

**SPOUSES BENITO MANALANSAN AND INES VITUG-MANALANSAN,
PETITIONERS, VS. HON. MARIANO CASTAÑEDA, JR., PRESIDING
JUDGE, BRANCH III, CFI OF PAMPANGA; ADORACION VDA. DE
DANAN, FOR HER...**

G.R. No. L-43607. June 27, 1978

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari and mandamus, to annul and set aside the order of the respondent judge, dated November 4, 1975, vacating the writ of execution he previously issued, and to direct said respondent judge to order the sale of the property involved therein, at public auction.

It appears that on June 22, 1962, the spouses Dominador and Adoracion Danan constituted a mortgage over their fishpond and residential lot, situated at Lubao, Pampanga, in favor of herein petitioners, spouses Benito Manalansan and Ines Vitug- Manalansan, to guarantee the payment of the amount of P62,574.80, within one (1) year, with 12% interest thereon, compounded annually. As the mortgagors did not pay notwithstanding demands, an action for the foreclosure of the mortgage was filed with the Court of First Instance of Pampanga on April 2, 1966. After trial, judgment was rendered, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants sentencing the latters to pay the former, jointly and severally, within a period of ninety (90) days from date, the sum of P62,574.80 with interest at 12% compounded annually, from June 2, 1962 until the full obligation is paid; to pay further the sum equivalent to ten (10) percentum of the amount due and unpaid as attorney's fees, plus moral damages in the amount of P5,000.00, and costs of suit. In the event that defendants shall fail to make payment within the period heretofore stated, let the properties mortgaged and described in paragraph '3' of the complaint be sold at public auction, with the proceeds thereof to be applied to the payment of the above-mentioned mortgage indebtedness and other sums herein adjudged." [1]

Defendant spouses Dominador and Adoracion Danan appealed to the Court of Appeals which modified the judgment by eliminating therefrom that portion ordering the said spouses to pay moral damages.[2] Dissatisfied, the defendant spouses filed a petition for review with this Court,[3] but their petition was denied on September 25, 1974.[4]

In due time, the records of the case were remanded to the court below and upon application, a writ of execution was issued on January 13, 1975.[5] But, when the Sheriff was about to levy upon the mortgaged properties, herein private respondent Adoracion Danan, opposed the levy on execution and filed a motion to set aside the writ of execution for reasons that the properties are in custodia legis and that the decision cannot be enforced by a writ of execution, but that the judgment should be presented as a money claim in the Intestate Estate of Dominador Danan, pursuant to Sec. 5, Rule 86 of the Revised Rules of Court since Dominador Danan had died on November

7, 1970, while the case was pending appeal before the Court of Appeals and intestate proceedings for the settlement of his estate had already been instituted.[6]

Acting upon the motion, the respondent Judge issued an order on April 24, 1975, directing the sheriff to desist from enforcing the writ of execution, and set the incident for hearing on May 20, 1975.[7]

After hearing the parties, the respondent Judge issued an order on November 4, 1975, setting aside the writ of execution. The dispositive portion of the order reads, as follows:

"WHEREFORE, in the light of all the foregoing consideration, the Court hereby sets aside the writ of execution heretofore issued on plaintiffs' motion thru their former counsel, and in lieu thereof hereby orders that a copy of this order embodying the judgment herein sought to be executed (see paragraph 3 on page 2 hereof) be served to the Administratrix of the estate of the late Dominador Danan thru the Intestate Court, Branch II, Guagua, Pampanga, with the indorsement of this coordinate Branch of the Court for the execution of said judgment." [8]

The petitioners filed a motion for the reconsideration of said order,[9] but their motion was denied.[10] Unable to obtain relief, the spouses Benito Manalansan and Ines Vitug-Manalansan filed the instant petition, seeking the annulment of the order dated November 4, 1975; and to direct the respondent Judge to proceed with the execution of the judgment rendered in the foreclosure proceedings.

The petitioners contend that the respondent Judge abused his discretion, amounting to lack of jurisdiction, in delegating the execution of a judgment to the probate court who has no jurisdiction to enforce a lien on property.

