

DEVELOPMENT BANK OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DIONISIO MIRANG, DEFENDANT AND APPELLANT.

G.R. No. L-29130. August 08, 1975

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal was originally taken to the Court of Appeals, which certified it here because it involves purely legal questions.

The appealed decision was rendered by the Court of First Instance of Davao on May 14, 1963 in its Civil Case No. 3762, and modified by its Order of July 1, 1963. It directed the defendant, now appellant, to pay the plaintiff Development Bank of the Philippines, now appellee, the sum of P16,013.13 plus 6% interest per annum from July 30, 1957[1] up to the date of payment, but deducting there from the sum of P360.00 representing the value of an engine, referred to in paragraph 11 of the stipulation of facts. The defendant was likewise ordered to pay P500.00 as attorney's fees, plus the costs of the suit.

From the stipulation submitted to the trial court it appears that on September 7, 1950 the appellant obtained approval of a loan of P14,000.00 from the Rehabilitation Finance Corporation,[2] secured by a first mortgage on defendant's homestead, for the following purposes:

P1,000 for purchase of work animals and farm implements;

P1,500 for construction of farmhouse and laborer's quarters; and

P11,500 for development and maintenance of 18.5 hectares of abaca land.

The loan was released gradually to the appellant up to a total of P13,000.00. Thereafter the appellee refused to make any further releases because the plantation which was being financed was attacked by mosaic disease, which destroyed the abaca plants. The appellant on his part, failed to pay the yearly amortizations; so in accordance with the terms of the promissory notes he had signed and the mortgage contract itself, the provincial sheriff of Davao, upon request of the appellee; foreclosed the mortgage extrajudicially under the provisions of Act 3135, as amended, and sold the mortgaged property at public auction on July 30, 1957. By that time the appellant's indebtedness, including interest, had reached P19,714.35, besides the expenses of the auction sale and registration fees, which amounted to P101.00. The appellee, as the highest bidder for P2,010.00, acquired ownership of the mortgaged property. The appellant was duly advised of the sale, with the information that the same was subject to his right of redemption within one year from July 30, 1957. This right he had not exercised when the complaint was filed by the appellee on May 29, 1962.

In his brief the appellant assigns five (5) errors, which may be condensed into the following issues:

(1) Whether or not the creditor Development Bank of the Philippines has a right to recover the balance of the

indebtedness after the mortgaged property was sold for less than the amount thereof under extrajudicial foreclosure pursuant to Act 3135, as amended;

(2) Whether or not the debtor, appellant Mirang, may be exempted from paying the loan on the ground that it had been granted to him for the purpose of developing his homestead by planting it to abaca, and that said abaca was destroyed by mosaic disease; or, failing that, whether or not his obligation may be reduced by this Court; and

(3) Whether or not the mortgage debtor who wishes to repurchase his homestead should pay therefor only the price paid by the purchaser at the auction sale, or the total obligation incurred by him and still outstanding.

On the first issue, the appellant contends that because the mortgage was extrajudicially foreclosed and sold at less than the mortgage debt under Act 3135 the appellee is not entitled to recover the deficiency because neither this Act, as amended, nor the mortgage contract itself, contains any provision giving such right to the mortgagee.

The same question has been settled by this Court in the case of *Philippine Bank of Commerce vs. Tomas de Vera*,^[3] where We held:

"The sole issue to be resolved in this case is whether the trial Court acted correctly in holding appellee Bank entitled to recover from appellant the sum of P99,033.20 as deficiency arising after the extrajudicial foreclosure, under Act No. 3135, as amended, of the mortgaged properties in question. It is urged, on appellant's part, that since Act No. 3135, as amended, is silent as to the mortgagee's right to recover deficiency arising after an extrajudicial foreclosure sale of mortgage, he (Mortgagee) may not recover the same.

"A reading of the provisions of Act No. 3135, as amended, (re extrajudicial foreclosure) discloses nothing, it is true, as to mortgagee's right to recover such deficiency. But neither do we find any provision there under which expressly or impliedly prohibits such recovery.

"Article 2131 of the new Civil Code, on the contrary, expressly provides that 'The form, extent and consequences of a mortgage, both as to its constitution, modification and extinguishment, and as to other matters not included in this Chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law,' Under the Mortgage Law, which is still in force, the mortgagee has the right to claim for the deficiency resulting from the price obtained in the outstanding obligation at the time of the foreclosure proceedings. (See *Soriano vs. Enriquez*, 24 Phil. 806; *Banco Nacional vs. Barreto*, 53 Phil. 995) Under the Rules of Court (Section 6, Rule 70[*]), 'Upon the sale of property, under an order for a sale to satisfy a mortgage or other incumbrance thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the Court, upon motion, should render a judgment against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, x x x' It is true that this refers to a judicial foreclosure, but the underlying principle is the same, that the mortgage is but a security and not a satisfaction of indebtedness."

