

**NELITA MORENO VDA. DE BACALING, PLAINTIFF AND APPELLANT,
VS. GOVERNMENT SERVICE INSURANCE SYSTEM, ET AL.,
DEFENDANTS AND APPELLEES.**

G.R. No. L-20124. August 14, 1965

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This appeal raises the issue whether the defendant-debtor in a foreclosure of mortgage proceedings, may maintain a separate action to annul the foreclosure sale while the motion to confirm such sale and the debtor's opposition thereto are pending consideration in the proceedings. The Iloilo court held that such action may not be maintained. Hence this appeal.

The facts. In Civil Case No. 5233 of the Iloilo court, the Government Service Insurance System (GSIS for short) obtained judgment to foreclose the real estate mortgage executed in its favor by Dr. Ramon Bacaling and his wife Nelita Moreno. Upon failure of the debtors to pay within the usual 90-day period, the Sheriff of Iloilo advertised and conducted the auction sale of the realty in October 1961, with the result that the GSIS became the highest bidder and got the award. On the tenth of that month, the Sheriff and the GSIS submitted to the court a motion for confirmation of the sale and for deficiency judgment. The next day, October 11, 1961, the defendant Nelita M. Bacaling (her husband had died) opposed the motion; and alleging irregularities, prayed that the public auction sale be set aside and another auction sale conducted.

After the GSIS had presented evidence to support the motion for confirmation and to overcome the opposition, the defendant Nelita M. Bacaling filed in the same court on March 15, 1962, this separate action No. 5934[1] to annul the sale. She alleged the same irregularities she had reported in her opposition to the motion to confirm the sale.

In due time, the GSIS filed a motion to dismiss this Case No. 5934 on the ground that there was another action between the same parties pending before the same court, involving the same issue of irregularities in the auction sale and validity thereof (i.e. in the foreclosure proceedings).

Order of the Court. Finding that the same issues were involved in the foreclosure proceedings, the Hon. Arsenio Nanawa, Iloilo judge, ordered the dismissal of this case as previously stated.

Errors assigned. The plaintiff appealed, after vainly moving for reconsideration of the order. She insists here that the lower court erred in holding that plaintiff could not maintain an independent civil action to annul the foreclosure sale made by the Sheriff of Iloilo. She relies mainly on our decision in *Jalandoni vs. Ledesma*[2] where we said that "a judicial sale may be set aside either on motion in the same suit in which such sale was ordered, or in a separate action brought for the purpose." This is correct; but we did not hold that both a motion and a separate action may proceed simultaneously. We could not have so held, because at that time, in 1937, one ground of demurrer was the pendency of another action[3] between the same parties. The idea of the rule (on pendency of another, action) is that where there is already a case between the same parties involving certain issues[4], no other litigation on identical issues shall be entertained. The purpose is to avoid multiplicity of suits

and judicial confusion or contradictions; Neither may plaintiff's case be aided, by the decision in Gov't vs. De los Cajigas,[5] because in that case, the motion for confirmation had already been granted—it was no longer pending. And what is more important, the civil action contained an additional element (the most material) which was not involved in the motion for confirmation, i. e., the validity of the order confirming the sale, the plaintiff not having been notified of the said motion for confirmation.

If it be argued in this connection, that the instant case involves another issue, viz. the claim for damages against the Sheriff, the answer would be that such claim depends entirely upon—was incidental to—the main issues included in the motion for confirmation and opposition thereto, namely: (a) whether or not the Sheriff had complied with the provisions of sec. 16 of Rule 39 (posting notices in public places); (b) publication in newspapers; (c) non-compliance with sec. 19, Rule 39 (selling lots separately); and (d) adequacy of the price.

And the inclusion of the Sheriff as defendant in this civil action is immaterial, because he was virtually a party in the foreclosure, and his inclusion here should not have the effect of avoiding the "pending action" rule.[6]

Conclusion. Our opinion is that the trial judge did not err in dismissing this complaint. The principal issues may, and should be decided in the foreclosure proceedings. Judgment affirmed, with costs against appellant.

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

[1] There was another complaint she filed (Civil Case No. 5705); but that is not mentioned because it was dismissed without prejudice.

[2] Lawyers' Journal, December 30, 1937.

[3] Art. 190, sec. 91.

[4] Foreclosure suit is not finished until approval of sale Salazar vs. Torres, 48 Off. Gaz., (1713).

[5] 55 Phil. 667.

[6] See Aquino vs. Securities, 89 Phil. 532.

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