

G. URRUTIA & CO., PLAINTIFF AND APPELLANT, VS. AMALIA MORENO AND LEON REYES, SHERIFF OF AMBOS CAMARINES, DEFENDANTS AND APPELLEES.

G.R. No. 8147. October 26, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This case comes before us upon an agreed statement of facts, as follows:

"1. Mendezona & Co., a partnership, in liquidation, obtained a judgment on a bond in the Court of First Instance of Manila in civil cause No. 3326 against Mariano Moreno, as principal, and against Amalia Moreno, Camilo Moreno, and Rafael Serra, as sureties, for the sum of P18,154.24, with interest at 6 percent per annum from the 11th day February, 1905; together with costs. Mendezona & Co. on the 2d day of July, 1908, by an instrument in writing, sold and transferred said judgment to G. Urrutia & Co.

"2. On the 1st day of July, 1908, the sheriff sold under execution issued upon the judgment described in the preceding paragraph one house belonging to Mariano Moreno, described in the first paragraph of the complaint, to Mendezona & Co. for the sum of P2,500. At the same time and under the same execution the sheriff sold seven parcels of land belonging to said Mariano Moreno, described in the second paragraph of the complaint, to said Mendezona & Co. for the various sums stated in the complaint, amounting in all to P2,710. Under the same execution there were also sold other lands belonging to Mariano Moreno and to his sureties, among them lands belonging to Amalia Moreno, those belonging to the latter selling for P5,250.

"3. The clerk of the Court of First Instance of Manila on the 24th of June, 1908, issued an execution upon a judgment in civil cause No. 4905 in an action entitled G. Urrutia & Co. vs. Mariano Moreno, said judgment being for the sum of P27,185.90, with interest from the 31st of July, 1906, at 9 1/2 per cent per annum. Said G. Urrutia & Co. presented said execution to the registrar of real estate titles of the Province of Ambos Camarines on the 24th of July of the same year, who entered in his daily registry of property at folio 483, entry No. 6411, the following annotation:

" 'Don Antonio V. Herrero, agent and attorney for G. Urrutia & Co., presents at 4.30 of the afternoon of this day an execution issued in cause No. 4905 in the Court of First Instance of Manila begun by G. Urrutia & Co. as plaintiff against Mariano Moreno as defendant, a judgment wherein [which] was entered by Judge Powell in favor of the plaintiff company; said presentation of said execution being made for the purpose of making a levy upon all of the real estate which according to the index of the registry of property belongs to said Mariano Moreno, said company desiring at the same time to levy upon and attach the right of redemption therein which said Mariano Moreno has according to section 464 of the Code of Civil Procedure in each and every one of said parcels of land which appears in his name, it appearing that all of said parcels are announced for public sale on the 27th of the present month. Nueva Caceres, 24th of July, 1908. (Sgd.) Tomas Flordeliza.—Antonio V. Herrero.'

"The registrar made a preventive annotation of said execution in the books and pages corresponding to the lands described in paragraphs 1 and 2 of the complaint.

"4. Doña Amalia Moreno, as surety of said Mariano Moreno, and subrogated to the rights of Mendezona & Co. and its successors in interest, delivered to the defendant sheriff, Leon Reyes, the sum for which the lands of Mariano Moreno described in the complaint had been sold, together with interest at 1 per cent per month to the 16th of June and the 22d of July, 1909, and said sheriff executed to said Amalia Moreno two documents to the effect that the said Amalia Moreno had redeemed the said lands as such surety and under said subrogation within the legal period.

"5. No other creditor of Mariano Moreno, nor any other person, has redeemed the said lands described in the complaint.

"6. G. Urrutia & Co., on its own behalf and as successors in interest to Mendezona & Co., refused to receive the sum delivered by Amalia Moreno to the sheriff for the redemption of the lands of Mariano Moreno and refuses to recognize the validity of such redemption and alleges that Amalia Moreno had and has no right to redeem nor to retain possession of the said lands of Mariano Moreno, nor to be subrogated in the rights of Mendezona & Co. and its successor in interest.

"7. Doña Amalia Moreno is now and has been since the month of July, 1909, in possession of the lands described in the complaint, pretending that she is the owner of the same and alleging that having been obliged to pay as surety of said Mariano Moreno the sum of P5,796.66 for the satisfaction of the judgment against him, she was subrogated in all of the rights which pertain to Mendezona & Co. or to its assigns with regard to the said lands to the extent of the money paid by her.

"8. The amount paid by Amalia Moreno for the redemption of said lands described in the complaint is in the hands of the defendant sheriff, Leon Reyes."

