

JUAN MATEO PETITIONER, V.S. THE COURT OF APPEALS AND SEVERINO ALBERTO, RESPONDENTS.

G.R. No. L-7056. May 31, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

To satisfy a money judgment rendered against Severino Alberto in Civil Case No. 5710 of the Court of First Instance of Bulacan, a piece of land with an assessed value of P3,870. 00 and belonging to the said judgment debtor was levied upon and sold at auction on March 22, 1941 for P529.00. Immediately thereafter, the purchasers sold 'their rights as such purchasers to Juan Mateo and the latter was put in possession of the land.

On October 7, 1943, that is, 2 years 5 months and 15 days after the auction sale, the judgment debtor wrote the sheriff offering to redeem the land, but the offer was not accepted because the time allowed for redemption had already expired.

In view of the refusal of the sheriff to permit him to redeem the land, the judgment debtor filed a complaint in the Court of First Instance of Bulacan, which, as finally amended on May 17, 1949, asked for the annulment of the sale to Juan Mateo by the first purchasers and thereafter to authorize the plaintiff judgment debtor to redeem the land from Juan Mateo upon payment of the sum of P529.00, or to compel the latter to pay him the sum of P6,000.00 as a reasonable price for the land. After the defendants had answered, the case was submitted on a stipulation of facts. The stipulation gives the facts as above summarized with the further statement that the purchasers at auction immediately sold the property "to the herein defendant Juan Mateo xxx who, as purchaser, was installed in the possession of such property; gathering and receiving the products therefrom during the period of redemption and thereafter which are estimated to be at least 120 Cavanese of palay per year, at the conservative price of P8.00 per cavan."

On the basis of the said stipulation of facts, the trial court dismissed the action on the ground that plaintiff had lost his right to redeem the land by failing to exercise said right during the time allowed for that purpose.

But on appeal, the Court of Appeals reversed the judgment of dismissal and adjudged plaintiff owner of the land and entitled to its possession together with indemnity and costs. The case is now before us on appeal by certiorari.

In reversing the judgment of the trial court, the Court of Appeals took the view that although the judgment debtor "was not sufficiently diligent in the exercise and protection of his rights still the redemption should be deemed to have taken place "Ipso facto because it appears from the stipulation of facts" that "the defendant Juan Mateo to whom the purchasers at the execution sale had transferred their rights as such purchasers? was, during the time allowed for redemption; in possession of the land and gathered products therefrom of the total value of P960.00, which was more than what the judgment debtor would have had to pay to redeem the land,

To this view we cannot bring ourselves to agree. The right of redemption in execution sales being statutory, it

must, to make it effective, be exercised in the mode prescribed by the statute. (31 Am. Jur. p. 552.)

The time and manner for the exercise of the right of redemption are provided for in section 26, Rule 39, Rules of Court, as follows:

"SEC. 26 The time and manner of and amount payable on, successive redemptions. Notice to be given" and filed. — The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interests. If the property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with two per centum thereon in addition and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount in addition, the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as often as a redemption is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with two per centum thereon in addition; and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest. Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registrar of deeds of the province, and if any assessments or taxes are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registrar of deeds; if such notice be not filed the property may be redeemed without paying such assessments, taxes, or liens."

It is clear that the Rules give the judgment debtor only 12 months from the date of the sale within which to redeem. After the expiration of that period, says Chief Justice Moran in his Rules of Court (1952 ed., Vol. I, p. 874), "redemption may be made only by redemptioners from other redemptioners who made redemptions within said period."

In the present case, it is agreed that the last day for the exercise of the judgment debtor's right of redemption was March 22 1942. And yet, it was not until October 7 1943, that is more than one year and a half afterwards, that he attempted to exercise such right. As the Court of Appeals itself says, the judgment debtor "was not sufficiently diligent in the exercise and protection of his rights."

It is settled that "when the time in which the debtor may redeem from a valid sale of his property has expired, he has no further right to or interest in, the property sold." (Moren's Rules of Court, Vol. 1, 1952 ed. p. 847., citing *Jones v. Thompson* 27 111, 177; *Massey v. Wescott*, 40 111. 160; *Pearson v. Pearson*, 131 111, 464; *Smith v. Mace*, 137 Ill. 68.) In such case, says this Court in *Lowell vs. Philippine National Bank* (54 Phil. 54, 63), "the purchaser or his accessor in interest is entitled to the proper deed of conveyance, or, what amounts to the same thing, the purchaser becomes the owner of the property purchased, otherwise he would not be entitled to the proper deed of conveyances." In other words, as the Court later concludes, "if the period for redemption expires without the judgment debtor having made use of the right (of redemption), the ownership of the land sold becomes consolidated in the purchaser."

The theory that redemption takes place by operation of law or *Ipso facto* (i. e., without the judgment debtor having taken the steps required for the purpose by section 26, Rule 39) if, during the redemption period, the purchaser at public auction receives income or benefit derived from his occupation of the property in an amount sufficient to

cover the redemption money, is not founded upon any express provision of the Rules. But the Court of Appeals invokes for its support the provisions of the Civil Code on compensation, according to which, where two persons, in their own right, are creditors and debtors of each other and the essential requisites prescribed therefor are present, the debt is extinguished. This view assumes that the judgment debtor and the purchaser at auction owe each other a sum of money, that is to say, that they are, with respect to each other, both creditors and debtors at the same time. The assumption is erroneous. Granting that the purchaser, who, as in this case, had, during the redemption period, possession of the property sold and derived income therefrom, may be made to 'account for said income to the judgment debtor, nevertheless, it is obvious that the latter owed the purchaser nothing, for he was not legally bound to exercise his right of redemption and until he should actually exercise that right he would be under no obligation to pay the purchaser anything. In other words, he could not be considered a debtor to the purchaser just because he could, if he wanted to, redeem the property sold. He might not want to redeem and there is no taking it for granted that he would. As a matter of fact, there might be cases where he would not, as for instance, where the property has greatly depreciated in value. It is true that in the present case the judgment debtor did express his desire to redeem, but that was more than two years and a half after the date of the sale, or more than one year and a half too late. At that time title had already consolidated in the purchaser or his successor in interest in accordance with the pronouncement of this Court in the Powell case, *supra*.

The Rules are specific on the time and mode for redeeming property sold under execution. That mode must be deemed exclusive, as it really is, if we want the law on that matter to be fixed and definite, instead of vague and uncertain.

In view of the foregoing, the decision appealed from is revoked and plaintiff's action dismissed, with costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Reyes, J.B.L., and Endencia, JJ., concur.

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