

**TEODORO S. BENEDICTO, AS SHERIFF OF THE PROVINCE OF ILOILO,
PLAINTIFF AND APPELLEE, VS. GREGORIO YULO, AS ATTORNEY
AND REPRESENTATIVE OF JUAN TUASON AND RUPERTO
MONTINOLA, DEFEN...**

G.R. No. 8106. November 26, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Iloilo ordering the sheriff to execute a conveyance of certain real estate, the subject of the action, in favor of one Ruperto Montinola.

According to the claim of Gregorio Yulo as attorney for Juan Tuason, some time prior to the beginning of this action a mortgage held by Juan Tuason against the real estate of one Ceferino Domingo Lim was foreclosed by the former and the property described therein sold at public sale to said Juan Tuason under the bid of Gregorio Yulo, his attorney. The sale, so far as the record is concerned, was duly and properly made and affirmed by the court. Later the purchaser at the sale, Juan Tuason, asked the sheriff for a deed of the property in pursuance of the purchase thereof at the public sale, and the sheriff was about to execute the conveyance to the purchaser when one Ruperto Montinola presented himself to the sheriff alleging that he had purchased from the mortgagor and defendant in the action to foreclose the mortgage, Ceferino Domingo Lim, his right to redeem the mortgaged premises and tendered to the sheriff the amount for which the mortgaged property was sold, with the costs and expenses, at the same time demanding that the sheriff execute a deed of said property to him. The sheriff finding himself called upon by two different persons, with interests apparently opposing, to perform an official act, began this action to determine to whom the conveyance of the property should be issued.

The facts as claimed by Montinola are the same as those stated by Gregorio Yulo as attorney for Juan Tuason, except that Montinola claims that the sale of the real estate in question was under an execution issued upon a judgment and not under a decree in foreclosure.

The trial court found, and ordered in accordance with that finding, that the conveyance of the premises in question should be executed in favor of Ruperto Montinola, upon the ground that he purchased the equity of redemption of the mortgagor, stood in his shoes, and was, therefore, entitled to a conveyance of the property.

There are several reasons why the judgment must be reversed.

In the first place, the action is begun against the attorney Gregorio Yulo, who is alleged by the plaintiff to be representing both Juan Tuason and Ruperto Montinola. Under section 114 of the Code of Civil Procedure, an action must be brought by the real parties in interest. Under other provisions of the code, and as a corollary to the provisions of section 114, actions must be brought against the real parties in interest. If the sheriff had the right to bring the action at all, a question to which we will refer later, it should have been brought against Juan Tuason and Ruperto Montinola, and very possibly against Ceferino Domingo Lim also. The first two persons at least are

the real parties in interest, and a judgment to be binding upon them and their interests must be against them personally. A judgment rendered against Gregorio Yulo as attorney for Juan Tuason and Montinola would not bind the latter, they not having appeared as parties in the action and having in no way litigated the questions involved. Unless they were estopped by some act of theirs, a judgment against Gregorio Yulo and Ruperto Montinola would be without force as to them, and they might on the day following the entry of such a judgment relitigate the questions already litigated in the other action.

Moreover, Gregorio Yulo cannot consistently represent Juan Tuason and Ruperto Montinola at the same time. Their interests, under the theory of the action and the pleadings, are clearly adverse to each other. Even if Gregorio Yulo were the proper party to be sued, he could be sued as the representative of only one of the two persons whom he is claimed to represent in this action. The interests of the other are so opposed to those of the one as to make an attempt to represent both farcical.

In the second place, the case was decided in the court below without any facts before it. Gregorio Yulo, as attorney for Juan Tuason, answered the complaint denying each and every allegation thereof and set up facts showing a special defense. Ruperto Montinola appeared by his attorneys and demurred to the complaint. The demurrer was overruled but, nevertheless, the complaint was ordered amended. An amended complaint was filed, to which the same demurrer was interposed by Ruperto Montinola and the same answer by Gregorio Yulo, as attorney for Juan Tuason. No action was taken on the demurrer to the amended complaint and nothing was done as to the issue joined by the answer of Gregorio Yulo as attorney for Juan Tuason. Instead, a final judgment upon the merits was entered in favor of Ruperto Montinola and against Juan Tuason, ordering the sheriff to execute a conveyance of the premises to the former. Relative to the basis of its decision the court says: "This is a case submitted to the court on written facts which seem to be accepted by the defendants but demurred to by them."

The court, after this statement, goes on to detail the sale of the land in question under a judgment in favor of Juan Tuason, the expiration of eleven months after such sale, the application of Tuason to the sheriff for a conveyance, the objection thereto by Montinola upon the ground that he had obtained an assignment from Lim, the judgment debtor, of his right to redeem, and the tender to the sheriff of the amount for which the property sold, with interest and costs.

