

**ROSA QUIMSON, SONIA QUIMSON AND FRANCIS-CO QUIMSON,
HEIRS OF THE LATE DR. FRANCISCO QUIMSON,
PLAINTIFFS-APPELLANTS, VS. PHILIPPINE NATIONAL BANK, THRU
ITS SPECIAL ASSETS DEPART...**

G.R. No. L-24920. November 24, 1970

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the order of the Court of First Instance of Rizal, Branch IV, dismissing its Civil Case No. 8300 after trial on the merits, holding that under the charter of the Philippine National Bank the right to redeem property sold in a judicial foreclosure sale of real estate mortgage to said Bank can be exercised only within one year from the date of the judicial confirmation thereof and not from the date of its registration, without passing on the question raised in the pleadings before it as to whether in an instance where the property sought to be repurchased is only one of several properties separately mortgaged by the same mortgagor to the said Bank at different times but sold in a single foreclosure proceeding together with the others because the separate deeds of mortgage commonly provide that each shall be security for all obligations of the mortgagor to the Bank, as in this case, should be the amount of the particular loan for which the property being redeemed was mortgaged or the total of all the loans covered by all the mortgages involved in the said foreclosure.

The trial court's judgment of dismissal was predicated thus:

"Francisco Quimson during his lifetime mortgaged several properties with the Philippine National Bank among which was a parcel of land situated in San Juan, Rizal, having an area of 465 square meters and covered by Transfer Certificate of Title No. 47769 of the Land Records of Rizal. The property was mortgaged for P2,500.00. Because of the failure of said Francisco Quimson to pay the mortgage loans, the Philippine National Bank filed foreclosure proceedings in the Court of First Instance of Nueva Ecija.

"On December 1, 1956, a Writ of Execution was issued by the said Court of First Instance and the Provincial Sheriff of Rizal was directed by the said Court to sell at public auction the property in question covered by Transfer Certificate of Title No. 47769. The property was sold to the Philippine National Bank, it being the highest bidder.

"On January 10, 1957, the Provincial Sheriff of Rizal issued a certificate of sale in favor of the Philippine National Bank which certificate of sale was given judicial confirmation on September 27, 1957.

"On April 24, 1959, the Branch Manager of the Philippine National Bank wrote a letter to plaintiff's son, Francisco Quimson, Jr. who is occupying the property, informing him that the property in question was sold by the bank to Ricardo S. Mendoza for the sum of P7,763.36.

"The certificate of sale dated January 10, 1957 as well as the judicial confirmation of the court were registered only with the Register of Deeds of Rizal on September 19, 1963.

"Plaintiffs who are the heirs of the late Francisco Quimson want to redeem the property from the Philippine National Bank. Defendant Philippine National Bank, however, refused alleging that the period of redemption which is to be counted from the date of judicial confirmation has already expired and that the property has already been sold to Ricardo S. Mendoza.

"Plaintiffs argued that the period of redemption should be counted from the date that the sale and the judicial confirmation were registered on September 19, 1963. In support of their argument, plaintiffs cited the case of Ernesto Salazar, et al. vs. Flor de Lis Mene-ses, et al., G. R. No. 15378, which was decided and promulgated by the Supreme Court on July 31, 1963.

"The court cannot sustain the argument of the plaintiffs. The above cited case, 'Ernesto Salazar, et al. vs. Flor de Lis Meneses, et al.' refers to an extrajudicial foreclosure and does not apply to the case at bar. The rule in judicial foreclosure is different in that the period of redemption is counted from the time of judicial confirmation. This is a well settled rule enunciated by the Supreme Court in the case of Ernesto Gonzales vs. Philippine National Bank, 48 Phil. 824 as well as in the very case cited by the plaintiffs."

