

**ARSENIO REYES, PLAINTIFF AND APPELLANT, VS. SINAI C. HAMADA AND GERALDA M. HAMADA, DEFENDANTS AND APPELLEES.***G. R. No. L-19967. May 31, 1965*

Ponente: BARRERA, J.

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This is an appeal by Arsenio Reyes from the order « the Court of First Instance of Baguio, dismissing the complaint against the spouses Sinai C. Hamada and Geralda in Civil Case No. 1041, by reason of the pendency of another action (Civil Case No. 1025 of the same court) between the same parties, over the same properties an where the cause of action in this case, if at all, properly be brought up. In this appeal, plaintiff-appellant assails the correctness of the aforesaid order of dismissal on the ground that there is no identity of cause of action between Civil Case No. 1025 and Civil Case No. 1041, because the issue in the first is the matter of ownership and possession of the properties in dispute, whereas second is concerned with the recovery of rentals paid to the defendants by the tenants of the properties, to which rentals plaintiff-appellant is allegedly entitled under the Rules.

The facts of this case are not controverted.

As a consequence of the extra judicial foreclosure proceeding instituted by the Philippine National Bank, certain real properties of the spouses Hamada, located in Baguio and mortgaged to the said institution, were sold at public auction on February 11, 1960, and awarded to Arsenio Reyes, the highest bidder, for P38,000.00. At 10 o'clock in the evening of February 10, 1961 (the last day of redemption), the mortgagors delivered to the City Sheriff of Baguio checks covering the redemption amount, which payment was accepted by the said official. The purchaser Reyes, however, refused to recognize the validity of such redemption and thereafter demanded the delivery of possession of the properties which remained with the defendant-mortgagors. Upon refusal of the spouses Hamada to do so, Reyes died on March 9, 1961, Civil Case No. 1025 in the Court of First Instance of Baguio for declaration of ownership and right to possession of the said properties by reason of his purchase thereof at the auction sale of February 11, 1960. During the pendency of said case, or on May 26, 1961, Reyes filed the complaint in the present case (Civil Case No. 1041), for recovery of the rentals paid by the tenants of the properties involved in the dispute to defendants Hamada, on the ground that under Section 30 of Rule 39 of the (old) Rules of Court, plaintiff, as purchaser of the properties, was entitled to the rentals receivable from the tenants thereof which were paid to the mortgagors during in f. after the period of redemption. Upon defendants «on to dismiss, the lower court issued the order now appeal.

The question to be determined here is whether tendency of Civil Case No. 1025, wherein the validity of the tender of redemption price and the ownership and the right to possession of the properties are in issue, precludes the institution of another action for the recovery of rentals receivable from the same properties.

Appellant bases his argument on Section 30 of Rule 89 of the old Rules of Court which reads:

“Sec. 30. Rents and profits pending redemption. Statement thereof and credit therefor on redemption.—The

purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive the rents of the property sold or the value of the use and occupation thereof when such property is in the possession of a tenant But when any such rents and profits have been received by the judgment creditor or purchaser, or by a redemptioner, or by the assignee of either of them, from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; \* \* \*.';

and concludes that, as it is not denied that appellant was the purchaser of the properties at the public auction held on February 11, 1960 and the said properties were being occupied by paying tenants, the right to the rentals thereof, granted to the said purchaser by the provision, can not be abated by any ruling in the involving the ownership and possession of the same properties.

Construing this Section 30 of Rule 39, which is applicable also to properties purchased in extrajudicial closure proceeding, this Court said:

"The rule, therefore, is clear that if during the period of redemption the judgment-debtor is in possession and the property sold, he is entitled to retain it and to receive its fruits, the purchaser not being entitled to its possession; but if the property is in the possession of a tenant, it is only then that the purchaser is entitled to receive its rents or the reasonable value of its use and occupation. In such a case, the purchaser is accountable for the amount thus received to the judgment—debtor he effects the redemption. \* \* \*." (Chan vs. Espe, G.R. No. L-16777, April 20, 1961.)

In other words, before the expiration of the 1-year period within which the judgment-debtor or mortgagor may redeem the property, the purchaser thereof is not entitled, as a matter of right, to possession of the same. Thus, while it is true that the Rules of Court allow the purchaser to receive the rentals if the purchased property is occupied by tenants, he is, nevertheless, accountable to the judgment-debtor or mortgagor, as the case may be, for the amount so received and the same will be duly credited against the redemption price when the said debtor or mortgagor effects the redemption. Differently stated, the rentals receivable from tenants, although they may be collected by the purchaser during the redemption period, do not belong to the latter but still pertain to the debtor or mortgagor. The rationale for the Rule, it seems, is to secure for the benefit of the debtor or mortgagor, the payment of the redemption amount and the consequent return to him of his properties sold at public auction.

In Civil Case No. 1025, the pendency of which was the reason given by the lower court for dismissing Civil Case No. 1041, for recovery of rentals, the question involved is whether or not there was a proper and timely redemption of the properties sold at public auction. It is clear, therefore, that the right to the rentals during the period of redemption and thereafter is necessarily included in the issue of the timeliness and adequacy of the redemption made or exercised by the mortgagors. Consequently, the pendency of Civil Case No. 1025 is a bar to the prosecution of Civil Case No. 1041, inasmuch as the issues in both cases can properly be resolved only in one. The lower court, therefore, committed no error in dismissing the complaint in this case.

Wherefore, the order appealed from is hereby affirmed, with costs against the appellant.

So ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Paredes, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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