There is merit in the contention. To begin with, the saving clause in Sec. 7, Rule 86 of the Revised Rules of Court,[11] which the respondent Judge required to be performed and the observance of which he gave as reason for setting aside the writ of execution he had previously caused to be issued, and in delegating the authority to execute the judgment in the foreclosure proceedings to the probate court, does not confer jurisdiction upon the probate court, a court of limited jurisdiction, to enforce a mortgage lien. Nor can it be relied upon as sufficient ground to delegate the execution of the judgment of foreclosure to the probate court. As stated, the rule merely reserves a right to the executor or administrator of an estate to redeem a mortgaged or pledged property of a decedent which the mortgagee or pledgee has opted to foreclose, instead of filing a money claim with the probate court, under said Section 7 of Rule 86. While the redemption is subject to the approval of the probate court, the exercise of the right is discretionary upon the said executor or administrator and may not be ordered by the probate court upon its own motion.

Besides, the action filed herein is for the foreclosure of a mortgage, or an action to enforce a lien on property. (Under Sec. 1, Rule 87 of the Revised Rules of Court,[12] it is an action which survives. Being so, the judgment rendered therein may be enforced by a writ of execution. In the case of *Testamentaria de Don Amadeo Matute Olave vs. Canlas*,[13] the Court ruled that an action to enforce a lien on property may be prosecuted by the interested person against the executor or administrator independently of the testate or intestate proceedings "for the reason that such claims cannot in any just sense be considered claims against the estate, but the right to subject specific property to the claim arises from the contract of the debtor whereby he has during life set aside certain property for its payment, and such property does not, except in so far as its value may exceed the debt, belong to the estate." (Emphasis supplied)

Since the mortgaged property in question does not belong to the estate of the late Salvador Danan, according to the foregoing rule, the conclusion is reasonable that the probate court has no jurisdiction over the property in

question, and that the respondent Judge had abused his discretion in delegating the execution of the judgment to the probate court.

The fact that the defendant Salvador Danan died before, and not after the decision of the Court of Appeals became final and executory will not nullify the writ of execution already issued. Thus, in *Miranda vs. Abbas*,^[14] judgment was rendered two months before the death of the defendant. Since neither the defendant nor his heirs after his death appealed from the judgment, the writ of execution was issued as a matter of course. The death of the defendant was communicated to the trial court six months after the decision had become final. The successors of the decedent contended that the writ of execution issued was void because contrary to Section 7, Rule 39,^[15] the defendant died before, not after, the entry of judgment. The Court rejected the theory, saying:

"We cannot accept this argument. The provision (Section 7 of Rule 39) relied upon by the petitioners cannot be so construed as to invalidate the writ of execution already issued in so far as service thereof upon the heirs or successors-in-interest of the defendant is concerned. It merely indicates against whom the writ of execution is to be enforced when the losing party dies after the entry of judgment or order. Nothing therein, nor in the entire Rule 39, to our mind, even as much as intimates that a writ of execution issued after a party dies, which death occurs before entry of the judgment, is a nullity. The writ may yet be enforced against his executor or administrator, if there be any, or his successors-in-interest."

In the light of the foregoing, We hold that the respondent Judge committed an error and acted with grave abuse of discretion in setting aside the writ of execution and in ordering that the judgment be served on the administratrix of the estate of the late Dominador Danan, through the intestate court, Branch II of the Court of First Instance of Pampanga, with his indorsement for the execution of the judgment.

WHEREFORE, the petition is granted and the orders of the respondent Judge dated November 4, 1975 and March 31, 1976 are hereby annulled and set aside and the case is remanded to the court below for the execution of the judgment. Costs against the private respondent Adoration Danan.

SO ORDERED.

Fernando, (Chairman), Barredo, and Santos, JJ., concur.

Antonio, J., concurs in the opinion of J. Aquino.

[1] Rollo, p. 1.

[2] *Id.*, p. 7.

[3] G.R. No. L-39180, entitled, "Dominator Danan, et al., petitioners, versus Hon. Court of Appeals, et al., respondents."

[4] p. 50, rollo of L-39180.

[5] Rollo, p. 15.

[6] *Id.*, p. 17.

[7] *Id.*, p. 23.

[8] *Id.*, p. 32.

[9] Id., p. 37.

[10] Id., p. 40.

[11] reading as follows:

"x x x but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made."

[12] Said section provides:

"Section 1. Actions which may and which may not be brought against executor or administrator.- No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover a real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal may be commenced against him."

[13] G.R. No. L-12709, Feb. 28, 1962, 4 SCRA 463.

[14] L-20570, January 27, 1967, 19 SCRA 117.

[15] Said section provides:

"Sec. 7. Execution in case of death of party.- Where a party dies after the entry of the judgment or order, execution thereon may issue, or one already issued may be enforced in the following cases:

(a) In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

(b) In case of the death of the judgment debtor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon;

(c) In case of death of the judgment debtor after execution is actually levied upon any of his property, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to corresponding executor or administrator for any surplus in his hands."

