

ANGEL ORTIZ, PLAINTIFF AND APPELLEE, VS. RAMON GARCIA, DEFENDANT AND APPELLANT.

G.R. No. 5412. February 12, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

This was an action commenced to foreclose a mortgage executed by the defendant to the plaintiff's assignor. The trial of the cause was set for the 22d day of October, 1908. The defendant, who appeared and answered in person, was sick on that day and notified the court of his inability to be present. The court thereupon adjourned the trial of the cause to the 2d day of November following. A notice of the adjournment, giving the date to which the cause had been continued, was sent to the defendant. He claims that he did not receive it until after the day to which the cause was adjourned for trial. As a result a default was taken against the defendant, the usual proceedings were had before the court, and on the 6th day of November the usual judgment of foreclosure in the cause was rendered.

The defendant upon receiving notice of the rendition and entry of the judgment made the following motion:

"The defendant in the above entitled cause appears and respectfully shows that he asks upon reasons of justice a new trial upon the following ground: For the reason that I have been the victim of an accident which ordinary prudence would not have been able to avoid, having been sick at the time of the trial and having for that reason been prejudiced in my legal rights in the case; therefore, the judgment is contrary to law."

In order to determine whether or not this court can review the evidence in this case, it is necessary to decide whether the ground upon which the above motion for a new trial is based is a sufficient ground under section 497,[1]subdivision 2, of the Code of Civil Procedure. That sub-division reads as follows:

"2. If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that" the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a" preponderance of the evidence, and render such final judgment, as justice and equity may require. But, if the Supreme Court shall be of the opinion that this exception is frivolous and not made in good faith, it may impose double or treble additional costs upon the excepting party, and may order them to be paid by the counsel prosecuting the bill of exceptions, if in its opinion justice so requires."

Having in mind the provisions of that section, we are of the opinion that the motion is not sufficient to permit this court to review the evidence. Said motion is not based upon any of the grounds specified in said section. A motion for a new trial upon the ground that the decision is contrary to law raises no question as to the sufficiency of the evidence to sustain the decision.

The court in deciding the case said:

"At the trial of the case, the defendant not having appeared at the time fixed by the court and the plaintiff having proved the allegations of his complaint, which were denied by the answer, by means of documentary

proofs, Exhibit A, Exhibit Cause No. 45, relating to the guardianship of the children of F. Suarez, as to the payment to D. Angel Ortiz by the defendant of the sum of four hundred and ninety-five pesos and thirty-three centavos (P495.33) and the interest at 10 per cent annually from the 17th day of November, 1906, to the time of its payment, with the costs of the present trial - It is ordered that the defendant deposit the sum above named in the clerk's office of this court, etc."

The part of the decision above quoted contains all of the findings of fact.

The second question in this case is whether or not such findings are sufficient to support the decision. The reference to Exhibit A in the decision, which Exhibit A is the mortgage being foreclosed, is not sufficient to make that mortgage a part of the decision. We may not, therefore, examine said mortgage upon the theory that such reference incorporated it into the decision so as to become an integral part thereof. Such mortgage could easily have been made a part of the decision if appropriate words for that purpose had been used. Such mortgage is not before us.

The only finding of fact contained in the decision is the statement that the facts alleged in the complaint were proved. The weight of authority seems to be that the findings of the court may refer to the pleadings for the facts found if such reference is sufficiently distinct and if the facts are sufficiently stated in the pleadings, (*McEwen vs. Johnson*, 7 Cal., 258; *Breeze vs. Doyle*, 19 Cal., 101; *Osment vs. McElrath*, 68 Cal., 466; *Knudson vs. Curley*, 30 Minn., 433; *School District No. 73 vs. Wrabeck*, 31 Minn., 77; *Downer vs. Sexton*, 17 Wis., 29; *Badger vs. Daenieke*, 56 Wis., 678; *McFadden vs. Friendly*, 9 Mich., 222; *Pollock vs. Pollock*, 71 N. Y., 137.)

The third question to be decided is whether the facts in the complaint are sufficiently stated; in other words, whether the complaint states facts sufficient to constitute a cause of action. The complaint says:

"First. That the plaintiff, D. Angel Ortiz, is of full age and a resident of Manila, P. I., and is represented in this Province of Sorsogon, P. I., by D. Eduardo Roteache, of full age and a resident of Sorsogon, Sorsogon, P. I.

"Second. That the defendant, Ramon Garcia, is of full age and a resident of the municipality of Bacon, Sorsogon, P.I.

"Third. That the defendant is indebted to the widow and daughters of F. Suarez in the sum of four hundred and ninety-five pesos and thirty-three centavos Philippine currency (P495.33), with interest at 10 per cent per annum from the 17th day of November, 1906, with a mortgage of a house, with its corresponding lot, described as follows: (Here follows a description of the land.)

"Fourth. That the said debt and mortgage have been transferred by the widow and children of F. Suarez to the plaintiff, D. Angel Ortiz.

"Fifth. That said mortgage by its terms was to become due on or before one year and six months from the 17th day of November, 1906.

"Sixth. That said mortgage became due on the 17th day of May, 1908, without the plaintiff having been paid said sum of four hundred and ninety-five pesos and thirty-three centavos, Philippine currency (5M95.33) or the interest at 10 per cent from the 17th day of November, 1906."

We are of the opinion that the complaint states facts sufficient to constitute a cause of action. It is not required in an action of foreclosure to state in detail every fact required by law to make the mortgage valid. The allegation that the defendant executed and delivered to the plaintiff a mortgage upon specified property is a sufficient allegation of the validity of the mortgage and of every act required to be done by either party thereto to make that mortgage valid. It is not necessary to allege evidentiary facts. Only ultimate facts should be pleaded. On the trial it is necessary, of course, to prove every fact required to make the mortgage valid and enforceable. We conclude,

therefore, that the finding of the court that the facts stated in the complaint had been proved is a sufficient finding of the facts, and as such is adequate to support the decision.

The judgment of the court below is therefore affirmed with costs against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

[1] Amended by Act No. 1596.

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