

METROPOLITAN INSURANCE CO., SUBSTITUTED BY THE SPOUSES LORETO Z. MARCAIDA AND MIGUEL DE MARCAIDA, PETITIONERS AND APPELLEES, VS. ELINO PIGTAIN AND TEODGRA CARPIO PIGTAIN, OPPOS...

G.R. No. L-9336. August 30, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

The issue involved in this case is whether the petitioners have right to the cancellation of the preliminary attachment lien recorded in favor of the oppositors at the back of Transfer Certificate of Title No. 48508 in the name of Daniel A. Jordan and his wife and carried over and copied at the back of Transfer Certificate of Title No. 38065 subsequently issued in the name of the petitioner Metropolitan Insurance Co., one of the appellees.

The record discloses that on June 3, 1952, Daniel A. Jordan executed a real estate mortgage in favor of the Metropolitan Insurance Co. over a parcel of land with improvements thereon, covered by Transfer Certificate of Title No. 49508, to secure the payment of a loan of P12,000. For failure of the mortgagor Daniel A. Jordan to pay his loan plus interest, the Metropolitan Insurance Co. foreclosed the mortgage and the property was sold by the Sheriff of Manila at public auction on December 15, 1953, under the provisions of Act 3135 as amended, upon previous publication of the corresponding notices required by law which were published, once a week, for three consecutive weeks, on November 9, 16 and 23, 1953, in The Manila Chronicle, a newspaper of general circulation. In that extrajudicial sale at public auction, the Metropolitan Insurance Co. was the highest bidder, hence the mortgaged property was sold unto it for the sum of P14,500 and, subsequently, on January 6, 1954, the Sheriff of Manila executed the corresponding certificate of sale, the last portion of which clearly states:

"I HEREBY CERTIFY that said purchaser METROPOLITAN INSURANCE Company, being the highest bidder and the mortgagee, considered himself paid to the amount of four thousand five hundred pesos (P14,500) the sale price of the property. I, therefore, issued to him/her this certificate under the grantees prescribed by law.

The period of redemption of said property sold expires on the 16th day of December, 1954."

Prior to the sale at public auction, to wit, on January 15, 1958, in Civil Case No. 18482, entitled Elinor Pigtaim and Teodora Carpio Pigtaim vs. Daniel A. Jordan and Anastacia Angeles Jordan, the oppositors-appellants obtained from the Court of First Instance of Manila a writ of preliminary attachment, by virtue of which the properties mortgaged to the Metropolitan Insurance Co. were levied upon. The writ of preliminary attachment was filed in the office of the Register of Deeds of Manila on June 7, 1953, and annotated at the back of Transfer Certificate of Title No. 48508, but not in the owner's duplicate of said Transfer Certificate of Title which was in the possession of the petitioner Metropolitan Insurance Co.

Neither Elinor Pigtaim and Teodora Carpio Pigtaim, as attaching creditors, nor Daniel A. Jordan and Anastacia Angeles Jordan, as mortgagors, did exercise the right of redemption granted by Section 6 of Act 3135 as amended

up to December 16, 1954, hence on December 17, 1954 the Metropolitan Insurance Co. registered in the Office of the Register of Deeds the certificate of sale executed in its favor by the Sheriff of the City of Manila together with an affidavit of consolidation and, by virtue of these instruments, on the same date, the Transfer Certificate of Title No. 48508 in the name of Daniel A. Jordan was cancelled and in lieu thereof Transfer Certificate of Title No. 38065 was issued in the name of Metropolitan Insurance Co. On February 17, 1955, the oppositors-appellants Elinio Pigtain and Teodora Carpio Pigtain tendered to the Metropolitan Insurance Co. the sum of P14,500, covered by the National City Bank of New York manager's check No. M-59127, to redeem the properties in question, but the Metropolitan Insurance Co. refused to accept it.

Prior to February 17, 1955, or to be more exact, on February 14, 1955, the Metropolitan Insurance Co. filed a petition for the cancellation of the preliminary attachment recorded in favor of the oppositors-appellants at the back of the Transfer Certificate of Title No. 48508 as well as in the Transfer Certificate of Title No. 38065 subsequently issued in the name of the petitioner-appellee Metropolitan Insurance Co., on the ground that the latter had acquired absolute ownership of the properties in question for the period of redemption expired on December 16, 1954 without the herein appellants as attaching creditors having exercised their right to redeem the properties in question sold at public auction. Answering the petition, the oppositors-appellants averred that on February 17, 1955 they tendered the sum of P14,500, covered by a bank manager's check, in payment of the redemption price of the properties in question; that said payment was tendered within one year from December 17, 1954, the date of the registration of the certificate of sale executed by the Sheriff of the City of Manila and the issuance of the Transfer Certificate of Title No. 38065 in the name of the Metropolitan Insurance Co., and that the annotation of the preliminary attachment in question should be maintained because it should be given preference over the sale at public auction of the mortgaged properties in question in favor of the petitioners.

