set it aside, it shall order a resale in accordance with law." The lower court, in accordance with this provision has a right to confirm or to refuse to confirm the sale for good cause shown, and the single question presented in this court is whether or not the objection of the defendant to the confirmation of the sale constituted a sufficient cause for refusing to confirm such sale.

The basis of the objection of the defendant in the lower court was that he was able to obtain from another person about P800 more than the sheriff received from the person to whom he sold said property. This person was not discovered by the defendant until ten or twelve days after the sale took place. No objection is made by the defendant that the sale was not duly advertised or that there was any collusion on the part of the sheriff or the other parties interested in the sale. It is the duty of the court, of course, in the sale of property under the conditions of the present case, to obtain as much money for the judgment debtor out of his property as it is possible. This duty on the part of the court, however, does not justify negligent delay in an attempt to protect his rights on the part of the said judgment debtor.

In the present case the defendant made no attempt to defend his rights until some days after judgment, execution, and sale. The Supreme Court of the United States has held in numerous decisions, that a sale under foreclosure proceedings would not be set aside upon the ground that the sheriff did not receive as much money as he might have received, providing all of the proceedings were valid and regular, unless the sale was made for a sum grossly inadequate in comparison with the real value of the property.

A judicial sale of real estate will not be set aside for inadequacy of price unless the inadequacy be so great as to shock the conscience or unless there be additional circumstances against its fairness. (Graftam et al. vs. Burgess, 117 U. S., 180; Schroeder vs. Young, 161 U. S., 334; Livingston vs. Byrne, 11 Johnson (N. Y.), 555; Eberhardt vs. Gilchrist, 11 N. 3. Equity, 167; Montague vs. Dawes, 14 Allen (Mass.), 369; Drinan vs. Nichols, 115 Mass., 353.)

While mere inadequacy of price under judicial sales has rarely been held sufficient to justify the setting aside of a judicial sale of property, courts will not be slow to seize upon this or other circumstances impeaching the fairness of the transaction as cause for vacating such judicial sales, especially if the inadequacy be so gross as to shock the conscience. (Schroeder vs. Young, 161 U. S., 334; Byers vs. Surget, 19 Howard, 303; Pacific Railroad Company vs. Ketchum, 101 U. S., 289.)

We are of the opinion and so hold that the judgment of the lower court should be affirmed with costs. So ordered.

Arellano, C. J., Torres, and Moreland, JJ., concur.

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