

DEVELOPMENT BANK OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEONOR R. VDA. DE MOLL, SEBASTIAN MOLL, JR., BACILISO MOLL, ERIBERTO MOLL, ESTRELLA MOLL, SALVADOR MOLL, SEGUNDO...*G.R. No. L-25802. January 31, 1972*

Ponente: BARREDO, J.

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Appeal from the decision of the Court of First Instance of Manila in its Civil Case No. 56037 sentencing appellants to jointly and severally pay to the appellee Development Bank of the Philippines the sum of P1,648,591.45, claimed by the said Bank to be the deficiency or unpaid balance of appellants' overdue obligation under certain agricultural and industrial loans it had granted to appellants after applying to the said loans the proceeds of the extrajudicial foreclosure and public auction sale of the properties mortgaged to secure their payment, plus attorney's fees and costs.

It appears that on April 12, 1947 and December 15, 1947, the appellee Development Bank of the Philippines (then known as the Rehabilitation Finance Corporation) granted agricultural loans in the amounts of P120,000.00 and P22,000.00, respectively, in favor of one Sebastian Moll, Sr. who, to secure the payment of said loans, mortgaged in favor of the appellee Bank fourteen (14) parcels of land - comprising the property known as "Hacienda Moll" - covered by certificates of title and tax declarations issued by the land registry of the province of Camarines Sur. Said Sebastian Moll, Sr. having subsequently died, his heirs (appellants) executed on May 14, 1949 an extrajudicial partition of his estate, including the properties above-mentioned, adjudicating the same to themselves, albeit binding themselves, jointly and severally, to assume payment of the indebtedness of the deceased with the appellee Bank; and starting from the said date, appellants themselves applied for and were granted by the appellee Bank new and additional loans, to wit: May 14, 1949 - an industrial loan of P150,000.00; May 28, 1951 - an additional agricultural loan of P100,000.00; and May 31, 1951 - another industrial loan of P580,000.00. The additional agricultural loan was granted by the appellee Bank on the security of the same properties already mortgaged to the appellee Bank by appellants' predecessor in interest, earlier stated: while the new industrial loans were secured by mortgages on machineries, equipment and some other real estate.

Appellants thereafter failed to comply with the terms of the loan contracts as they fell due. Consequently, the above-mentioned mortgages on their properties were extrajudicially foreclosed under the provisions of Act 3135, as amended; and in the public auction sale thereof subsequently conducted by the Provincial Sheriff of Camarines Sur on June 30, 1962, the 14 parcels of land mortgaged to secure payment of the agricultural loans and the machineries, equipment and other real estate mortgaged to secure payment of the industrial loans were awarded in favor of the appellee Bank – as the sole and highest bidder - for the amounts of P176,174.50 and P19,750.00, respectively, which were accordingly applied to the payment of the corresponding portions of the said loans.

As the proceeds of the foreclosure sales aforesaid were not sufficient to cover the loan indebtedness of appellants,

the appellee Bank then instituted the present case in the Court of First Instance of Manila on January 23, 1964, for the purpose of recovering, so the complaint alleges, the sums of P173,117.55, on account of the agricultural loans, and P1,475,473.90, on account of the industrial loans, which it claims to be the outstanding balances or deficiencies under the two types of loans obtained by appellants.

In their answer, appellants admit the existence of their indebtedness to the appellee Bank under the loan contracts mentioned in the latter's complaint; but they deny and dispute, among others, the deficiency claims of the appellee Bank, contending at the same time, by way of affirmative and special defenses, that the extrajudicial foreclosure and public auction sales of the properties mortgaged had been carried out by the sheriff irregularly and improperly in violation of the pertinent provisions of Rule 39 of the Rules of Court and had thus resulted in the sale for unconscionable prices of their mortgaged properties which, according to appellants' own estimate, have a total actual value of not less than P5,000,000.00.

It appears, further, that the corresponding deeds and certificates of sale issued in favor of the appellee Bank in consequence of the disputed foreclosure proceeding and public auction sales were registered with the Register of Deeds concerned only on November 11, 1964 and December 7, 1964 – some ten (10) months later than the commencement of the present action for collection of the deficiency claim of the appellee Bank.