Appellant invites the attention of this Court to the new provisions of the Civil Code on pledge, particularly Article 2115, which provides:

"The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. x x x .If the price of the sale is less, neither shall the creditor be entitled to the deficiency, notwithstanding any stipulation to the contrary."

as well as to the fact that in chattel mortgage under Art. 1484, paragraph 3, the creditor shall have no further action to recover any unpaid balance if he has chosen to foreclose the chattel mortgage. These provisions, far from supporting the appellant's stand, militate against it, because they show that when the Legislature intends to bar or occlude a creditor from suing for any deficiency after foreclosing and selling the security given for the obligation,

it makes express provision to that effect. In the same case of *Philippine Bank of Commerce vs. De vera*, supra, this Court said apropos:

"It is then clear that in the absence of a similar provision in Act 3135, as amended, it cannot be concluded that the creditor loses his right given him under the Mortgage Law and recognized in the Rules of Court, to take action for the recovery of any unpaid balance on the principal obligation, simply because he has chosen to foreclose his mortgage extrajudicially, pursuant to a special power of attorney given him by the mortgagor in the mortgage contract. As stated by this Court in *Medina vs. Philippine National Bank* (56 Phil. 651), a case analogous to the one at bar, the step taken by the mortgagee-bank in resorting to extra-judicial foreclosure under Act No. 3135, was 'merely to find a proceeding for the sale, and its action cannot be taken to mean a waiver of its right to demand the payment of the whole debt.' "

On the second issue the appellant asks that if he cannot be completely absolved he should at least be given a reduction of his indebtedness because of his inability to realize any income from the abaca he planted. His predicament may evoke sympathy, but it does not justify a disregard of the terms of the contract he entered into. His obligation thereunder is neither conditional nor aleatory; its terms are clear and subject to no exception.

The third issue has likewise been resolved by this Court in a similar case.[4] The issue posed there involved the price at which the mortgagor should redeem his property after the same had been sold at public auction — whether the amount for which the property was sold, as contended by the mortgagor, or the balance of the loan obtained from the banking institution, as contended by the mortgagee RFC. Cited in that case was Section 31 of Com. Act No. 459, which was the special law applicable exclusively to properties mortgaged with the RFC, as follows:

"The mortgagor or debtor to the Agricultural and Industrial Bank*, whose real property has been sold at public auction, judicially or extra-judicially, for the full or partial payment of an obligation to said Bank, shall within one year from the date of the auction sale, have the right to redeem the real property by paying to the Bank all the amount he owed the latter on the date of the sale, with interest on the total indebtedness at the rate agreed upon in the obligation from said date, unless the bidder has taken material possession of the property or unless this has been delivered to him, in which case the proceeds of the property shall compensate interest. x x x"

The same provision applies in the instant case. The unavoidable conclusion is that the appellant, in redeeming the foreclosed property, should pay the entire amount he owned to the Bank on the date of the sale, with interest thereon at the rate agreed upon.

WHEREFORE, the decision appealed from is affirmed, with costs.

Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

Castro, J., concurs in a separate opinion.

Makasiar, J., dissents in a separate opinion.

[1] The date of the auction sale of the mortgaged property.

[2] Later converted into the Development Bank of the Philippines under R.A. 2081, approved June 14, 1958.

[3] G.R. No. L-18816, Dec. 29, 1962, 6 SCRA 1026.

* Now Rule 68, New Rules of Court

[4] *Jesus Nepomuceno, et al. vs. RFC*, L-14897, Nov. 23, 1960, 110 Phil. 42.

[*] The Agricultural & Industrial Bank subsequently became the RFC, under Rep. Act No. 85.

CONCURRING OPINION

CASTRO, J.:

If we go by conventional legal wisdom, there can be no debate on the three conclusions reached by Chief Justice Makalintal in his resolution of the main issues in the case at bar; they are clearly in accord with statutory law and jurisprudence.

These conclusions may be restated thus:

- (a) The Development Bank of the Philippines as creditor can recover the balance of the defendant Mirang's indebtedness after the later's real estate property was sold for very much less than the amount of his indebtedness by virtue of an extra-judicial foreclosure under the provisions of Act 3135, as amended;
- (b) Mirang is not exempt from paying the balance of his indebtedness even if the proceeds of the loan he obtained from the DBP which he invested in the planting of abaca in his homestead went to waste because of the destruction of his abaca plants by mosaic disease; nor has this Court authority to reduce his net liability to the DBP; and
- (c) To redeem his homestead Mirang must pay not merely the price paid for it by the DBP at the auction sale but the total of his obligation still due and owing to the DBP.

But even as I perforce concur in the above-stated conclusions, I cannot ignore — as in fact I here add my own emphasis to — the cogent and pointed observations articulated by Justice Felix V. Makasiar in his dissenting opinion.