Upon this statement the learned trial court held that Amalia Moreno was entitled under the law to redeem the premises belonging to Mariano Moreno which were sold under the judgment held by Mendezona & Co. This appeal is from that judgment.

The question presented for our determination is whether or not a surety against whom a judgment has been obtained jointly with the principal can redeem the real estate belonging to the principal which was sold by virtue of an execution issued upon said judgment, the surety having been obliged to contribute to the payment thereof.

It does not appear from the record whether the judgment was fully satisfied by the sale of the properties described in the stipulation of facts. Whether it was or not we do not consider important, although the claim that it was not perhaps gave rise to the contention that the case of *Somes vs. Molina* (15 Phil, Rep., 133), is decisive of this case. Whether the judgment was fully paid by the sale under execution does not affect in any way the right to redeem, whereas in the *Somes* case it was the decisive question. In that case we held that subrogation rests upon purely equitable grounds and will not be enforced against superior equities; and that it ought not to be allowed to the plaintiff in that case because it would work an injustice to the creditor. For the purpose of showing its inapplicability to the present case, we incorporate a memorandum which, while not added as a part of the opinion in that case, was before the court and was part of the reasoning by which the final decision was reached.

"Subrogation ought not to be allowed to the plaintiff because it would work an injustice to the creditor. The defendant Molina, in making *Somes* pay under the appeal bond, merely took advantage of a right which *Somes* gave him. Can Molina, in thus exercising that legal right, be made to suffer in his relations with *De la Riva*? Can one be prejudiced for rightfully taking what the law gives him? No act of Molina injured *Somes*. If the latter has suffered any loss it is because of his own act in signing the bond in question. What Molina did was merely to take advantage of a right which *Somes* had already given him and for the exercise of which Molina had already paid a valuable and adequate consideration. The bond in question, so far as *Somes* is concerned, is not without consideration; the consideration for the principal the consideration also for the secondary obligation of *Somes* as surety. Molina had a right, except for the intervention of the law of appeal, to take

advantage of judgment No. 3402, which he had secured against De la Riva, and proceed to collect it forthwith. Every presumption was in favor of its validity and he had the undoubted right to proceed at once to its collection,, except for the code provisions relating to appeals. They provide that when a judgment-debtor shall appeal from the judgment against him, the judge of the court from which the appeal is taken may require him to give a bond, with sufficient sureties, conditioned that, in case the judgment is affirmed by the appellate court, he will see that it is paid. This bond is required by the judge when he believes it necessary for the protection of the judgment creditor. By this provision the judgment-creditor, by being obliged to forbear collection of the judgment he has, is deprived of. certain rights, and, in compensation for and the protection of those rights, he is given a bond by the judgment-debtor by which he shall be assured of the payment of his judgment should it be affirmed by the appellate court. AH this indicates clearly and necessarily that the law regards the forbearance of the judgment-creditor as a valuable and adequate consideration for the obligation of the judgment-debtor and the sureties incurred under the bond in question. If this were not so, and, if the judgment-creditor were not, by his forbearance, giving a valuable consideration, then the law would be giving him something for nothing, in that it would be requiring his protection at the hands of the judgment-debtor and his sureties without the judgment-creditor doing anything to warrant it. This the law never does. That forbearance to prosecute a judgment to collection is a valuable and adequate consideration upon which to found an obligation is recognized in the jurisprudence of every country, and the law, in requiring a bond on appeal as a prerequisite to this forbearance, recognizes fully the valuable and adequate character of such forbearance as a consideration for that bond.

"The result of all of this is that, when the bond is executed and the creditor is obliged to forego the prosecution of his judgment, the transaction is closed; the creditor has paid his consideration and, as a result thereof, the surety has, incurred his obligation. Now, to compel the surety to fulfill that obligation does not require any new consideration on the part of the judgment-creditor; nor does it place him under a new or additional obligation. The consideration for what the surety does when he pays was given by the creditor when he withheld the prosecution of his judgment, even though that was done by mandate of the law. It ought to be evident that no new obligation is incurred by the creditor in requiring the surety to do the very thing for which the original consideration was given by the creditor. Therefore, if subrogation is allowed in this case and the surety is permitted to share with the creditor in the debtor's property pro rata, we are making the creditor pay again for the privilege of collecting from the surety on an obligation the consideration of which had already once been paid by the creditor. When the creditor with holds his rights to collect and awaits the law's delays, and the resulting risks, for an opportunity to prosecute the appeal from the judgment which he has obtained in order that he may realize upon it, and incurs the expenses incident thereto, is it then just to say to him that he must divide the benefits which the law gives him for this waiting, this expense, and this risk, with the very man who has caused it all? The weapon which the law gave the creditor for his own protection ought not now to be placed in the hands of his enemies for use against him.

