

TOMASA OSORIO Y REYES, AS ADMINISTRATRIX OF THE ESTATE OF ANTONIO OSORIO, PLAINTIFF AND APPELLANT, VS. ANGELA SAN AGUSTIN, AS ADMINISTRATRIX OF THE ESTATE OF BENITO SAN AGUSTIN,...*G.R. No. 8246. October 07, 1913*

Ponente: JOHNSON, J.

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This is an action brought by the plaintiff against the defendants for the foreclosure of a mortgage. The action was commenced on the 28th day of February, 1911, in the Court of First Instance of the Province of Cavite. The record shows that Antonio Osorio died on the 13th day of May, 1908, and that Benito San Agustin died on the 1st day of November, 1908. For each estate the administratrix mentioned in the title of the cause was duly appointed.

The complaint alleges that on the 28th day of February, 1891, Benito San Agustin executed and delivered to Antonio Osorio a mortgage upon the property described in the third paragraph of the complaint, for the purpose of securing the payment of the sum of P800. Said mortgage was payable at the termination of three years from the date of its execution, with 7 per cent interest, payable monthly. The mortgage also contained a provision that the debtor should pay to the creditor the sum of P150 in case of a default in the compliance with the conditions of said mortgage. The plaintiff prayed for a judgment on said mortgage, with interest at 7 per cent, from the 28th day of February, 1891, together with the sum of P150 to cover the expenses incurred by the plaintiff by reason of the fact that the defendants had failed to comply with the conditions of said mortgage.

On the 2d day of March, 1911, the defendant, Angela San Agustin, as administratrix, appeared and answered the complaint of the plaintiff, admitting the obligation of the estate of Benito San Agustin under the said mortgage.

On the 8th day of March, 1911, the defendant Crisanta Hernandez, widow of the said Benito San Agustin, presented a petition asking for permission to intervene in said cause, for the purpose of defending the estate of her deceased husband.

On the 15th day of March, 1911, the Honorable Vicente Jocson, judge, admitted the said petition of intervention and permitted the said Crisanta Hernandez to appear in said cause and to answer. On the 12th day of September, 1911, the said Crisanta Hernandez answered the complaint presented by the plaintiff. The said defendant, Crisanta Hernandez, in her answer, filed a general and special denial in the lower court and alleged that said action had prescribed; that there was another action pending for the same purpose between the same parties and that the court had no jurisdiction over the person of the said defendant.

After hearing the evidence adduced during the trial of the cause, the Honorable Vicente Jocson, judge, rendered a very interesting opinion in which he discussed all of the facts, and reached the following conclusion:

"Relying upon the foregoing reasons, the court declares:

"First, that another case is pending between the same parties for the same sum claimed herein, because the judgment rendered in case No. 603 is pending on appeal before the Supreme Court, an appeal raised by the same counsel for the administratrix of the deceased Antonio Osorio;

"Second, that even were such case not pending, the foreclosure action instituted herein has prescribed;

"Wherefore, the court absolves the defendants from this complaint, with costs against the plaintiff."

From that judgment the plaintiff appealed to this court and made the following assignments of error:

"1. The court erred in declaring that another case is pending in this matter between the same parties.

"2. The court erred in declaring that the foreclosure action instituted has prescribed.

"3. The court erred in holding that the presentation of the claim for collection to the appraisal committee was invalid and destroyed the creditor's right to present an action for collection of the mortgage.

"4. The court erred in absolving the defendants from the complaint."

