

**DEVELOPMENT BANK OF THE PHILIPPINES,
MORTGAGEE-APPELLANT, VS. LEONARDO JIMENEZ AND CORAZON
BENITO, MORTGAGORS-APPELLEES, JOSEFINA B. JIMENEZ,
REDEMPTIONER-APPELLEE.**

G.R. No. L-28165. December 19, 1970

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Direct appeal from the order of the Court of First Instance of Pangasinan, dated 1 April 1967, directing the appellant, Development Bank of the Philippines (DBP for short), to surrender the owner's duplicate copy of Original Certificate of Title No. 14483 to the Register of Deeds of Pangasinan for annotation and consequent cancellation of the same. The said order follows:

"Acting on the ex-parte motion filed by the movant and redemptioner, Josefina B. Jimenez, praying for an order of this court requiring the Branch Manager of the Development Bank of the Philippines, Dagupan City, to cause the delivery of Original Certificate of Title No. 14483, to the Office of the Register of Deeds of Pangasinan, for the purpose of annotating the deed of redemption, and it appearing from said motion ex-parte, which is verified, that the Manager of the Development Bank of the Philippines refused to surrender the owner's copy of Original Certificate of Title No. 14483; as prayed for, the said Manager of the Development Bank of the Philippines, Dagupan City, or any of the officials or employees of the said bank who has custody of the owner's copy of Original Certificate of Title No. 14483, is hereby ordered to deliver the said owner's copy of Original Certificate of Title No. 14483, to the Register of Deeds of Pangasinan for annotation and consequent cancellation for the purpose of issuing a Transfer Certificate of Title in favor of the redemptioner within five (5) days from receipt of this order."

The antecedent facts of the case show that the spouses Leonardo Jimenez and Corazon Benito are registered owners of a parcel of land containing 618 square meters, more or less, with improvements thereon, located at Lingayen, Pangasinan, covered by Original Certificate of Title No. 14483-Pangasinan. On 16 January and 28 July 1958, the said spouses mortgaged the said property to the DBP for P15,000 and P2,000, respectively. The mortgages were duly registered. On 25 March 1966, the same property was sold at a public auction in an extra-judicial foreclosure sale, due to the mortgagors' inability to pay the amortizations on said loans. The only bidder at the public auction was the mortgagee itself, the DBP, represented by its Branch Attorney, and which paid P11,000.

In 1967, the mortgagors sold their said registered land, including the right of redemption to their daughter and redemptioner herein, Josefine B. Jimenez, evidenced by Document No. 459, Page No. 93, Book No. XIV, Series of 1967, acknowledged before Notary Public Priscilo G. Evangelista, Lingayen, Pangasinan. By virtue of this sale, redemptioner Jimenez paid to the Provincial Sheriff the amount of P11,000 re-presenting the redemption price, plus P1,320 as legal interest up to 27 March 1967, or a total of P12,320. The Provincial Sheriff then executed a Deed of Redemption in her favor after which she presented the same to the Register of Deeds for

registration, annotation in the owner's duplicate copy of the title, and to secure a Transfer Certificate of Title in her own name. The Deed of Redemption was entered (Entry No. 270696) in the Register of Deeds' Office. However, in view of DBP's repeated refusal to deliver to the Register of Deeds the said owner's copy of the title, the annotation of the redemption and the cancellation of the title could not be made.

On 1 April 1967, redemptioner filed an Ex-Parte Motion with the Court of First Instance of Pangasinan praying that the Court issue an order for the DBP Branch Manager to cause the delivery of the afore-said copy of the title to the Register of Deed. The Ex-Parte Motion was granted by the lower court in its order of 1 April 1967, *supra*, copy of which was received by the DBP on 5 April 1967. On 7 April 1967, the DBP filed an Ex-Parte Urgent Motion requesting for the extension of time within which to comply with the order of 1 April 1967, expressing at the same time its desire to be heard and to file a Motion for Reconsideration thereof. On 7 April 1967, the court issued an order giving the DBP 10 days from 10 April 1967 within which to comply with the order of 1 April 1967. On 20 April 1967, the last day of the extension, the DBP filed a Motion for Reconsideration of the paid court orders of 1 April and 7 April 1967, contesting the validity of the Deed of Redemption on the grounds that (a) the Provincial Sheriff had no authority to execute the said Deed, and (b) the redemption price was inadequate, contending that it should be the Bank's total claim and interest on the date of sale, which was P32,020.57 as of 27 March 1967, which should be paid and not merely P12,320. On 25 April 1967, the redemptioner filed an Opposition to the Motion for Reconsideration, alleging that the Provincial Sheriff had full authority to execute the Deed of Redemption under Section 23, Rule 39, of the Rules of Court, and reiterating its previous prayer that the DBP produce the owner's copy of the title, in compliance with the court orders of 1 and 7 April 1967. On 12 May 1967, the DBP filed a Reply to the Opposition to Motion for Reconsideration and on 14 August 1967, the court issued an Order denying the Motion for Reconsideration of 20 April 1967. Hence, this appeal.