I find the following inescapably and at once particularly disturbing:

- (a) The DBP, as the highest bidder at the auction sale, bought the property of the debtor Mirang, which has a quite sizeable area of 18-1/2 hectares, for the miniscule sum of only P2,010, or a miserable P110 per hectare;
- (b) The DBP displayed not an ounce of sympathy for Mirang's inability to amortize his mortgage loan, occasioned by a fortuitous event — of course beyond his control in the form of infestation of his abaca plantation by mosaic disease, a disease that the Government itself, with all its expertise and resources, has thus far been unable to eradicate;
- (c) The DBP apparently did not attach the least bit of importance to the fact that the destruction of Mirang's abaca plantation by mosaic disease was not caused by his negligence nor by his failure to take necessary precautionary measures; and
- (d) Created fundamentally to assist, by extending credit facilities, in the development and expansion of agriculture and industry and the broadening and diversification of the national economy, the DBP, in relation to Mirang, has actually, by the action it has taken, negated its basic mission.

Justice Makasiar makes the pertinent suggestion that the DBP restructure the account of Mirang. Like Justice Makasiar, I personally know that the DPB and similar Government financial institutions (the Philippine National Bank, the Government Service Insurance System, and the Social Security System) have restructured accounts of debtors. Considering the inordinate appreciation of land values everywhere, there appears to be no insuperable obstacle to the DBP restructuring the account of Mirang, not only to enable him to pay his indebtedness in easy terms over a period of years but as well to make available additional funds to be utilized by him in the development of his 18-1/2-hectare land. It is not too late in the day - in this, our compassionate society — for the DBP to do so.

It is well to remember that uncompromising or mechanical application of the letter of the law has resulted, not infrequently, in the denial of moral justice.

DISSENTING OPINION

MAKASIAR, J.:

The Courts of the Republic are courts of equity as well as of law.

While as a matter of strict law, the position of appellant is untenable; the admitted equities of the case should absolve appellant from further liability on the following grounds:

1. The abaca plantation mortgated on September 7, 1950 for the original loan of P14,000.00 to the appellee DBP, has an area of 18.5 hectares. Out of the approved loan, only the amount of P13,000.00 was gradually released to the appellant, after which further releases were stopped because the abaca plantation was attacked by mosaic disease which destroyed the abaca plants. The outstanding indebtedness however of appellant later amounted to P19,714.35 including interest. As the highest bidder, the appellee DBP bought the said property for only P2,010.00 at the auction sale on July 30, 1957. Obviously, the market value of the plantation must have increased in 1957 after the lapse of about 7 years, and especially now after about 18 years. Its market value even in 1957 could not be less than the outstanding indebtedness of the appellant considering that it merited in 1950 a loan of P14,000.00; and its present market value must be a lot more.

2. The failure of the appellant to pay the yearly amortizations on the mortgage was neither malicious nor deliberate. His inability to meet the yearly amortization was due to the fact that his plantation was attacked by mosaic disease, which not even the government could successfully eradicate until this date. This is practically a fortuitous event like epidemic, pestilence, floods or locusts (Vol. IV, Tolentino, Civil Law, 1973 ed. p. 119, citing 3 Salvat 83-84; Vol. IV, Caguioa, Civil Law, 1968 ed. pp. 88-89, citing 3 Castan, 8[th] ed., p. 159). There is no showing that the disease infected his abaca plantation because of his negligence or omission to take precautions against it. Considering the unforeseen tragedy that befell appellant as well as the importance of abaca in the economy of the nation, the government should not merely view the said plight of appellant with sympathy, but must give positive recognition to the appellant's right under the circumstances to be relieved of further liability. As above intimated, the present market value of the abaca plantation of about 18.5 hectares could amply cover the unpaid deficiency of P16,013.13 including interest.

3. As originally conceived on October 29, 1946 in its charter, Republic Act No. 85 as approved by Congress, the main purpose of the RFC was "to provide credit facilities for the rehabilitation and development of property damaged by war, and broadening and diversification of the national economy ..." (Sec. 1, R.A. No. 85). As amended on June 15, 1958 by the passage of Republic Act No. 2081, the DBP, the successor to RFC, was primarily established "to provide credit facilities for rehabilitation and development and expansion of agriculture and industry, the reconstruction of property damaged by war and the broadening and diversification of the national economy x x x" It is thus patent that the RFC, now the DBP, was created principally to assist the agricultural producers and industrialists in developing their farms and industries to accelerate national progress, more than to realize profit for itself. Appellant is in great need of such assistance as he apparently is not a man of means. For the DBP to exact its "pound of flesh" would be to play the hated role of a Shylock, which is at war with the ideals of a compassionate society, to which the government is dedicated. It would be unjust enrichment on the part of DBP, which could breed disenchantment and discontent.

The dictum that "the letter of the law killeth; its spirit giveth life" has a special relevance to the instant case. And to appellant, if he is exempted from liability for any deficiency, social justice, which guarantees him together with the rest of the citizenry "dignity, welfare and security" (Sec. 6, Art. II, 1973 Constitution), becomes a living

reality, not a myth.

Further assistance could have been extended by the DBP to appellant by restructuring his account, as the DBP has done and is doing, in favor of some of its debtors.

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