

**ESTRELLA BENIPAYO RODRIGUEZ, MANUEL D. BENIPAYO, DONATO BENIPAYO, JR., JAIME D. BENIPAYO, MAXIMA BENIPAYO MORALES, AURORA BENIPAYO DE LEON, FRANCISCO D. BENIPAYO, ALEJANDRO D. B...***G.R. No. L-22958. January 30, 1971*

Ponente: REYES, J.B.L., J.

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Petition for certiorari, with a prayer for the issuance of a writ of preliminary injunction, filed by some[1] of the children of the deceased spouses, Donato Benipayo, Jr., and Pura Disonglo, seeking to have this Court set aside the order issued on 28 April 1964 by the Hon. Juan O. Reyes in Civil Case No. 52188 of the Court of First Instance of Manila, entitled "Estrella Benipayo-Rodriguez, et al. vs. Alberto D. Benipayo", approving the sheriff's sales of properties owned in common by the plaintiffs and defendant aforesaid, subject to the condition that the vendors should clear the titles thereof from any encumbrance in favor of the Development Bank of the Philippines. The petition further sought to compel the respondent judge to cause a re-bidding of the properties involved, at public auction, or to approve the sales aforementioned without the condition imposed upon the vendors.

Upon the filing of a bond in the amount of P20,000.00, this Court ordered the issuance of a writ of preliminary injunction on 25 June 1964.[2]

It appears that on 13 November 1962, petitioners filed with the respondent court a complaint against their brother, respondent Alberto D. Benipayo, for the partition of the properties held by them in common as heirs of the late spouses, Donato D. Benipayo and Pura Disonglo (Civil Case No. 52188). After respondent Benipayo had answered the complaint, the court set the case for a pre-trial conference, and in the course thereof the parties agreed to have the properties in litigation sold at public auction to the highest bidder. Pursuant to an order issued by the respondent judge, the parties submitted to the court a list of the properties to be sold, among which were some lots in Albay, and the following parcels of land, with their improvements, that were at the time mortgaged to the Development Bank of the Philippines:

- "1. Lot No. 6-A, Block 2124, with an area of 314.70 square meters, evidenced by TCT No. 48978, Manila;
2. Lot No. 6-B-2, Block No. 2124, with an area of 389.90 square meters, evidenced by TCT No. 48979, Manila;
3. The improvements erected on the above two lots denominated as No. 664 Misericordia, Manila.

The above improvements and two lots are mortgaged with the Development Bank of the Philippines with an outstanding mortgage capital of about P50,000.00."

The respondent judge first directed the sale at public auction of properties located in Albay. After the consummation of the sale and the approval thereof, His Honor ordered the sale of the two Manila lots and

improvements described above. Pursuant to the order, the sheriff of the City of Manila scheduled the auction sale on 30 March 1964 at 10:00 o'clock A.M. Notice thereof was duly posted and published, with the following warning:

"NOTE: According to information furnished by the plaintiffs' counsel, Atty. Gonzalo D. David, the real properties described above are mortgaged with (sic) the Development Bank of the Philippines, under which there is allegedly an outstanding balance in the sum of P37,121.76.

"Prospective buyers and bidders are hereby enjoined to investigate for themselves the titles to the real properties described above, as well as the encumbrances thereon, if any there be."

On the date set for the sale, petitioners moved for its postponement on the ground that they were not in a position to actively participate therein, but upon objection of respondent Benipayo's counsel, His Honor denied the motion and the sale was held as scheduled.

Herein respondent, Jose N. Dualan, successfully bid at the auction sale the sum of P 235,000.00 for Lot No. 6-B-2, Block No. 2124, covered by Transfer Certificate of Title No. 48979, issued by the Office of the Register of Deeds of Manila; while respondent Vicente Sayson's bid of P173,000.00 was the highest for Lot No. 6-A of Block No. 2124, covered by Transfer Certificate of Title No. 48978 issued by the same office.[3]

After the sheriff had filed his return with the respondent judge, petitioners moved for the approval of the sale, deducting from the total amount of P408,000.00 the sheriff's percentage, and the expenses incurred by petitioners for the publication of the notice of sale. Commenting on the aforesaid motion, respondents Benipayo and Dualan prayed that the respondent judge order (1) the payment of the mortgage debt in favor of the Development Bank of the Philippines in the amount of P37,121.96 from the proceeds of the auction sale; (2) the issuance by the sheriff of Manila of a certificate of sale in favor of Dualan of the property sold to him free from all liens and encumbrances; and (3) the payment to respondent Benipayo of 1/12 of the proceeds of the sale after deducting therefrom the payment to the Development Bank of the Philippines.