We do not know from the record what facts are admitted. Those stated in the complaint are denied by Gregorio Yulo as attorney for Juan Tuason, and as a special defense he sets up facts making an entirely different case from that shown by the complaint. As to the defendant Gregorio Yulo as attorney for Montinola, the facts stated in the complaint are admitted by the demurrer. There was no hearing, no evidence, no stipulation between the parties, and no agreed statement of facts. From the statement of the facts in the opinion of the trial court we do not know whether the sale was by virtue of an execution issued upon an ordinary judgment for a sum of money, as seems to be alleged in the complaint, or whether it was a sale by virtue of a mortgage foreclosure as alleged in the answer. Certainly the facts as stated in the brief of Montinola are entirely different from those stated in the brief of Gregorio Yulo as attorney for Tuason; and their arguments are based upon the facts stated in their briefs. This indicates that there was no agreement upon the facts in the court below in the real sense of the term and that there must have been some mistake in assuming that the facts were agreed upon.

For these reasons the judgment must be reversed and the cause remanded for the purpose of giving the parties an opportunity to agree upon a statement of facts upon which the case may be decided or for such proceeding upon the demurrer and answer as the parties may desire and the law permits.

Certain questions, however, having been thoroughly argued in this court and presented on this appeal, we take the occasion, as we have in numerous other cases, to set out our views upon the questions thus presented and argued,

to the end that time and expense may be saved the litigants. In all probability our opinion upon these questions will settle the case once for all and obviate the necessity of again presenting to this court or to any other the same facts upon which the case rests here.

As to that portion of the judgment which requires the sheriff to execute a conveyance of the land in question to Ruperto Montinola:

Treating the sale as one in foreclosure, we may say that even if it be conceded that there exists an equity of redemption after mortgage property has been sold and the sale duly confirmed, and even though it be admitted that Ruperto Montinola purchased that right of redemption, there still appears no reason why a conveyance of the property should be made to him by the sheriff. Redemption of the land merely replaces title in the mortgagor, if it be assumed that the title was at any time divested. It is from him that Montinola must obtain his conveyance if he is entitled to it from any one. It is clear that, if Lim had himself redeemed the property, there would have been no necessity for the execution of a conveyance, as a redemption cancels and renders without force or effect the sale of the property by the sheriff and reverts title in the mortgagor. Certainly the sheriff owes no duty whatever to Montinola so far as the execution of a conveyance is concerned. If the property is redeemed, it is, by that fact, taken from the hands of the sheriff and he loses jurisdiction over it. A sheriff may issue a conveyance only by virtue of official duty. If there were no redemption, his sale of the property would require him to execute a conveyance to the purchaser. But when there is a redemption, the sale and all of its incidents and effects are destroyed and obliterated, and, accordingly, he has no official connection with the matter thereafter. It returns to the mortgagor. It is clear, therefore, that the demand of Montinola that the sheriff execute to him a conveyance of the property in question, after the redemption, is entirely gratuitous. It in effect asks the sheriff to perform an act not imposed upon him as a duty and which refers to property over which he has lost jurisdiction and control. If Montinola is entitled to a conveyance, he must obtain it from the mortgagor Lim.

What has been said with relation to the sheriff's duty in the case of redemption from sales in actions of foreclosure applies with equal force to redemption from sales under executions; and Montinola, on redemption, would not be entitled to receive from the sheriff a conveyance in either case.

We may say, furthermore, that this court has already held that in mortgage foreclosures the rights of the mortgagee and persons holding under him are cut off by the sale, when duly confirmed, and with them the equity of redemption. The reason for that holding is that the right of redemption being purely statutory, and there being no statute conferring that right, it does not exist. We so held in the case of the *Compania General de Tabacos de Filipinas vs. Romana Gauzon*. (10 Off. Gaz., 1043, notes.) The same opinion is expressed, in the case of *Raymundo vs. Sunico*. (25 Phil. Rep., 365.) While the judgment in the former case was subsequently vacated and the cause remanded for a new trial, it was done upon grounds which did not affect the decision as to the right of redemption, and the opinion of the court expressed in that case after full argument and extensive citation of authorities, and after full consideration, is one to which we adhere at this time.

It is a principle well established that the right of redemption is a statutory right and does not exist in the absence of statute. In the case of *Parker vs. Dacres* (130 U. S., 43), the court says, at page 47: "Counsel for the plaintiff speaks of a common-law right of redemption after sale that attaches in the absence of any statutory provision on the subject. We are not aware of any such right existing at common law, or in the system of equity as administered in the courts of England previous to the organization of our Government. It is a mistake to suppose that the case of *Clark vs. Reyburn* (8 Wall., 319), recognizes a right of redemption after a sale under a foreclosure decree independently of statute. It is there stated that 'by the common law, when the condition of the mortgage was broken, the estate of the mortgagee became indefeasible,' and that 'equity interposed and permitted the mortgagor, within a reasonable time, to redeem upon the payment of the amount due before sale;' also, that,

according to the settled practice in equity, when proceedings to foreclose were not regulated by statute, this right to redeem before sale is fixed by the primary decree, and that only in the event of final default in paying the amount ascertained to be due is an absolute sale ordered. * * * It is clear that the right to redeem after sale, wherever it exists, is statutory."

