

MARCELO STEEL CORPORATION, HON. WALFRIDO DE LOS ANGELES, IN HIS CAPACITY AS JUDGE, COURT OF FIRST INSTANCE OF RIZAL, BRANCH IV, QUEZON CITY, AND THE SHERIFF OF QUEZON CITY, PETI...

G.R. Nos. L-34317 & L-34335. November 28, 1973

Ponente: BARREDO, J.

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BARREDO, J.:

Petitions for review of the decision of the Court of Appeals in CA-G. R. No. 47519-R, entitled *Petra Farin, et al., vs. Hon. Walfrido de los Angeles, etc. et al.*, granting a petition for certiorari of herein private respondents, the spouses Benjamin and Petra Farin, and annulling and setting aside the orders separately issued by the Court of First Instance of Quezon City in its Civil Case No. Q-9384 and in L. R. C. Record No. 7681, the first being an order dated December 9, 1970 denying private respondents' motion to stop the Sheriff of Quezon City from proceeding with the extrajudicial fore-closure sale of the properties herein involved which said private respondents had mortgaged to herein petitioner Marcelo Steel Corporation, after the said court had already rendered judgment dismissing the complaint for prohibition to enjoin said foreclosure, but pending the appeal thereof, and the second being the order dated February 4, 1971 granting the same petitioner's motion for a writ of possession of the said properties which it had acquired in the fore-closure sale which the court had refused to restrain in the other case.

The background facts are stated in the decision of the Court of Appeals thus:

"This is a petition for certiorari to annul the order dated December 9, 1970, issued in Civil Case No. Q-9384 of the Court of First Instance of Quezon City, Branch IV, and the writ of possession issued in L. R. C. Rec. No. 7681 of said court.

It appears that on October 30, 1964, the petitioner spouses executed a deed of real estate mortgage, in favor of respondent Marcelo Steel Corporation, hereinafter referred to as respondent corporation over a parcel of land covered by T. C. T. No. 42589 of the Register of Deeds of Quezon City, as security for the payment of a promissory note in the sum of P600,000.00.

On July 24, 1965, the respondent corporation filed with the Sheriff of Quezon City a verified letter-petition for the extra-judicial foreclosure of the afore-mentioned real estate mortgage. Accordingly, the respondent Sheriff of Quezon City advertised and scheduled the extra-judicial fore-closure sale of the mortgaged property for August 26, 1965.

On August 21, 1965, the petitioners filed against the respondent corporation and the respondent Sheriff of Quezon City a petition captioned "Prohibition with Injunction and Damages" docketed as Civil Case No. Q-9384 of the Court of First Instance of Rizal, wherein they prayed that the respondent sheriff be permanently enjoined from proceeding with the scheduled sale at public auction of the mortgaged property, and that the respondent corporation be condemned to pay the petitioners P200,000.00 as actual and moral damages and P50,000.00 as penal and compensatory damages and P30,000.00 as attorney's fees, on the ground

that they have not been in default in the payment of their obligation.

On August 21, 1965, the respondent judge issued an order commanding the respondent Sheriff and the respondent corporation to desist from proceeding with the public auction sale of the mortgage property scheduled on August 26, 1965.

After trial, the respondent judge rendered a decision on October 3, 1970, the dispositive portion of which reads as follows:

'WHEREFORE, judgment is hereby rendered as follows:

- The above-entitled case is hereby ordered DISMISSED, for lack of sufficient basis;
- Ordering the petitioners, jointly and severally, to pay the sum equivalent to 15% of the total obligation due, as reasonable attorney's fees;
- Ordering petitioners to pay respondent Marcelo Steel Corporation, jointly and severally, the sum of P50,000.00 as actual exemplary damages;
- Ordering the petitioners, jointly and severally, to pay the costs of the suit.

The order of status quo issued by the Court under date of August 21, 1965 is hereby LIFTED and SET ASIDE, and the Sheriff of Quezon City may now proceed with the extrajudicial foreclosure of the mortgage.'

Petitioners received a copy of the decision on October 15, 1970.

On October 19, 1970, respondent corporation filed with respondent Sheriff another verified letter-petition informing the latter of the decision rendered in Civil Case No. Q-9384 and praying for the extra-judicial foreclosure of the real estate mortgage. Acting on said letter-petition, the respondent Sheriff issued the necessary notices setting the public auction sale of the mortgaged property on December 9, 1970.

On October 30, 1970, petitioners filed their notice of appeal, appeal bond and record on appeal.