After hearing the arguments of the parties on the motion, the respondent judge apparently entertained some doubts as to whether there had been a meeting of minds on the question of who was to discharge the mortgage obligation in favor of the Development Bank, so he suggested that the properties be subjected to another "bidding" "with a clear-cut understanding that the 12 heirs shall assume all obligations and that they should not be paid by the buyers." [4] The suggestion was not accepted by the buyers; and the respondent judge, on 28 April 1964, issued the order complained of, the dispositive portion of which reads as follows:

"WHEREFORE, the Manila Sheriff's Report dated March 30, 1964, and the Quezon City Sheriff's Report dated April 6, 1964, are hereby approved, subject to the following conditions:

1. That the vendors or the owners of the properties sold shall clear said properties of all encumbrances that were incurred by them long before the auction sales;
2. That since the taxes on said real estates are not encumbrances incurred by the owners of the properties, but are proper charges attached and against the properties themselves, the real estate taxes shall be borne by the owner or owners of the said properties on the date when said taxes become due for payment."

Petitioners' motion for reconsideration of the above-quoted order having been denied, the present petition for certiorari was filed by them.

After the respondents had filed their answer to the petition and the parties had submitted their respective memorandum, the petitioners, jointly with respondents Vicente Sayson and Alberto Benipayo, submitted a compromise agreement, on 8 May 1970, cancelling the sale to respondent Vicente Sayson of the property (TCT

No. 48978) previously bidden for by him, upon the consideration that the amount paid to the Sheriff by Sayson be returned to the latter. As respondent Jose Dualan interposed no objection to the approval of the said compromise agreement, this Court rendered, on 30 June 1970, a partial decision, approving the compromise agreement and ordering the compliance with its provisions by the parties thereto, and, as prayed for, dismissed this case as against Vicente Sayson, leaving only Jose N. Dualan, purchaser of the property covered by TCT No. 48979 of the City of Manila, as party respondent.

The petitioners seek to apply the doctrine of caveat emptor to the successful bidder Dualan, and contend that under said rule Dualan bought at his own peril and, having purchased the property with knowledge of the incumbrance, he should assume payment of the indebtedness secured thereby.

We find the stand of petitioners-appellants to be unmeritorious and untenable. The maxim "caveat emptor" applies only to execution sales, and this was not one such.<sup>[5]</sup> The mere fact that the purchaser of an immovable has notice that the required realty is encumbered with a mortgage does not render him liable for the payment of the debt guaranteed by the mortgage, in the absence of stipulation or condition that he is to assume payment of the mortgage debt. The reason is plain: the mortgage is merely an encumbrance on the property, entitling the mortgagee to have the property foreclosed, i.e., sold, in case the principal obligor does not pay the mortgage debt, and apply the proceeds of the sale to the satisfaction of his credit. Mortgage is merely an accessory undertaking for the convenience and security of the mortgage creditor, and exists independently of the obligation to pay the debt secured by it. The mortgagee, if he is so minded, can waive the mortgage security and proceed to collect the principal debt by personal action against the original mortgagor.

By buying the property covered by TCT No. 48979 with notice that it was mortgaged, respondent Dualan only undertook either to pay or else allow the land's being sold if the mortgage creditor could not or did not obtain payment from the principal debtor when the debt matured.<sup>[6]</sup> Nothing else. Certainly the buyer did not obligate himself to replace the debtor in the principal obligation, and he could not do so in law without the creditor's consent. Our Civil Code, Article 1293, explicitly provides:

"ART. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237."

The obligation to discharge the mortgage indebtedness, therefore, remained on the shoulders of the original debtors and their heirs, petitioners herein, since the record is devoid of any evidence of contrary intent. This Court has so ruled in *Bank of the Philippine Islands vs. Concepcion é Hijos, Inc.*, 53 Phil. 806, from which We quote:

"But the plaintiff argues that in American jurisprudence, the purchaser of mortgaged property who assumes the payment of the mortgage debt, may for that reason alone be sued for the debt by the creditor and that that rule is applicable in this jurisdiction. Aside from the fact we are not here dealing with a mere assumption of the debt, but with a subrogation, it may be noted that this court has already held that the American doctrine in this respect is not in harmony with the spirit of our legislation and has not been adopted in this country. In the case of *E. C. McCullough & Co. vs. Veloso and Serna* (46 Phil., 1), the court, speaking through its present Chief Justice, said:

"The effects of a transfer of a mortgaged property to a third person are well determined by the Civil Code. According to article 1879<sup>[7]</sup> of this Code, the creditor may demand of the third person in possession of the property mortgaged payment of such part of the debt, as is secured by the property in his possession, in the manner and form established by the law. The Mortgage Law in force at the promulgation of the Civil Code and referred to in the latter, exacted, among other conditions, also the circumstance that after judicial or notarial demand, the original debtor had failed to make payment of the debt at maturity. (Art. 135 of the Mortgage Law of

the Philippines of 1889.) According to this, the obligation of the new possessor to pay the debt originated only from the right of the creditor to demand payment of him, it being necessary that a demand for payment should have previously been made upon the debtor and the latter should have failed to pay. And even if these requirements were complied with, still the third possessor might abandon the property mortgaged, and in that case it is considered to be in the possession of the debtor. (Art. 136 of the same law.) This clearly shows that the spirit of the Civil Code is to let the obligation of the debtor to pay the debt stand although the property mortgaged to secure the payment of said debt may have been transferred to a third person. While the Mortgage Law of 1893 eliminated these provisions, it contained nothing indicating any change in the spirit of the law in this respect. Article 129 of this law, which provides for the substitution of the debtor by the third person in possession of the property, for the purposes of the giving of notice, does not show this change and has reference to a case where the action is directed only against the property burdened with the mortgage. (Art. 168 of the Regulation.)"

Upon the other hand, the orders complained of, in so far as they require the vendors-heirs to clear the title to the land sold to respondent Dualan, when the latter bid for it with full knowledge that the same was subject to a valid and subsisting mortgage, is plainly erroneous. In submitting his bid, Dualan is presumed to know, and in fact did know, that the property was subject to a mortgage lien; that such encumbrance would make him, as purchaser, eventually liable to discharge mortgage by paying or settling with the mortgage creditor, should the original mortgagors fail to satisfy the debt. Normally, therefore, he would have taken this eventuality into account in making his bid, and offer a lower amount for the lot than if it were not encumbered. If he intended his bid to be understood as conditioned upon the property being conveyed to him free from encumbrance, it was his duty to have so stated in his bid, or at least before depositing the purchase price. He did not do so, and the bid must be understood and taken to conform to the normal practice of the buyer's taking the mortgaged property subject to the mortgage. Consequently, he may not demand that the vendors should discharge the encumbrance aforesaid.

Thus, the questioned order of the trial court ordering the vendors-heirs to clear the property of all its encumbrances is not in accordance with law.

The second and fourth grounds for the petition for certiorari are that the minds of the parties allegedly never met, so that the court should have ordered a re-bidding. The claim that there was no meeting of the minds is not only inconsistent with petitioners' own argument on the main issue, but is belied by their conduct. The fact is that an offer to sell was advertised, a bidding was conducted, and the winning bidder deposited the price. A rebidding would have been proper had all the parties agreed to it, but they did not. Instead, the petitioners authorized their lawyer to negotiate for the redemption of the property, thereby implying that they have accepted the validity of the sale and that their questioning it now is but an afterthought.

The third ground relied upon in the petition for annulling the sale is the participation of Atty. Ambrosio Padilla in the auction sale on behalf of respondent Dualan while still the counsel of record for respondent Benipayo. The ground lacks merit, for the reason that petitioners have not shown that they were in any way prejudiced, and they had, by their conduct, accepted the validity of the sale.

FOR THE FOREGOING REASONS, the petition for certiorari is hereby granted and the orders complained of are reversed and set aside in so far as they require petitioners to clear the property sold from the mortgage in favor of the Development Bank. The writ of preliminary injunction heretofore issued is made permanent. No costs.

Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.  
Concepcion, C.J., and Castro, J., no part.

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[1] Some of the 11 petitioners denied having authorized the filing of the petition. (Motion, dated 13 June 1964,

Rollo, pages 162 -169)

[2] Rollo, page 192.

[3] Per Sheriff's return on auction sale, Annex "P" to Petition, Rollo, pages 65-68.

[4] T.s.n., 18 April 1964, pages 29-31.

[5] Albay vs. Benito, 43 Phil. 576; Laxamana vs. Carlos, 57 Phil. 722.

[6] "ART. 2129. The creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said third person possesses, in the terms and with the formalities which the law establishes.

[7] Now Article 2129, New Civil Code.

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