After trial, the court below rendered the decision appealed from which, as stated earlier in the opening paragraph hereof, sustains the above-mentioned deficiency claims of the appellee Development Bank of the Philippines.

In this appeal, appellants assail the said judgment thus:

"I. THE HONORABLE COURT A QUO ERRED IN NOT SETTING ASIDE THE ALLEGED AUCTION SALE ON JUNE 30, 1962, OF THE MORTGAGED PROPERTIES BY THE DEFENDANTS-APPELLANTS TO THE PLAINTIFF-APPELLEE, ON THE GROUND THAT THE SELLING AUCTION PRICES OF SAID PROPERTIES WERE UNJUST, DISPROPORTIONATE AND UNCONSCIONABLE IN THE LIGHT OF THE FAIR AND CURRENT MARKET VALUE OF THE SAME PROPERTIES AT THE TIME OF SAID AUCTION SALE.

"II. THE HONORABLE COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT AT BAR FOR RECOVERY OF A DEFICIENCY CLAIM, ON THE GROUND THAT SAID COMPLAINT WAS OR IS, PREMATURE, FOR THE REASON THAT IT HAD BEEN FILED DURING THE PERIOD OF LEGAL REDEMPTION GRANTED BY LAW TO DEFENDANTS-APPELLANTS AS MORTGAGE-DEBTORS."

The thrust of appellants' argument in respect of the first assignment of error is to the effect that if in 1947 and 1951 when the agricultural and industrial loans herein involved were obtained by appellants, the appellee Bank, after due inspection and appraisal of the securities they offered therefor, had granted them a total agricultural loan of P242,000.00 upon the security of the 14 parcels of land they mortgaged and a total industrial loan of P770,000.00 upon the security of other lands and machineries and equipment they also mortgaged, hence, it is inconceivable that after the lapse of more than ten years and the fast and steadily increasing real estate values these past years, the same properties would command, in the extrajudicial foreclosure sales conducted by the provincial sheriff of Camarines Sur in 1962, only the measly sums of P176,174.50 and P19,750.00, respectively, considering that pursuant to consistent banking practice, the aforesaid amounts of loans granted would represent only 60% of the actual and current market value of the securities at the time of the grant of said loans. In short, it is the position of appellants that the foreclosure sales aforesaid should be set aside because "the total auction selling price of P195,924.50 for both the collateral securities to the agro-industrial loans, is so inadequate, disproportionate and shocking to conscience."

It does appear that the purchase prices in question are considerably out of proportion to the possible actual market

value of appellants' securities. Considering, however, that the impugned sales were made subject to appellants' right of redemption, the following ruling in *Ponce de Leon vs. Rehabilitation Finance Corporation*,^[1] sufficiently disposes of their contention:

"In support of their second assignment of error, the Sorianos maintain that the sum of P10,000.00, for which the Parañaque property was sold to the RFC, is ridiculously inadequate, considering that said property had been assessed at P59,647.05. This pretense is devoid of merit, for said property was subject to redemption and:

'* * * where there is the right to redeem * * * – inadequacy of price should not be material, because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale (*Barrozo vs. Macaraig*, 83 Phil. 378, 381, *Italics Ours.*)'

"Then, again, as the trial court had correctly observed:

'But, mere inadequacy of the price obtained at the sheriff's sale unless shocking to the conscience will not be sufficient to set aside the sale if there is no showing that in the event of a regular sale, a better price can be obtained. The reason is that, generally, and, in forced sales, low prices are usually offered (1 *Moran's Rules of Court*, 834-835). Considering that in *Gov't of P.I. vs. Serna*, G.R. No. 32196, wherein property worth P120,000.00 was sold for only P15,000.00, in *Philippine National Bank vs. Gonzales*, 45 Phil. 693, wherein property valued at P45,000.00 was sold for P15,000.00 and in *Cu Unjieng & Sons vs. Mabalacat Sugar Co.*, 58 Phil. 439, property worth P300,000.00 to P400,000.00 was sold for P177,000.00, the Court cannot consider the sales of the Bacolod properties, the Taft Avenue house and lot and the Parañaque property of the Sorianos null and void for having been sold at inadequate prices shocking to the conscience and there being no showing that in the event of a resale, better prices can be obtained.'"