On December 2, 1970, petitioners filed an "Urgent Motion to Require Respondents to Desist From Proceeding With The Public Auction Sale of Petitioners' Properties."

After respondent corporation filed its opposition to said motion, the respondent judge issued on December 9, 1970, an order denying petitioners' aforementioned motion to stop respondent Sheriff from proceeding with the scheduled auction sale of petitioners' mortgaged property. On the same date, the respondent Sheriff proceeded with the auction sale of the mortgaged property, respondent corporation being the successful bidder, and issued the corresponding certificate of sale dated December 9, 1970.

On the same date, December 9, 1970, the respondent Judge issued an order approving petitioners' record on appeal.

On January 12, 1971, the respondent corporation filed in L. R. C. Rec. No. 7681 an independent petition for the issuance of a writ of possession entitled "In the Matter of the Petition For Issuance of Writ of Possession Over a Parcel of Land Covered By Transfer Certificate of Title No. 42589 Of The Office of The Register Of Deeds of Quezon City In The Name Of Mortgagor Petra R. Farin Married To Benjamin Farin; Marcelo Steel Corporation (Mortgagee), Petitioner". This petition was also assigned to the respondent Judge. Petitioners did not file an opposition to said petition.

On January 18, 1971, the respondent Judge issued an order directing the presentation and submission of evidence before the Branch Clerk of Court. After the respondent corporation had submitted its evidence in support of its petition, the respondent Judge issued an order on February 4, 1971, granting the petition for the issuance of a writ of possession.

Thereupon, the petitioners filed the present petition."

Upon these facts, the Court of Appeals held the trial court exceeded its jurisdiction when it denied the motion of the Farins seeking to enjoin the foreclosure sale of their mortgaged properties inasmuch as they had already perfected their appeal from the decision dismissing their petition for prohibition against said sale. According to the appellate court, since the remedy pursued by the Farins was not an ordinary action of injunction within the contemplation of Section 4 of Rule 39 nor one for the annulment of mortgage, but a special civil action of prohibition, the decision therein is not immediately executory as a matter of right but only of sound judicial discretion under Section 2 of the same rule, and considering that the prevailing party had not even moved for immediate execution, the trial court could not have availed of its powers under this last mentioned provision.

It is quite obvious that the Court of Appeals has missed the point. As a matter of fact, it is plain that the trial court did not issue any order of execution. The sheriff's act of proceeding with the foreclosure sale was not done by virtue of any such order of execution, but pursuant to his authority and duty under Act 3135 as amended by Act 4118 governing the extrajudicial foreclosure of mortgages, which is simply to sell the mortgaged properties at public auction to the highest bidder, upon verified petition of the mortgagee and without the need of any judicial order. In other words, the sheriff went ahead not because he was so ordered by the court, but precisely because the court refused to restrain him by dismissing respondents' petition for prohibition and lifting the status quo order it had preliminarily issued upon the filing of the complaint. Under these circumstances, the perfection of respondents' appeal could not by itself have had the effect of restoring the status quo order, without an express order in that sense, which, of course, the court had the power to issue. The Court has so held as early as November 13, 1902 in *Watson & Co. vs. Enrique z*, found in Volume I of the Philippine Reports at pages 480 to 484. The ruling therein made which is very illuminating applies four-square to the case at bar.

"The plaintiff, at the commencement of this action obtained a preliminary injunction as prayed for in its complaint. The case was afterwards tried, and in September, 1902, a final judgment therein was entered in favor of the defendants and the temporary injunction was dissolved.

On the 20th of September a bill of exceptions was perfected and signed by the judge, and a certified copy thereof was then transmitted to this court. In this court the plaintiff has presented a motion asking that the preliminary injunction be continued.

Before discussing the power of this court to grant a preliminary injunction, under these circumstances, it seems necessary to determine whether or not the preliminary injunction granted below was continued in force by the filing of the bill of exceptions. Article 144 of the Law of Civil Procedure, now in force, says: "But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless," etc. Article 1007 of the Revised Statutes of the United States states the manner of obtaining a supersedeas in cases pending in the Federal courts. The meaning of the word "supersedeas" as used in that section has been defined as follows: "A super-sedeas, properly so called, is a suspension of the power of the court below to issue an execution on the judgment or decree appealed from; or, if a writ of execution has issued, it is a prohibition emanating from the court of appeals against the execution of the writ." (*Hovey vs. McDonald*, 109 U. S., 150.)