In appellants' brief, they have assigned two alleged errors, the first one being:

"THE LOWER COURT ERRED IN HOLDING THAT THE ONE-YEAR PERIOD OF REDEMPTION GRANTED BY SECTION 20, REPUBLIC ACT 1300, CHARTER OF THE PHILIPPINE NATIONAL BANK, IN FAVOR OF THE PLAINTIFFS-APPELLANTS IN THIS CASE SHOULD BE COUNTED FROM SEPTEMBER 27, 1957, THE DATE OF THE JUDICIAL CONFIRMATION OF THE SHERIFF'S CERTIFICATE OF SALE DATED JANUARY 10, 1957, INSTEAD OF FROM SEPTEMBER 19, 1963, THE DATE WHEN THE CERTIFICATE OF SALE AND THE DECREE OF CONFIRMATION OF THE SAME BY THE COURT WERE REGISTERED WITH THE OFFICE OF THE REGISTER OF DEEDS FOR THE PROVINCE OF RIZAL, AND THAT, CONSEQUENTLY, THE PERIOD OF REDEMPTION AS FAR AS PLAINTIFFS-APPELLANTS ARE CONCERNED HAD ALREADY EXPIRED."

In their discussion of this alleged error of the trial court, appellants rely on the firm and uniform rulings of this Court that the period of redemption of real property with Torrens title and sold in an execution sale under Sections 24 and 30 of Rule 39 must be computed from the date of registration. Cited by them is this Court's holding in *Agbulos v. Alberto*, 5 SCRA 790, 792 that:

"The property involved in the present case is registered land. It is the law in this jurisdiction that when property brought under the operation of the Land Registration Act is sold, the operative act is the registration of the deed of conveyance. The deed of sale does not 'take effect as a conveyance, or bind the land' until it is registered (Section 50, Act No. 496; *Tuason v. Raymundo*, 28 Phil. 635; *Sika-tuna v. Guevara*, 43 Phil. 371; *Worcester v. Ocampo*, 34 Phil. 646). Undoubtedly, to be in consonance with this well settled rule, Section 24, Rule 39 of the Rules of Court, provides that a duplicate of the certificate of sale given by the sheriff who made the auction sale to the purchaser must be filed (registered) in the office of the register of deeds of the province where the property is situated.

"In *Garcia v. Ocampo*, G. R. No. L-13029, June 30, 1959, we held that the twelve months period of redemption provided for in Sec. 26, Rule 39 of the Rules of Court 'begins to run not from the date of the sale, but from the time of registration of the sale in the office of the register of deeds.' The entry or annotation made on the back of the certificate of title of the property in question on July 18, 1959 (*supra*) was in accordance with this ruling when it provided that the execution sale was 'subject to redemption within one(1) year from registration hereof.'

"A case similar to the present is that of *Gonzales, et al. v. Philippine National Bank, et al.*, 48 Phil. 824, where we held that the provision of Section 32, Act 2938 (Charter of the Philippine National Bank) providing for a right of redemption in favor of the bank's mortgagor 'within one year after the sale of the real estate as a result of the foreclosure' should be construed to mean one year after the confirmation of the foreclosure sale, because

the sale becomes valid only after confirmation. Along the same line we may say in this case that the period of one year after the sale must likewise start only from the date of registration of the certificate of sale, because it is only then that the certificate takes 'effect as a conveyance' in accordance with Act 496."

It is true that this case of *Agbulos v. Alberto* involved a sale on an ordinary execution and not a foreclosure sale, but it must be borne in mind that exactly one year after *Agbulos*, in *Salazar v. Meneses*, 8 SCRA 495, this Court speaking again thru Mr. Justice Arsenio Dizon who penned *Agbulos*, after quoting the above portions thereof, held that:

"The above ruling is squarely applicable to the present case which involves also registered land, in spite of the fact that the sale in question is not an execution sale but a foreclosure sale."

We reiterated this ruling in all subsequent cases having similar factual circumstances: *Reyes v. Noblejas*, 21 SCRA 1027; *Rosario v. Tayug Rural Bank, Inc.* 22 SCRA 1220; and *Reyes v. Manas*, 29 SCRA 736. Even the dissenting opinion of Mr. Justice Teehankee in *Lazo vs. Republic Surety & Insurance Co.*, 31 SCRA 329 emphasized Our unbroken adherence to it.