It is equally certain that the right of redemption in the form in which it is asserted in this case, i. e., after sale under decree of court, did not exist under the Spanish law. Mr. Coote says: "By the civil law, the debtor might redeem the estate on payment of his debt, at any time before sentence passed." (Coote on Mori, 10.) "Until debarred by judicial sentence." (Ibid., 209.) "Until decree of foreclosure." (Ibid.) "The mortgagor is the equitable owner until the land is redeemed or foreclosed." (Ibid., 319.) Under the Spanish law the right of redemption was destroyed by the sale under the decree of foreclosure.

"Both at law and in equity," says Mr. Jickling, "the conveyance is at first conditional, not absolute; and in both, the estate may, on an event, be discharged of the condition, and become the indefeasible property of the mortgagee. At law, that event is the non-payment at the day agreed upon; in equity, it is the decree of a court of judicature. In the former jurisdiction, it is conventional; in the latter, judicial." (Jickling's Analogy, 66.)

Chancellor Kent, in his definition of a mortgage, states that: "The legal ownership (of the land mortgaged) is vested in the creditor; but in equity, the mortgagor remains the owner until he is debarred by his own default, or by judicial decree." (4 Kent, 133.)

And again: "The equity doctrine is, that the mortgage is a mere security for the debt, and only a chattel interest, and that until decree of foreclosure, the mortgagor continues the real owner of the fee." (Ibid., pp. 159, 160.)

Hillard says: "Foreclosure is the process by which a mortgagee acquires an absolute title to the property of which he had previously been only the conditional owner, or upon which he had previously a mere lien or encumbrance." (2 Hillard on Mort., 1, 1st ed.)

Whenever the decree is pronounced, the event which fixes the limit to the mortgagor's equitable estate has happened; and to say the mortgagor may redeem after "sentence passed," or after he is "debarred by judicial decree," or "decree of foreclosure," is in contradiction of, and directly repugnant to language so explicit and entirely unambiguous, as to preclude the possibility of successful cavil.

The doctrine of the adjudged cases may be stated, without hazarding successful controversy, to be that after decree of foreclosure or judicial sentence, and immediately thereupon, the entire estate, both legal and equitable, becomes vested in the mortgagee, subject only to a judicial sale, from the proceeds of which the mortgagor may, perchance, derive the benefit of a resulting surplus.

This is the general doctrine prevailing in the absence of statute. It may be modified, and is modified, either materially or casually by the legislative authority of the state. Here the mortgagor is given until the term of court next succeeding the one in which the decree of foreclosure is made to pay the mortgage debt, interest, cost, and charges; and in the event of such payment the land remains his own. The provisions of the Code of Civil Procedure which deal with the foreclosure of mortgages are silent on the equity of redemption. Having arrived at the point where the sale is to take place, reference is then made to the provisions relating to sales under execution, and the provisions in relation to such sales are made applicable to sales in foreclosure. While the provisions relating to the sale of property under execution, to which the provisions of the code relative to the foreclosure of mortgages make reference, provide that, where a sale of property is made by virtue of an execution, the debtor whose property is sold shall have one year within which to pay the judgment, interest, costs, and charges and to retake the property thus sold, we are, nevertheless, of the opinion that it was not the intention of the Legislature to

include those provisions in the reference contained in the sections relating to mortgage foreclosures. The substantive rights of the parties to a mortgage are determined by the law, and in the present instance, it is undoubted, under the Code of Civil Procedure as well as under the general law, that the right of redemption is property and is subject to the same protection which other property receives at the hands of the law. The owner of that equity is entitled to the same consideration which the owner of other property must receive and he can be deprived of it only under the same circumstances and conditions and with the same formalities. It is equally true, on the other hand, that the equity of redemption, if there be one, being when granted property of the mortgagor and in derogation of the rights of the mortgagee, will not be held to be conferred upon the mortgagor in the absence of clear statutory provisions to that effect. The contract between the parties is that to which we must first look to determine their rights; and that contract, as interpreted and construed under the law of the state, is the only source from which the rights of the parties under the contract spring. The contract in this case grants no such right; and it being the general rule that the rights which pertain to the mortgagor are completely terminated and cut off by the decree of foreclosure and the sale thereunder, the latter being duly confirmed, it follows of necessity that his rights can not be continued beyond that point except by clear provision of statute, for the reason that, in the absence of such provisions, the rights of the mortgagee under the contract would become absolute on the happening of that event. We are of the opinion, therefore, that when, in the law relating to the foreclosure of mortgages, reference was made to the provisions of the code relative to the sale of property under execution, it was intended, there being no express words to the contrary, to include in such reference only such provisions as refer to the mere management and conduct of the sale—the mere ministerial acts which must be performed in order that the sale be legal—and not to those provisions which relate to the substantive rights of the parties before or after the sale has been consummated.

The judgment is reversed and the cause remanded for such proceedings, if any, as the parties interested may desire to take consistent with law.

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

Trent, J., concurs in the result.

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