As so construed, article 1007 of the Revised Statutes of the United States is substantially the equivalent of our article 144. This question as to whether a supersedeas has, in the Federal courts, the effect of continuing in force an injunction dissolved by the lower court has frequently been passed upon by the Supreme Court. That court has said: "The general ruling is well settled that an appeal from a decree granting, refusing, or dissolving an injunction does not disturb its operative effect. (*Hovey vs. McDonald*, 109 U.S., 150-161; *Slaughterhouse Cases*, 10 Wall., 273-297; *Leonard vs. Ozark Land Company*, 115 U. S., 465-468.) When an injunction has been dissolved it can not be revived except by a new exercise of judicial power, and no appeal by a dissatisfied party

can of itself revive it." (Knox Co. vs. Harshman, 132 U. S., 14.)

"The truth is that the case is not governed by the ordinary rules that relate to a supersedeas of execution, but by those principles and rules which relate to chancery proceedings exclusively. * * * In this country the matter is usually regulated by statutes or rules of court, and, generally speaking, an appeal, upon giving the security required by law, when security is required, suspends further proceedings and operates as a supersedeas of execution. * * But the decree itself may have an intrinsic effect which can only be suspended by an affirmative order either of the court which makes the decree or of the appellate tribunal. This court, in the Slaughterhouse Cases, 10 Wall. , 273, decided that an appeal from a decree granting, refusing, or dissolving an injunction does not disturb its operative effect. Mr. Justice Clifford, delivering the opinion of the court, says: 'It is quite certain that neither an injunction nor a decree dissolving an injunction passed in circuit court is reversed or nullified by an appeal or writ of error before the cause is heard in this court.' It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisites for supersedeas were complied with. It was not decided that the court below had no power, if the purpose of justice required it, to order a continuance of the status quo until a decision should be made by the appellate court, or until that court should order the contrary. This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the decree as rendered." (Hovey vs. McDonald, 109, U. S., 159.)

In Minnesota the supersedeas statute provided that the appeal from the order of judgment should "stay all proceedings thereon and save all rights affected thereby." The court of this State, relying upon the last of the two clauses quoted, held that an appeal from an order dissolving an injunction continued the injunction in force. The evils which would result from such a holding are forcibly pointed out by Judge Mitchell in a dissenting opinion. He said: "Although a plaintiff's papers are so insufficient on their face or so false in their allegations that if he should apply on notice for an injunction, any court would, on a hearing, promptly refuse to grant one, yet, if he can find anywhere in the State a judge or court commissioner who will improvidently grant one ex parte, which the court on the first and only hearing ever had dissolves, he can, by appealing and filing a bond, make the ex parte injunction impervious to all judicial interference until the appeal is determined in this court. * * * Such a result is so unjust and so utterly inconsistent with all known rules of equity practice that no court should adopt such a construction unless absolutely shut up to it by the clear and unequivocal language of the statute." (State vs. Duluth St. Ry. Co., 47 Minn., 369.)

The supreme court of that State afterwards, although adhering to that decision on the ground of stare decisis, stated that in their opinion it was unsound. (State ex rel. Leary vs. District Court, 78 Minn., 464.)

We have in these Islands no appeal from orders granting or dissolving preliminary injunctions, yet what was said by Justice Mitchell applies to a case where, upon a full trial in a court below, the judge has decided that neither upon the facts nor the law is the plaintiff entitled to any relief. To allow a plaintiff in such a case, by taking an appeal and giving a supersedeas bond, to continue an injunction in force would be manifestly unjust.

We adopt the rule announced by the Supreme Court of the United States and hold that the filing of the bill of exceptions in the case at bar did not operate to revive the preliminary injunction which was dissolved in and by the final judgment.

We also adopt the other conclusion of that court to the effect that the judge below has the power, if the purposes of justice require it, to order a continuance of the status quo until a decision should be made by the appellate court or until that court should order to the contrary. We have already in effect declared that principle in the case of Maximo Cortes vs. Palanca Yutivo, decided August 6, 1902."

This doctrine was reiterated a few days later in Sitia Teco vs. Ventura, 1 Phil. 497 thus:

"During the pendency of the suit the plaintiff applied for a preliminary injunction on the ground, as stated in the oral argument of counsel, that the house placed by the plaintiff upon the lot having been destroyed by order of the municipality the defendants repossessed themselves of the premises and were preparing to build a house thereon.

