

**JOSEFINA B. CENAS AND THE PROVINCIAL SHERIFF OF RIZAL,
PETITIONERS, VS. SPS. ANTONIO P. SANTOS AND DRA. ROSARIO M.
SANTOS AND HON. PEDRO C. NAVARRO, PRESIDING JUDGE,
CFI-RIZAL, ...**

G.R. No. L-49576. November 21, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari seeking to annul and set aside the August 28, 1978 decision* of the then Court of First Instance of Rizal in Civil Case No. 20435 enjoining the Pro-vincial Sheriff of Rizal and any other person in his behalf from proceeding with the auction sale predicated upon the petition for extra-judicial foreclosure prayed for by petitioner Josefina B. Cenas; and the December 4, 1978 Order of the same court denying the motion for reconsideration.

On May 3, 1976, the spouses Jose Pulido and Iluminada M. Pulido mortgaged to Pasay City Savings and Loan Association, Inc. their land covered by TCT No. 471634, subject of this case, to secure a loan of P10,000.00. The said mortgage was registered with the Registry of Deeds on the same date and was duly annotated in the title of the property.

On May 18, 1976, the said mortgaged land was levied upon by the City Sheriff of Quezon City pursuant to a writ of execution issued by the then Court of First Instance of Quezon City in Civil Case No. Q-2029 entitled, "Milagros C. Punzalan vs. Iluminada Manuel-Pulido", and eventually, on July 19, 1976, the same was sold to herein petitioner Josefina B. Cenas who was the highest bidder in the execution sale.

On January 18, 1977, Pasay City Savings and Loan Association, Inc. assigned to petitioner Cenas all its rights, interests, and participation to the said mortgage, for the sum of P8,110.00, representing the unpaid principal obligation of the Pulidos as of October 6, 1976, including interest due and legal expenses. Thus, petitioner became the purchaser at the public auction sale of the subject property as well as the assignee of the mortgage constituted thereon.

On July 19, 1977, herein private respondent Dra. Rosario M. Santos redeemed the said property, paying the total sum of P15,718.00, and was accordingly issued by the City Sheriff of Quezon City a Certificate of Redemption.

On April 17, 1977, petitioner Cenas, as the assignee of the mortgage loan of the Pulidos which remained unpaid, filed with the Office of the Provincial Sheriff of Rizal, a verified petition for extra-judicial foreclosure of the mortgage constituted over the subject property. Accordingly, the subject property was adver-tised for sale at public auction on May 15, 1978.

On the other hand, private respondents, spouses Antonio P. Santos and Dra. Rosario M. Santos, apprised of the impending auction sale of the said property, filed an affidavit of adverse claim with the Provincial Sheriff of Rizal, claiming that they had become the absolute owners of the property by virtue of the Certi-ficate of

Redemption, dated July 20, 1977, issued by the City Sheriff of Quezon City; and on May 11, 1978, filed with the respondent court a verified Petition for Prohibition with Preliminary Injunction to enjoin the Provincial Sheriff of Rizal from proceeding with the public auction sale of the property in question. To this petition, petitioners filed their Answer on May 18, 1978.

Private respondents filed a Motion to Amend Petition together with the Amended Petition, which was opposed by the petitioners. The trial court, in its Order of July 17, 1978, denied the motion and ordered the parties to submit simultaneous memoranda.

After the parties have submitted their respective memoranda, the trial court rendered its judgment dated August 28, 1978 in favor of private respondents, the dispositive portion of which reads:

"WHEREFORE, premises considered, the respondent Provincial Sheriff of Rizal and any other persons acting in his behalf are hereby enjoined from proceeding with the auction sale predicated upon the petition for extra-judicial foreclosure prayed for by respondent Josefina B. Cenas."

The trial court held that the redemption of the subject prop-erty effected by the herein private respondents, "wipe out and extinguished the mortgage executed by the Pulido spouses in favor of the Pasay City Savings and Loan Association, Inc."

Petitioners filed a Motion for Reconsideration but the trial court, in its Order of December 4, 1978, denied the same. Hence, the instant petition.

The First Division of this Court, in the Resolution of March 2, 1979, gave due course to the petition. Petitioners filed their brief on June 9, 1979 while respondents failed to file their brief within the required period. Consequently, this case was considered submitted for decision without respondent's brief in the re-resolution of November 26, 1979.

Petitioners raised two (2) assignment of errors, to wit:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE PRE-EXISTING MORTGAGE OBLIGATION OF THE JUDG-MENT DEBTOR CONSTITUTED ON HER PROPERTY WAS WIPED OUT AND EXTINGUISHED UPON THE PAYMENT OF THE REDEMPTION PRICE WITH THE SHERIFF RE-PRESENTING THE PURCHASE PRICE PLUS INTEREST DUE THEREON WITHIN THE REDEMPTION PERIOD OF ONE (1) YEAR FROM THE DATE OF THE EXECUTION SALE OF THE SAID PROPERTY TO SATISFY THE JUDG-MENT DEBT OF THE SAID JUDGMENT DEBTOR.

II

THE TRIAL COURT ERRED IN NOT DISMISSING THE INSTANT ACTION FILED BY THE HEREIN PRIVATE RESPONDENTS FOR NOT BEING PROSECUTED IN THE NAME OF THE REAL PARTY IN INTEREST AS PROVIDED BY SECTION 2, RULE 3 OF THE REVISED RULES OF COURT.