"When the creditor's obligation against the debtor is fully paid, then the surety will have his subrogation to the rights of the creditor in this judgment, and he may then take it and collect it against the debtor whenever opportunity may offer.

"It is evident that if subrogation is allowed in this case the creditor will be injured. He has already collected judgment No. 3402 from the plaintiff's surety, *Somes*. This he had a right to do because he had long before paid? the consideration for the privilege of doing that very thing. There remains of the judgment-debtor's property not enough to pay the two remaining judgments now held by the judgment-creditor against him. If now *Somes* is allowed to be subrogated and share under judgment No. 3402 with the judgment-creditor in said property, pro rata, it is evident that the creditor will be injured; for, the property of the debtor, which ought to be divided between two judgments, will be divided among three. Bearing in mind the fact that the creditor has already paid for the privilege of making *Somes* pay judgment No. 3402, why should he pay again for that same privilege by permitting *Somes* to share in property which rightfully belongs to him?"

This additional exposition of the *Somes* case shows that it is not authority in the case before us. Here the question is one of redemption rather than one between the creditor and the surety. The former right is granted by statute and its provisions define specifically and clearly the persons who are entitled to exercise it. Section 464 of the Code of Civil Procedure reads:

"Who may redeem.—Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

"1. The judgment debtor, or his successor in interest in the whole or any part of the property;

"2. A creditor having a lien by attachment, judgment, or mortgage on the property sold, or on some part thereof, subsequent to that on which the property was sold.

"Persons mentioned in the second subdivision of this section are termed redemptioners."

From these provisions it is clear that in order to be able to redeem, the defendant Amalia Moreno must be either the judgment-debtor or his successor in interest or must hold a lien by judgment or mortgage upon the premises to be redeemed, which lien is subsequent to the lien of the judgment under which the property to be redeemed was sold. Passing without comment the word "lien," as it has been defined by this court, we observe instantly when we ask the question whether or not the defendant Amalia Moreno falls within the first class entitled under the section to redeem, that she does not fall within that class unless her contribution to the payment of the judgment against her principal is sufficient in law to substitute her in the place of the judgment-debtor or to make her his successor in interest to the extent of conferring upon her the right to redeem. We are of the opinion that she does not occupy the place of the judgment-debtor in this or any sense. The right of redemption is a right belonging to the debtor and cannot be taken away from him without authorization of law. If the surety upon payment of the judgment were to be substituted in his place and allowed to redeem as such, the right of the judgment-debtor would be thereby destroyed or, better said, would be exercised by another and he would be unable to exercise it thereafter himself. The surety has no right directly to take the property of his principal whose debt he has paid or assisted in paying unless he is expressly authorized to do so by law or has pursued the courses necessary under the law to that end. Courts are not authorized, generally speaking, to take rights from one person and give them to another without notice to the person from whom they are taken and an opportunity to be heard. Not being the judgment debtor or his successor in interest, in short, not representing him in such a way, as to be able to exercise his right relative to the redemption, defendant's claim under the first class must fail.

We arrive at the same conclusion when we consider whether the defendant falls within the second class. As a general proposition it is true that when a surety pays a judgment which has been obtained jointly against him and his principal, he is subrogated to the rights of the creditor (not the debtor) in the judgment and may execute that judgment against his principal in the same manner and with the same effect as the creditor could have executed it; and it is a rule laid down by some courts that the judgment is kept alive and subsists as a lien in favor of the surety paying it. This principle of subrogation, however, does not aid the surety in this case. The judgment, to the rights in which she is subrogated, is the same judgment that the creditor held. Its lien is the same as to time. The code, however, requires, before the right of redemption can be exercised, that the person who exercises it must be the owner of a judgment the lien of which is subsequent to the judgment under which the sale of the property to be redeemed was made. This is the particular provision which prevents the defendant from exercising the right of redemption under the second class even though we concede to her the benefits of the widest doctrine of subrogation. The language of the statute is plain. It needs no interpretation or construction. Our duty, then, is simply to apply it. Applying it, we exclude the defendant from the class known as redemptioners.

It is, therefore, adjudged that the defendant Amalia Moreno has no right to redeem the lands belonging to Mariano Moreno sold under judgment obtained against him by Mendezona & Co. and referred to in the stipulation of facts; and that the attempt to redeem and all of the acts performed in relation thereto by said defendant are without force or effect against the plaintiff. The judgment is reversed, without costs in this instance.

Nothing in this decision shall be understood as preventing Amalia Moreno from redeeming her own lands that were sold under execution, provided she has not done so, and her right to do so still subsists.

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

Johnson, J., concurs in the result.

Carson and Trent, JJ., dissent.

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