This ruling was reiterated in the more recent case of *De Leon vs. Salvador, et al.*,^[2]

" * * * (w)hile in ordinary sales for reasons of equity a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere, such does not follow when the law gives to the owner the right to redeem, as when a sale is made at public auction, upon the theory that the lesser the price the easier it is for the owner to effect the redemption. And so it was aptly said: 'When there is the right to redeem, inadequacy of price should not be material, because the judgment debtor may reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale.'"

At this juncture, it may not be amiss to make it clear that appellants' period to redeem the properties sold in the extrajudicial foreclosure sales in question is one year, "computed from the date of the registration of the certificates of sales of the mortgaged properties," since registered lands are involved in this case, and, as explained lately by this Court in *Quimson, et al. vs. Philippine National Bank*,^[3] "this Court has uniformly ruled that redemption from execution sales under ordinary judgments pursuant to Section 30, Rule 39 of the Rules of Court should be made within twelve (12) months from the registration of the same and We have uniformly applied the same rule to sales upon extrajudicial foreclosure of registered lands."

On the other hand, it may also be stressed that actions seeking to set aside auction sales do not toll the running of the period of redemption; and this We have to emphasize now, if only to forestall the possibility of the parties' coming up here in the future and praying for a definite ruling on the matter. This question was resolved in *Sumerariz vs. Development Bank of the Philippines*, L-23764, December 26, 1967, 21 SCRA 1374, thus:

"Under the second assignment of error, plaintiffs maintain that the period of one (1) year to redeem the property in question was suspended by the institution of Case No. 29306 (commenced by *Sumerariz* and his wife against the DBP and the Sheriff of Manila to set aside the foreclosure sale involved therein) on March 26,

1956, or three (3) days before the expiration of said period. We have not found, however, any statute or decision in support of this pretense. Moreover, up to now plaintiffs have not exercised the right of redemption. Indeed, although they have intimated their wish to redeem the property in question, they have not deposited the amount necessary therefor. It may not be amiss to note that, unlike Section 30 of Rule 39 of the Rules Court, which permits the extension of the period of redemption of mortgaged properties, (*Enage vs. Vda. e Hijas de F. Escano*, 38 Phil. 657) Section 3 of Commonwealth Act No. 459, in relation to Section 9 of Republic Act No. 85, which governs the redemption of property mortgaged to the Bank, does not contain a similar provision (*Nepomuceno vs. Rehabilitation Finance Corporation*, L-14897, November 23, 1960). Again this question has been definitely settled by the decision in the previous case declaring that plaintiffs' right of redemption has already been extinguished in view of their failure to exercise it within the statutory period."

Perforce then We must hold that the foreclosure sales here involved cannot be set aside on the ground, vigorously alleged by appellants, that the prices obtained therein are grossly inadequate and unconscionable. Corollarily, We do not deem it necessary to discuss further and rule upon appellants' claim that the foreclosure sales referred to were improperly and irregularly conducted by the provincial sheriff of Camarines Sur because the latter sold the mortgaged properties here involved in mass and within a single day, although the record appears to be bereft of any concrete showing, other than appellants' claim that better prices could had been obtained for the said mortgaged securities had the above-mentioned provincial sheriff conducted the sales in question otherwise.[4]

Anent appellants' second assignment of error to the effect that the present case was prematurely instituted on the ground that an action for recovery of an alleged deficiency claim cannot be legally entertained during the period of redemption, appellants argue in their brief (pp. 16-18), as follows:

"In the case at bar, the suit to recover deficiency claim was instituted on January 23, 1964, (page 1 Record on Appeal), but, the Certificate of Sale by the Provincial Sheriff of Camarines Sur in connection with the auction sale of the collateral securities on the industrial loans was registered in the Office of the Register of Deeds of said province on November 11, 1964, and, the Certificate of Sale of said provincial sheriff in connection with the auction sale of the collateral securities on the agricultural loans, was registered In the same office on December 7, 1964. Therefore, the present action for recovery of deficiency claim was filed even before the registration of both Certificates of Sale, as shown by Exhibit '2' for appellants (pp. 33-34 Record on Appeal). As the running of the period of one year of the right of redemption commenced from the date and/or dates of registration of the Certificates of Sale, it is too clear and unassailable that the filing of the case at bar on January 23, 1964, was improper and premature. For indeed, the filing of a suit for recovery of a deficiency claim before the commencement or, during the period of the right of redemption, constitutes a clever anticipation that the auction sale arising from the effects of extra-judicial foreclosure had been conducted with all the earmarks of validity, even if it were not. Suppose an auction sale were declared illegal due to irregularities and violation of the mandate of the law, what would be the effect of such pronouncement in an action for deficiency claim when such action has no legal basis? If a suit for recovery of a deficiency judgment or deficiency claim is a legal consequence of an auction sale arising from judicial or extrajudicial foreclosure, then such suit should await for the expiration period of the right of redemption within which period, precisely, the redemptioner may ordinarily institute an action to assail the manner with which the auction sale was conducted. * * *."

In the case of *Philippine Bank of Commerce vs. De Vera*,[5] We held:

"A reading of the provisions of Act No. 3135, as amended (re extrajudicial foreclosure) discloses nothing, it is true, as to the mortgagee's right to recover such deficiency. But neither do we find any provision thereunder 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 sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings. (See Soriano vs. Enriquez, 24 Phil. 584; Banco de Islas Filipinas vs. Concepcion e Hijos, 53 Phil. 86; Banco Nacional vs. Barreto, 53 Phil. 101). Under the Rules of Court (Sec. 6, Rule 70), 'Upon the sale of any real 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, * * *.' 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. * * *."

Under the provisions of section 6 of Rule 70 – now section 6 of Rule 68 of the revised Rules of Court – above-cited, it is expressly provided that "if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall render judgment against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue immediately if the balance is all due at the time of the rendition of the judgment." Said provisions are equivalent to those of section 260 of the old Code of Civil Procedure, under which it was held in a case,[6] "that in order that a decree for any balance for which the mortgagor may be personally liable to the mortgagee may be issued, it is necessary that the sale of the mortgaged real property has been made according to the decree for said sale to satisfy the judgment; that there has remained a balance due the mortgagee after applying the proceeds of the sale to the debt; (and) that the mortgagee presents a motion for the issuance of a decree for said balance," while in another case,[7] it was said that "Section 260 requires the rendition and entry of a judgment for the deficiency against the defendant, who shall be personally liable to the plaintiff, and execution may issue on said judgment at once." We believe it is apparent from the provisions and decisions above-quoted that once the auction sale of the mortgaged property is effected and the resulting deficiency in the mortgage debt is ascertained, the mortgagee-creditor is then and there entitled to secure a deficiency judgment which may immediately be executed, whether or not the mortgagor is still entitled to redeem the property sold. We hold then that appellants right to redeem their auctioned properties could not be a bar to the present action of appellee to recover the deficiencies which it claims to have resulted after applying the proceeds of the foreclosure sales here involved in payment of appellants' mortgage debt.

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

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Teehankee, Villamor, and Makasiar, JJ., concur.

Castro and Fernando, JJ., took no part.

[1] L-24571, December 18, 1970, 36 SCRA 289, 302.

[2] L-30871, December 28, 1970, 36 SCRA 567, 579-580.

[3] L-24920, November 24, 1970, 36 SCRA 26, 32.

[4] See Villar vs. Paderanga, 97 Phil. 604, 608, where it was said that "the rule that real property, consisting of several lots, should be sold separately, applies to sales in execution (Rule 39, section 19) and not to foreclosure of mortgages."

[5] L-18816, December 29, 1962, 6 SCRA 1026, 1029.

[6] Gov't of P.I. vs. Torralba Vda. de Santos, 61 Phil. 689, 691.

[7] Soriano vs. Enriquez, 24 Phil. 584, 593.

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