With reference to the first assignment of error, from an examination of the record we find that on or about the 8th day of May, 1909, the present plaintiff presented the claim contained in said mortgage, constituting the basis of the complaint in the present action, before the commissioners appointed by the court for the purpose of considering claims against the estate of the said Benito San Agustin, and prayed that said commissioners allow said claim in favor of the estate of the said Antonio Osorio and against the estate of Benito San Agustin. After a consideration of said claim, the said commissioners disallowed the same. From that conclusion of the commissioners, the plaintiff appealed to the Court of First Instance. On the 27th day of August, 1910, the plaintiff, in furtherance of said appeal, presented a complaint in the Court of First Instance, in which he alleged the execution and delivery of the mortgage described in the present cause, the fact that said claim had been presented to the said commissioners and had been disallowed, and prayed that the Court of First Instance render a judgment in favor of the estate of the said Antonio Osorio and against the estate of said Benito San Agustin for the amount due on said mortgage, including the P150 stipulated as costs, resulting from the failure of the defendants to pay said mortgage. In that cause (No. 603, Court of First Instance) the said defendant in the present cause, Crisanta Hernandez, appeared and answered and made substantially the same defense which she has made in the present cause (No. 634, Court of First Instance).

After hearing the evidence in that cause (No. 603) the Honorable Vicente Jocson, judge, on the 10th day of March, 1911, in a very interesting opinion, reached the following conclusion: "The court absolves Crisanta Hernandez from the complaint and declares prescribed the action or credit herein claimed by the estate of Antonio Osorio from the estate of Benito San Agustin, sentencing the plaintiff to payment of the costs occasioned to Crisanta Hernandez."

From that judgment (cause No. 603, Court of First Instance) the plaintiffs gave notice of their intention to appeal.

From the foregoing it is clearly seen that the purpose of the present action (No. 634, Court of First Instance) had for its object exactly the same purpose for which said action No. 603 was brought. In other words, the two actions were for the purpose of securing a judgment upon exactly the same indebtedness. The appellant contends that she had a right to maintain the two actions by virtue of the provisions of section 708 of the Code of Civil Procedure, which provides:

"A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the committee, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court,

making the executor or administrator a party defendant; * * *."

It is clear by the provisions of said quoted section that a person holding a mortgage against the estate of a deceased person may abandon such security and prosecute his claim before the committee, and share in the distribution of the general assets of the estate. It provides also that he may, at his own election, foreclose the mortgage and realize upon his security. But the law does not provide that he may have both remedies. If he elects one he must abandon the other. If he fails in one he fails utterly. He is not permitted, under said section, to annoy those interested in the estates of deceased persona by two actions for exactly the same purpose. A multiplicity of actions is abhorrent to the law and is not permitted in equity and justice: In view of the fact that the plaintiff had elected to abandon the security given him by his mortgage and to prosecute his claim before the committee, he forfeited his right to bring an action upon the security in another separate and distinct action. With this conclusion, the judgment of the lower court must be affirmed, with costs. So ordered.

In view of the foregoing conclusion, we deem it unnecessary to discuss the other assignments of error made by the plaintiff.

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

CONCURRING

CARSON, J.,

I concur in the disposition of this case.

Merely to avoid possibility of misunderstanding, I think it well to point out that under the provisions of section 708 of Act No. 190, part of which is quoted in the opinion, it would appear that in case a creditor elects to rely upon his mortgage he may foreclose his mortgage or realize upon the security by an ordinary action in court, making the executor or administrator a party defendant; and if there is a judgment for a deficiency after the sale of the mortgaged premises or the other property pledged in the foreclosure or other proceeding, he may prove his deficiency judgment before the committee and to that amount he may share in the general assets of the estate of the deceased. In other words, a creditor holding a claim against the deceased person secured by mortgage or other collateral security may rely upon his security and institute an ordinary action based thereon without abandoning his right to present his claim to the committee should the security not be sufficient to pay the debt.

I call attention to this because the language of the majority opinion seems to me to go too far in declaring that "the law does not provide that he (the creditor) may have both remedies. If he elects one he must abandon the other." While that statement is true as a general proposition, nevertheless the express language of section 708 of Act No. 190 evidently contemplates that in the case just mentioned the creditor may rely upon both remedies.

The case at bar does not fall under this exception to the general rule, and I concur with the disposition of this case in the majority opinion.

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