After due trial, the court a quo ordered the cancellation of the annotation of the preliminary attachment in question, hence this appeal on the ground that (1) the lower court has no jurisdiction to summarily decide the case at bar by reason of the controversial nature of the same; and (2) that the court erred in ordering the annotation of the cancellation of the attachment lien at the back of Certificate of Title No. 38065 issued in the name of the petitioner-appellee Metropolitan Insurance Co.

While the appeal was pending, the Metropolitan Insurance Co. sold the properties involved in this case to the spouses Loreto Z. Marcaida and Miguel de Marcaida and, upon petition duly acted upon by this Court, said spouses were made parties in this case in substitution of the original petitioner.

As could readily be seen, the main question is whether the annotation of the preliminary attachment in question in the aforecited transfer certificate of title should be cancelled in view of the facts surrounding the case. The petitioners sustain the affirmative contending that the oppositors-appellants having failed to exercise their right to redeem the properties in question within one year, or to be more exact, up to December 16, 1954, the preliminary attachment in question had become valueless and should not remain in the Transfer Certificate of Title No. 38065 to the prejudice of the Metropolitan Insurance Co., the true owner of said properties. It is undisputed that only on February 17, 1955 did the oppositors-appellants tender to the petitioner-appellee, the manager's check No. 159127 for the sum of P14,500 to redeem the properties in question and unquestionably, and on that date the period of one year granted to the oppositors-appellants as judgment creditors to redeem the land, had already elapsed, for Section 6 of Act No. 3135 provides:

"In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors in interest or any judicial creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed

by the provisions of sections four hundred and sixty-four to four hundred and sixty-six inclusive, of the Code of Civil Procedure, (now sections 25 to 31 of Rule B9 of the Rules of Court) insofar as these are not inconsistent with the provisions of this Act."

It is however claimed that on December 1, 1954, the appellants wrote the appellee, the Metropolitan Insurance Co., signifying their willingness to assume the obligation to pay all the accounts of Daniel A. Jordan and Anastacia Angeles Jordan with the appellee; that subsequently they personally manifested said readiness to the appellee and its counsel and that on February 17, 1955 they tendered to the appellee a manager's check for the sum of P14,500 to redeem the properties in question, and therefore the preliminary attachment should be maintained until the decision in Civil Case No. 18482 mentioned above is finally decided by the corresponding court. We find no merit in their contention. Carefully examined, the offer made by the oppositors-appellants to the petitioner-appellee through their letter of December 1, 1954 and their personal interview with the petitioner-appellee and its counsel, at most can be considered as an offer to pay the obligation of Daniel A. Jordan to the petitioner-appellee, but the same cannot be legally considered as tender of payment for the purpose of exercising their right of redemption. And when on February 17, 1955 they tendered the aforesaid manager's check for the sum of P14,500, their right to redeem had already elapsed, for in the certificate of sale executed by the Sheriff of Manila, the period of redemption was fixed to December 16, 1954. But again the appellants claim that in this particular case, the statutory redemption period of one year should begin from December 17, 1954 when the auction sale was actually recorded in the office of the Register of Deeds of Manila, and not from December 15, 1953 when the sale at public auction of the properties in question took place. We find this contention to be also untenable in view of the clear provision of the aforesaid Section 6 of Act No. 3135 to the effect that the right of redemption should be exercised within one year from the date of the sale. It should not be overlooked that the extrajudicial sale in question was in pursuance of a mortgage and not by virtue of an ordinary writ of execution in a civil case. The Metropolitan Insurance Co. was a mortgagee whose right to be paid the entire loan guaranteed by the mortgage is preferential to that of any subsequent creditor the mortgagor might have after the execution of the mortgage. The preliminary attachment in question was therefore subordinate to the mortgage in favor of the Metropolitan Insurance Co. and unless the whole indebtedness for which the properties in question were mortgaged is wholly satisfied, the herein appellants as attaching creditors acquired no right over said mortgaged properties for the satisfaction of their credit. The latter, therefore cannot claim preferential right on the mortgaged properties in question for the satisfaction of their credit over that of the petitioner-appellee, the Metropolitan Insurance Co., because the mortgage in the latter's favor was recorded prior to the attachment lien of the appellants. And since the appellants had failed to redeem the land in question within the time allowed by Section 6 of Act 3135, the appellee has perfect right to secure the cancellation of the attachment lien in question.

The appellants also claim that there being a controversial matter in the present case, the court can not summarily order the cancellation of the annotation of the attachment lien in question and that the same should be brought in an ordinary civil action. This contention is also untenable, for Section 112 of the Land Registration Act provides as follows:

"* * * Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; * * *; Provided, however, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent."

We believe that the above provision of law is completely applicable to the present case because there has been entered in the Transfer Certificate of Title No. 38065 an attachment lien which should not be maintained for it had lost its legal value and its annotation at the back of the said title will work to the prejudice of the true owner of the properties in question who, for value and in good faith, had acquired them at a legally conducted public auction sale. We hold that the matter in controversy has been properly brought in the original registration case under the provisions of Section 112 of the Land Registration Act mentioned above and pursuant to the ruling laid down in the case of *Cavan vs. Wislizenus*, 48 Phil. 632.

Wherefore, the decision appealed from is hereby affirmed in toto, with costs.

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

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