Appellees insist that the said ruling cannot apply to this case because, according to them, what is here involved is a sale resulting from judicial foreclosure of real estate mortgage and not, as in those cases, one by virtue of an extrajudicial foreclosure under Act 3135 as amended by Act 4118. It is pointed out that in judicial foreclosures under Rule 68 (formerly 70) of the Rules of Court, a mortgage debtor has no right of redemption after the judicial confirmation of the sale of the mortgaged property, all that he has being the equity of redemption which must be exercised within ninety days from the finality of the judgment, and that it is only by virtue of the Charter of the Philippine National Bank that such a right of redemption after the foreclosure sale is recognized as regards properties mortgaged to said Bank. In this connection, appellees cite the decision of this Court in the case of *Gonzales v. Philippine National Bank*, 48 Phil. 824, the same case referred to by Justice Dizon in *Agbulos*, wherein We held:

"The sales of real property by the Philippine National Bank under foreclosure proceedings are more or less *sui generis*. Strange as it may seem, the question of redemption in such cases is separate and distinct from, and unlike, that of any other foreclosure proceeding.

"The law in question was enacted for a special reason, and should not be construed to defeat its purpose and intent. Giving it a liberal construction, it is apparent that in this class of cases, the words 'within one year after the sale of real estate, etc.' should be construed to mean within one year after the confirmation of the sale. It is the confirmation only which consummates the sale. Prior to that, the purchaser's bid is nothing more than an executory contract, which may or may not be executed depending upon the confirmation of the sale. That is the spirit and intent of the law in question."

and they argue that this is the ruling that should control in the case at bar, hence the period of redemption of appellants should be considered as having started on September 27, 1957 when the public auction sale in question to the appellee Bank was confirmed.

We do not agree. The property herein involved is registered land. While, indeed, sales on foreclosure of properties mortgaged to the Philippine National Bank may partake of being *sui generis*, they need not depart from the sound principles governing registration of transactions concerning lands coming under the Land Registration Act or the Torrens system. As already stated, this Court has uniformly ruled that redemption from execution sales under ordinary judgments pursuant to Section 30, Rule 39 of the Rules of Court should be made within twelve (12) months from the registration of the same and We have as uniformly applied the same rule to sales upon extrajudicial foreclosure of registered lands. We see no valid reason why the rule in foreclosure of mortgages of

registered real estate where the mortgagee is the Philippine National Bank should not be the same.

Section 32 of Act 2938 (now Section 20 of Republic Act 1300), the Bank's charter, provides:

"SEC. 20. Right of Redemption of property foreclosed. - The mortgagor shall have the right, within the year after the sale of real estate as a result of the foreclosure of a mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank by reason of the execution and for the custody of said property."

This is practically the same language as that of Section 6 of Act 3135 governing redemption in extra-judicial foreclosures and Section 30 of Rule 39 governing redemption from sales on execution of ordinary judgments. Nothing said in the Gonzales case relied upon by appellees precludes the desirability and propriety of having a uniform procedure to govern matters or transactions of the same nature or in pari materia. It is to be noted that nowhere in the Gonzales case does it appear that what was involved therein was registered land. Of course, it is understandable that with regard to unregistered land, the most natural date from which the period of redemption should be computed should be that of the judicial confirmation of the sale as it is only then that, in the language of Section 3 of Rule 68, the sale "operates to divest the rights of all the parties to the action and to vest their rights in the purchaser." Withal, the qualification contained in the same Section 3 of Rule 68 to the effect that the vesting of the rights of all the parties to the foreclosure in the purchaser is "subject to such rights of redemption as may be authorized by law" verily implies that the applicable rules of redemption, particularly as to the period thereof, must be premised on the character of finality imparted by the judicial confirmation upon the sale but it need not be computed from the date thereof but, rather, according to what the particular applicable law providing for the right of redemption may ordain or specify. It is thus clear that it is preferable that even in foreclosure of mortgage of registered real property by the Philippine National Bank by virtue of its charter, the period of redemption should start from the registration of the deed of sale conducted by the sheriff and not from the date of confirmation thereof, and We so hold.