Upon a trial of the case judgment was rendered against the plaintiff on the merits of the suit, and the injunction was dissolved. The plaintiff has appealed the case by a bill of exceptions and has made application to this court to restore the injunction on the ground that the operative effect of the judgment by which the injunction was dissolved has, by virtue of the appeal taken, and the giving of a supersedeas bond, been lost, and that the judgment in the case should not have the effect of disturbing the inter-locutory injunction. In the case of *Watson & Co. vs. Enriquez*, decided by this court October 26, 1902, it is held that an appeal from an order dissolving an injunction does not suspend the operation of the decision so as to revive the interlocutory injunction."

We had occasion to reaffirm the same ruling in *Aguilar vs. Tan*, G. R. No. L-23600, rendered on January 30, 1970, 31 SCRA 205-214.

Now, in connection with the issuance by the trial court, upon motion of petitioner and without objection of the Farins, of the writ of possession in the L. R. C. case, the appellate court ruled that the same amounted to an execution of the decision in the civil case, and such being the case, the trial court should have desisted from doing it in view of the respondents' appeal. We do not agree. It is Our considered opinion that the writ of possession was properly issued, since, as already discussed above, the foreclosure proceeding conducted by the sheriff was not predicated on any judicial order. Again, the erroneous pose of the Court of Appeals runs counter to standing jurisprudence on the matter. In *De Gracia vs. San Jose*, 94 Phil. 623, which is likewise on all fours with the situation presently before Us, the Court held:

"Petitioner is the registered owner of the real property described in Transfer Certificate of Title No. 3731 of the Land Records of the City of Manila, which, by way of extrajudicial foreclosure of a mortgage constituted upon the same in favor of the Rehabilitation Finance Corporation, was on November 14, 1952, sold to the Republic Surety & Insurance Co., Inc., as the highest bidder at a public auction conducted by the sheriff of said city under a special power of attorney attached to the mortgage deed and pursuant to Act No. 3135, as amended by Act No. 4118. Three days after the sale, the purchaser filed an ex parte motion, duly verified, in the fourth branch of the Court of First Instance of Manila as authorized in section 7 of the same Act, as amended, praying that it be given possession of the property during the redemption period and offering to furnish the corresponding bond. But before the motion could be acted upon, herein petitioner filed an opposition thereto and followed it with a complaint for the annulment of the sale and a motion to dismiss the petition for a writ of possession or to postpone consideration thereof until the complaint for annulment could be decided. Being specifically empowered by the Act to grant such writ on an ex parte motion by the purchaser, the court refused to be side-tracked and authorized the issuance of the writ upon the filing of a bond without prejudice to the right of the oppositor to question the validity of the sale in the manner provided by law.

Contending that the lower court acted without jurisdiction and with grave abuse of discretion in authorizing the issuance of the writ, petitioner has come to this Court for a writ of certiorari and prohibition.

The petition is without merit.

Sections 7 and 8 of Act No. 3135, as amended, provide:

"SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating

the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form or an ex parte motion in the registration or cadastral proceedings if the pro-perty is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

"SEC. 8. The debtor may, in the proceedings in which possession was requested but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal."

As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the cor-responding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is ex parte.

It thus appear that the respondent Judge, in ordering the issuance of a writ of possession in this case, merely obeyed an express mandate of the law in the manner and upon the terms therein provided, and petitioner may not complain that he has been deprived of a substantial right without due process, because the order states that it is to be "without prejudice to the rights of the oppositor to question the validity of the above mentioned sale in the manner provided by law."

Having merely followed an express provision of the law, whose validity is not questioned, the Judge cannot be charged with having acted without jurisdiction or with grave abuse of discretion. The rule that the purchaser at a judicial public auction is not entitled to possession during the period of redemption is not applicable to a sale under Act No. 3135 where the granting of said possession is expressly authorized. x x x"

As may be gleaned from the foregoing dissertation of Justice Alex Reyes for the Court, even the main remedy of prohibition sought by the Farins was uncalled for. The plain, speedy and adequate and even more expeditious remedy available to them was that specifically provided for in Section 8 of Act 3135, as amended, quoted in the opinion, which is by the summary petition under Section 112 of Act 496, the Land Registration Act. We surmise that the issue of alleged usury raised by respondents must have been considered by the trial judge who also decided the civil case in which said defense was raised as not substantial enough to warrant its being taken up in

an ordinary action outside of the land court.

PREMISES CONSIDERED, the decision of the Court of Appeals under review is reversed and the petition for certiorari filed by the respondent Farins therein is dismissed, with costs against said respondents.

Zaldivar, (Chairman), Fernando, Antonio, Fernandez, and Aquino, JJ., concur.

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