

96 Phil. 127

[G.R. No. L-7198. October 30, 1954]

PACIENCIA G. PICZON, ACCOMPANIED BY HER HUSBAND FILOMENO PICZON, PLAINTIFFS, VS. JOHN DOE, AS REPRESENTATIVE OF THE ESTATE OF POLICARPO AMPATIN, DEFENDANT. MAGNO LAPUS, PETITIONER AND APPELLANT.

D E C I S I O N

REYES, A., J.:

This is an appeal from an order denying relief from judgment under Rule 38. It appears that on February 6, 1950, an action for foreclosure was filed in the Court of First Instance of Tacloban, Leyte, by Paciencia G. Piczon and her husband Filomeno Piczon against an unknown defendant described in the complaint as "John Doe as Representative of the Estate of Policarpio Ampatin, deceased, "it being alleged in the complaint that on or about November 6, 1940, the said Policarpio Ampatin executed a mortgage on his land, identified as Lots Nos. 4240 and 4353 of the Tacloban Cadastre, in favor of plaintiff Paciencia G. Piczon as security for a debt of P400 (later increased to P460), payable in 2 years with 12 per cent interests; that Policarpio Ampatin was killed during the Japanese occupation and left no known heirs or relatives; that up to the date of the complaint the mortgage debt had remained unpaid; and that the deceased had left no other indebtedness. On the strength of the allegations that the deceased Policarpio Ampatin left no known heirs or relatives, the court ordered service of summons to be made by publication with designation of the day for appearance and answer, and when after said publication no one appeared and made answer for the defendant, the court declared the defendant in default, heard plaintiff's evidence and, under date of March 18, 1950, rendered judgment foreclosing the mortgage and directing the sale of the

mortgaged property after 90 days. Following the usual procedure the property was sold by the sheriff at public auction and it was bought by Lino L. Anover who, upon the sale being registered, received from the Register of Deeds Transfer Certificate of Title No. T-766.

On February 9, 1952, the said Lino Anover obtained a writ of possession from the court, and in compliance with the writ the sheriff on the 17th of that month ordered the occupants of the land, among them the herein appellant Magno Lapuz, to vacate the premises and immediately put Anover in material possession thereof.

Five days later, that is, on February 22, 1952, Magno Lapuz filed in the same case a verified "petition for relief from judgment" with supporting affidavit of merit, alleging that he had never been notified of the whole proceeding and that his failure to appear therein was due to plaintiff's fraudulent and deceitful misrepresentation by making it appear that John Doe, an unknown person, was the representative of the estate of the deceased when plaintiff well knew that since 1949 he was the representative in possession of the said estate, having bought it from the heirs of the deceased and the Philippine National Bank in 1948; that if given a chance he could prove that plaintiff had already been paid the amount of the mortgage by enjoying the products of the land for a number of years, and that it was only on February 17, 1952, that petitioner learned of the foreclosure and sale of the land to Añover.

The petition was denied by the court on the ground that the same had been filed out of time and that Añover was a purchaser in good faith. In a motion for reconsideration the denial was reiterated with the additional ground that petitioner was not entitled to relief because he was not a party in the case. It is from this ruling that petitioner has appealed.

It would appear from Añover petition for a writ of possession that, before title was transferred to him as purchaser in the foreclosure sale, the land was already covered by Original Certificate of Title No. 52880. Being registered land, the same was subject to

Section 89 and 63 of the Land Registration Act. Section 89 provides that such land upon the death of its owner goes to the executor or administrator of the deceased whether the owner dies intestate or testate and shall be subject to the same rules of administration as if the same were personal; while section 63 provides that mortgages of registered land may be foreclosed in the manner provided in the Code of Civil procedure, now the Rules of Court. Under the Rules the mortgage creditor is given the option either to abandon his security and prosecute his claim as an unsecured creditor or foreclose his mortgage by ordinary action in court, making the executor or the administrator a party defendant. If he chooses the latter course the executor or administrator of the deceased debtor is an indispensable party defendant (Gov't of the P. I. vs.

Cajigas, 55 Phil. 667). In the present case, the action for foreclosure was not brought against the executor or administrator of the deceased Policarpio Ampatin and it does not even appear that an executor or administrator has been appointed. And aside from this defect in procedure there is the further anomaly alleged by petitioner-appellant that "the plaintiffs made John Doe, an unknown person, as representative of the estate of Policarpio Ampatin (deceased) when plaintiffs knew very well since 1949 that the petitioner was the representative of the estate," which allegation, if proved, would tend to support the claim that the judgment of foreclosure was obtained through fraud.

But while there may be cause for an action to set aside the said judgment, a mere petition for relief under Rule 38 would in this case not be the proper remedy because of the lapse of the period allowed for that purpose and the fact that petitioner was not in the true sense made a party in the foreclosure proceeding. In the circumstances, we have to affirm the order appealed from but without prejudice to the filing of an independent action to annul the judgment of foreclosure. Without special pronouncement as to costs. So ordered.

Paras, C. J., Bengzon, Padilla, Moitemayor, Jugo, Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

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