The instant petition is impressed with merit.

There appears to be no question that respondents Santos spouses are the real parties in interest in this case.

Under Section 29, Rule 39 of the Rules of Court, a real prop-erty sold by virtue of a writ of execution, may be redeemed by -

"(a) The judgment debtor, or his suc-cessor in interest in the whole or any part of the property;

(b) A creditor having a lien by attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the judgment under which the property was sold. Such redeeming creditor is termed redemptioner." (Underscoring supplied)

The judgment debtor, whose property was levied on execution, may transfer his right of redemption to anyone whom he may desire. The term "successor in interest" includes, among others, one to whom the debtor has conveyed his interest in the property for the purpose of redemption (*Magno v. Viola de Soto*, 61 Phil. 80). It is not disputed that Dra. Rosario M. Santos as an assignee of her sister Iuminada M. Pulido's right of redemption, redeemed the questioned property as "successor in interest" of said judgment debtor. The latter interposed no objection thereto while petitioner Josefina Cenas acceded unconditionally to the redemption of the property sold on execution.

However, the main issue in this case is whether or not the redemption of the questioned property by herein private respondents wiped out and extinguished the pre-existing mortgage obligation of the judgment debtor, Iuminada M. Pulido for the security of which (mortgage debt) the subject property had been encumbered.

The answer is in the negative.

Section 30, Rule 39 of the Rules of Court, provides for the time, manner and the amount to be paid to redeem a property sold by virtue of a writ of execution. Pertinent portion reads:

"SEC. 30. Time and manner of, and amounts payable on, successive redemptions. Notice to be given and filed.
- The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve (12) months after the sale, on paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. x x x."
(Under-scoring supplied)

Under the above-quoted provision, if the purchaser is also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the redemptioner has to pay, in addition to the prescribed amounts, such other prior lien of the creditor-purchaser with interest.

In the instant case, it will be recalled that on May 3, 1976, the Pulidos mortgaged the subject property to Pasay City Savings and Loan Association, Inc. who, in turn, on January 8, 1977, assigned the same to petitioner Cenas. Meanwhile, on July 19, 1976, pursuant to the writ of execution issued in Civil Case No. Q-2029 (Petitioner Cenas is not a party in this case No. Q-2029), the subject property was sold to petitioner Cenas, being the highest bidder in the execution sale. On July 19, 1977; private respondent Dra. Rosario M. Santos redeemed the subject property. Therefore, there is no question that petitioner Cenas as assignee of the mortgage constituted over the subject property, is also a creditor having a prior (mortgage) lien to that of Dra. Rosario M. Santos. Accordingly, the acceptance of the redemption amount by petitioner Cenas, without demanding payment of her prior lien - the mortgage obligation of the Pulidos - cannot wipe out and extinguish said mortgage obligation. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted (Art. 2126, Civil Code). Otherwise stated, a mortgage creates a real right which is enforceable against the whole world. Hence, even if the mortgaged property is sold (Art. 2128) or its possession transferred to another (Art. 2129), the property remains subject to the fulfillment of the obligation for whose security it was constituted (Padilla, Civil Code annotated, Vol. VII. p. 207, 1975 ed.).

It will be noted that Rule 39 of the Rules of Court is silent as to the effect of the acceptance by the purchaser, who is also a creditor, having a prior lien to that of the redemptioner, of the redemption amount, without demanding payment of her prior lien. Neither does it provide whether or not the redemption of the property sold in execution sale freed the redeemed property from prior liens. However, where the prior lien consists of a mortgage constituted on the property redeemed, as in the case at bar, such redemption does not extinguish the mortgage (Art. 2126). Furthermore, a mortgage previously registered, like in the instant case, cannot be prejudiced by any subsequent lien or encumbrance annotated at the back of the certificate of title (*Gonzales v. Intermediate Appellate Court*, 157 SCRA 587 [1988]).

Moreover, it must be stressed that private respondents re-deemed the property in question as "successor in interest" of the judgment debtor, and as such are deemed subrogated to the rights and obligations of the judgment debtor and are bound by exactly the same condition relative to the redemption of the subject property that bound the latter as debtor and mortgagor (*Sy vs. Court of Appeals*, 172 SCRA 125 [1989]; citing the case of *Gorospe vs. Santos*, G.R. No. L-30079, January 30, 1976, 69 SCRA 191). Private respondents, by stepping in the judgment debtor's shoes, had the obligation to pay the mortgage debt, otherwise, the debt would and could be enforced against the property mortgaged (*Tambunting vs. Rehabilitation Finance Corporation*, 176 SCRA 493 [1989]).

Nevertheless, considering the lapse of time that the parties have been in status quo and the fact that private respondents erroneously believed that the questioned property was freed from any lien after the redemption, equity dictates that the foreclosure be allowed only after the private respondents shall have been afforded the chance to settle the mortgage obligation but failed to do so.

WHEREFORE, the questioned August 28, 1978 judgment of the trial court is Reversed and Set Aside. Petitioner Josefina B. Cenas may proceed with the foreclosure of the mortgaged property after the private respondents shall have failed to settle the mortgage debt plus interest and legal expenses, within thirty (30) days from finality of this decision.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Davide, Jr., and Romero, JJ., concur.

* Penned by Judge Pedro C. Navarro

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