CONCURRING OPINION

AQUINO, J.:

I concur. The lower court in its decision of April 23, 1969 ordered the mortgagors, the spouses, Dominador Danan and Adoracion F. Danan, to pay the mortgage debt within ninety days "from date" and, in case of failure to do so, the mortgaged properties should be sold at public auction. (Civil Case No. 2944, CFI of Pampanga, San Fernando Branch III). The mortgagors appealed to the Court of Appeals.

On November 7, 1970, or during the pendency of the appeal, Dominador Danan died but his death was not reported to the court. In fact, in the petition for certiorari filed in this Court on September 18, 1974, Dominador Danan was made a petitioner, as if he was still alive (L-39180, Dominador Danan, et al. vs. Court of Appeals).

The Court of Appeals affirmed the lower court's judgment with the modification that the award of moral damages was eliminated (Manalansan vs. Danan, CA-G. R. No. 49109-R, July 3, 1974). This Court denied the petition for

the review of that decision (L-39180, *supra*).

In 1971, an intestate proceeding was filed for the settlement of Dominador Danan's estate. His wife, Adoracion Vitug-Danan, was named administratrix (Spec. Proc. No. G-22, CFI of Pampanga, Guagua Branch II).

On January 13, 1975 the trial court issued a writ of execution requiring the mortgagors to pay the mortgage debt, plus interest, "within 90 days from date" (meaning the date of the writ) and, should there be no such payment, the sheriff was commanded to sell the mortgaged properties at public auction.

At this juncture, it should be observed, parenthetically, that section 2, Rule 68 of the Rules of Court provides that the trial court after hearing shall order that the mortgage debt should be paid into court "within a period of not less than ninety (90) days from the date of the service of such order". This provision cannot be literally complied with in case the mortgagor appeals from the lower court's judgment. It would seem that the period for the payment to the court of the mortgage debt should be reckoned from the date of the entry of judgment.

In the instant case, it may be repeated that the trial court ordered the payment of the mortgage debt within ninety days "from date", without specifying what date is contemplated. The clerk of court in the writ of execution interpreted that phrase as ninety days from the date of the writ.

The trial court acted correctly in issuing the writ of execution. It erred in subsequently setting aside that writ and in directing that the copy of the judgment "be served to the administratrix" of the intestate estate of Dominador Danan (said administratrix is also a party in the foreclosure proceeding), "thru the intestate court", "for the execution of said judgment".

The trial court justified that order by citing the provision in section 7, Rule 86 of the Rules of Court that in case the mortgagor dies, the executor or administrator of his estate may redeem the mortgaged property under the direction of the probate court. In the trial court's view, in order to implement that provision, the probate court has to be apprised of the mortgage debt so that it can decide whether the mortgaged property should be sold at public auction.

The trial court's interpretation of section 7 of Rule 86 is erroneous. When the mortgagor, Dominador Danan, died during the pendency of his appeal, the action for foreclosure was not extinguished because the claim against him is not a pure money claim but an action to enforce a mortgage lien. It is an action which survived his death and which can proceed independently of the intestate proceeding for the settlement of his estate (Secs. 16, 17 and 21, Rule 3 and sec. 1, Rule 87, Rules of Court).

The situation in the instant case is not the one contemplated in section 7, Rule 86 of the Rules of Court Which refers to a case where the mortgagor is already dead at the time the mortgagee decides to enforce his mortgage to lien.

In this case, one of the mortgagors, Mrs. Danan, survived her husband and is a defendant in the foreclosure proceeding. She is also the administratrix of her husband's estate. She should be substituted for her deceased husband in the foreclosure case, Civil Case No. 2944.

The writ of execution should be served upon her. It is then incumbent upon her to apprise the probate court whether the mortgaged properties should be redeemed and to suggest to the probate court how funds could be raised for that purpose. That is how the provision in section 7, Rule 86 may be implemented. The directive in the writ of execution is a directive to redeem the mortgaged properties within the ninety-day period.

The contention of the petitioner that the mortgaged properties cannot be sold at public auction because they are in custodia legis in the intestate proceeding is wrong. If the said properties are in custodia legis, then it is the San

Fernando branch, where the foreclosure case is pending, that has custody of the said properties.

At any rate, it should be noted that properties in custodia legis may now be attached (Last par. of sec. 7, Rule 57, of the Rules of Court). That provision is not found in section 7, Rule 59 of the 1940 Rules of Court).

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