Incidentally, appellee Mendoza contends that if the above rule of registration is to be followed, and not the Gonzales ruling regarding the date of confirmation, this Court should also apply as to him the familiar rule, with respect to registered land, that actual knowledge is equivalent to registration, and since it appears that appellants were notified by the appellee Bank on April 24, 1959 that the property in question had been sold to him on April 16, 1959 yet, he maintains that appellants' period of redemption should be computed from the date of said notice, April 24, 1959. The contention is not correct. We have already held in *Reyes v. Manas*, supra, that "Of course, appellant maintained that the said ruling is good for third parties but should not apply to a case 'where no third party to the sale is involved'. This contention, however, overlooks that the rule laid down is precisely for the person entitled to exercise the right of redemption, who necessarily is the owner of the property sold and not any third party." In other words, when it comes to the period of redemption of registered real estate sold on execution, whether in foreclosure proceedings or in ordinary cases, actual notice of the sale by the judgment debtor or redemptioner is immaterial, the period must always be computed from the date of registration of the corresponding auction sale.

Accordingly, We hold that appellants' first assignment of error is well taken and, therefore, appellants' period of redemption should be computed from September 19, 1963. It may be stated, however, that since the record is not very clear as to what concrete steps have been taken by appellants towards the actual redemption in controversy, outside of the letter they have written to appellee Bank on June 17, 1964 "requesting information as to proper steps to be taken in order to repurchase the (subject) property", We are not in a position to hold now whether or not appellants' right to make the said redemption may be considered as still subsisting.

In view, therefore, of the possibility that appellants might still be able to exercise the redemption in question, We have to consider the second alleged error which they have assigned in their brief, to wit:

"AS A LOGICAL CONSEQUENCE OF THE FOREGOING ERROR, THE LOWER COURT ERRED IN NOT DECLARING THAT THE SALE MADE BY DEFENDANT-APPELLEE PHILIPPINE NATIONAL BANK IN FAVOR OF ITS CO-DEFENDANT-APPELLEE RICARDO MENDOZA ON APRIL 16, 1959, IS NULL AND VOID, AND IN NOT FIXING THE AMOUNT OF THE REDEMPTION PRICE FOR THE PRO-PERTY INVOLVED IN THIS CASE."

To start with, since, as already stated, We are not now in a position to decide whether or not appellants' pretended right of redemption herein in controversy may still be exercised because it is not clear whether or not they have made within one year after registration of the sale the appropriate tender to the proper party, it follows that We cannot now also pass upon the question of whether or not the sale of the subject property to appellee Mendoza by appellee Bank on April 16, 1959 is null and void. All that we can rule upon in connection with appellants' second assignment of error just quoted is the question of how much they should pay as principal repurchase price, on the assumption that they can still make such re-purchase. Appellants contend that the amount that they should be made to pay should be only P6,045.00, the amount for which appellee Bank acquired the subject property at the foreclosure sale of January 10, 1957. On the other hand, both appellees maintain that such principal amount should be P64,400.73, the amount stated in the writ of execution under which the mortgaged properties of appellants' predecessor in interest were sold at the foreclosure sale.

Appellees are right. Although nothing is said about it in the decision of the trial court, it is nevertheless clear in the stipulation of facts and its annexes, which were submitted at the trial and which are the only evidentiary matters appellants have incorporated in their record on appeal, that the foreclosure judgment under which the land herein involved was sold was not solely for the loan and mortgage over said land but for all the other several indebtedness and mortgages, that Francisco Quimson, predecessor of appellants, had incurred and executed in favor of appellee bank, all of which had already matured and had not been paid, and, what is more important, that in each and everyone of the deeds covering the said fore-closed mortgages, beginning with the very one hereby directly affected, there is the common stipulation worded thus:

"That for and in consideration of certain loans-overdrafts and other credit accommodations obtained from the Mortgagee, and to secure the payment of the same and those that may hereafter be obtained the principal of all which is hereby fixed at - TWO THOUSAND FIVE HUNDRED - (P2,500.00) Pesos, Philippine currency, as well as those that the Mortgagee may extend to the Mortgagor, including interest and expenses or any other obligation owing to the Mortgagee whether direct or indirect, principal or secondary, as appears in the accounts, books, and records of the Mortgagee, the Mortgagor, does hereby transfer and convey by way of mortgage unto the mortgagee, its successors or assigns, the parcels of land which are described in the list inserted on the back of this document together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the Mortgagor declares that he is the absolute owner free from all liens and incumbrances." (p. 64, Rec. on Appeal)

In other words, it is undisputed and plainly obvious from the real evidence in the record that, contrary to the impression given by appellants in their brief, the judgment against them or their predecessor for which the subject property was sold, together with their other properties, was for more than P64,400.73 and that is the amount that appears in the writ of execution. In such circumstances, We have no alternative but to apply the pertinent provision of Section 20 of the appellee bank's charter, aforequoted, the language of which is unmistakable and unequivocal - "The mortgagor shall have the right, ... to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the Bank by reason of the execution and sale and for

the custody of said property."

That, indeed, the property in question was the subject of a separate and distinct earlier mortgage from the others involved in the foreclosure, the said mortgage being on a loan of only P2,500.00 and it was purchased by appellee bank at the execution sale for only P6,045.00 and was later on sold by it to appellee Mendoza for only P6,500.00, payable in five years, cannot alter the fact that in the very deed of mortgage relied upon by them, appellants' predecessor agreed to make the same property a security not only for the P2,500.00 loan already obtained by him but for all other obligations he may subsequently have to the appellee bank and subsequently, he did incur other such obligations, all amounting to over P64,000.00, albeit secured by other mortgages. Appellee bank must have had its reasons for imposing such a condition and from all that is extant in the records, appellants' predecessor agreed to it. Such being the case, We can only say that this Court is without power to alter or modify the terms and conditions of contractual obligations freely agreed upon by the parties on a mere plea of the obligator that he is without means to fully comply with it or that he feels the same to be inequitable. Besides, if it is considered that it is possible that the other collaterals given by appellants' predecessor may not yield enough to cover the full amount of his indebtedness secured thereby, the justification for the all-inclusive provision can easily be perceived. After all, as long as all the properties mortgaged are returned to appellants upon their payment of the full amount of over P64,000.00 appellees are insisting upon, We cannot see any inequity in the posture of appellee Bank.

As already stated, We are aware that the lower court made no findings, whether of fact or of law on the point under discussion, but in instances like the one at bar where in the appeal before Us both parties have joined issues in their briefs on a matter not touched upon by the trial court because it is inconsistent with the theory on which the decision is premised, but which may be a necessary alternative in the event of reversal or modification of the trial court's theory, and the relevant and material facts are undisputed or indisputable, by stipulation of the parties or as found by the court from indubitable evidence, and are incorporated in the record on appeal, We hold that it is within the prerogative of this Court in the pursuit of substantial justice to consider such matter and thus avoid the necessity, otherwise, of returning the case to the trial court for further proceedings, with concomitant added expenses and loss of time for the parties.

Accordingly, We hold that the amount which appellants should pay for the redemption of the property in question must be the one fixed in the writ of execution under which it was sold, which as stated above is more than P64,000.00.

IN VIEW OF ALL THE FOREGOING, the decision of the lower court is modified in the sense that the appellants may be allowed to redeem the subject property after this decision has become final, if they have taken the proper steps to enable them to exercise their right thereto by having made within one (1) year from the re-registration of the execution sale the appropriate tender to the proper party, and provided that they pay the full amount fixed in the writ of execution of over P64,000.00, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Fernando, and Teehankee, JJ., concur.

Ruiz Castro, J., reserves his vote.

Makalintal and Villamor, JJ., took no part.

Makasiar, J., on official leave of absence.

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