The errors assigned by appellant DBP are:

1. The lower Court erred in issuing, with-out previous hearing, the Order of April 1, 1967 directing the mortgagee-DBP to surrender the owner's copy of OCT No. 14483 to the Register of Deeds of Pangasinan on the basis of redemptioner-appellee's ex-parte motion, contrary to Section 111 of Act No. 496; and
2. The lower Court erred in holding that Section 31 of C. A. No. 459 is not applicable to properties mortgaged to and subsequently foreclosed by the DBP such as the land covered by OCT No. 14483 and in denying the DBP's Motion for Reconsideration of the Order of April 1, 1967.

The DBP charges that the lower court committed a reversible error when it issued its order of 1 April 1967, directing the Bank officials to surrender the owner's copy of OCT No.14483 to the Register of Deeds of Pangasinan without complying with Section 111,[1] Act No. 496. It is the contention of the mortgagee-Bank that the re-demptioner should have applied to the court by petition instead of mere Ex-Parte Motion and that a hearing should have been had to enable said Bank to interpose its objections to the surrender and consequent cancellation of the owner's duplicate copy of the certificate of title in its possession.

It is true that the redemptioner merely filed an Ex-Parte Motion on the basis of which the court issued the order of 1 April 1967. However, that procedural defect was cured when the DBP presented its Motion for Reconsideration of the said orders of 1 April and 7 April 1967, contesting the validity of the Deed of Redemption on grounds discussed therein. When the court, therefore, overruled the DBP's said objections and arguments and affirmed its previous orders, the DBP was given its day in court, and the objection of lack of notice or opportunity to be heard is overcome.

The issue raised in the second assignment of error was already resolved in the case of *Nepomuceno, et al. vs. The Rehabilitation Finance Corporation (now the DBP)*[2] when this court held in effect that Section 31 of

Commonwealth Act No. 459[3], and not Section 26, Rule 39, of the Rules of Court[4], is applicable in case of redemption of real estate mortgaged to the DBP to secure a loan. As such, the redemption price to be paid by the mortgagor or debtor to the DBP is "all the amount he owes the latter on the date of the sale, with interest on the total indebtedness at the rate agreed upon", and not merely the amount paid for by the purchaser at the public auction, pursuant to Section 31, Rule 39, of the Rules of Court.[5] The pertinent portion of the decision in the Nepomuceno case follows:

"From the cursory reading of the foregoing provisions it would appear that Section 26, Rule 39 of the Rules of Court which is referred to as a complimentary provision of Section 6 of Act 3135, is wider in scope than Section 31 of Commonwealth Act 459. The first embraces all properties mortgaged in favor of any person as mortgagee while the latter merely relates to properties mortgaged to the Agricultural and Industrial Bank. Stated otherwise, Section 26, Rule 39, operates on every mortgaged property in the hands of any mortgagee that comes within the purview of Act 3135 whereas Section 31 of Commonwealth Act 459 operates only on properties mortgaged to the Rehabilitation Finance Corporation.[6] It thus appears that Commonwealth Act No. 459 is a special law exclusively applicable to properties mortgaged to the Rehabilitation Finance Corporation, while Act 3135, as implemented by Section 26, Rule 39, is a general law which embraces all properties mortgaged to any party to the exclusion of said corporation as mortgagee. Therefore, under the familiar rule that a special law should prevail over a general law when the application of their provisions should conflict on a particular transaction, we cannot but conclude that the law that should apply to the redemption of the foreclosed property is Commonwealth Act No. 459."

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"Considering the above premise, and it appearing that under Section 31, Commonwealth Act 459 a mortgagor or debtor whose property is sold at public auction, judicially or extrajudicially, may only redeem said property by paying to the bank all the amount he owes the latter on the date of the sale, with interest on the total indebtedness at the rate agreed upon, the inescapable conclusion is that the mortgagor herein or his assignees cannot redeem the property in dispute without paying the balance of the total indebtedness then outstanding on the date of the sale to the Rehabilitation Finance Corporation."[7]

The paramount reason given by this Court in the above interpretation is "to protect the investment of the government in the institution". It can readily be seen in this case that if the redemptioner were allowed to redeem the property by merely paying the DBP the purchase price at the auction sale with interest, or a total of P12,320, the DBP would lose P18,239.37 at least as of the date of the sale, considering that its total claim of principal, interest and publication expenses on said date already amounted to P30,559.37.[8]

The ruling that Section 31 of Commonwealth Act No. 459 governs the redemption of real properties mortgaged to the DBP has likewise been reiterated in the more recent case of *Sumerariz vs. Development Bank of the Philippines*[9] when this Court said -

"It may not be amiss to note that, unlike Section 30 of Rule 39 of the Rules of Court[10], which permits the extension of the period of redemption of mortgaged properties Section 3[11] of Commonwealth Act 459, in relation to Section, 9 of Republic Act 85[12], which governs the redemption of property mortgaged to the Bank, does not contain a similar provision." (Underscoring supplied)

Referring to a similar provision in the Charter of the Philippine National Bank, this Court ruled in *Medina vs. Philippine National Bank*, 56 Phil. 651, at pages 656-657:

"When the bank's right to foreclose the mortgage of the Manila Commercial Company accrued, Act No. 3135 was already in force. Of course, this law, being general, did not affect the charter of the bank, which was a special law. Thus, when the bank, in order to sell the mortgaged property extrajudicially, resorted to Act No. 3135, it did so merely to find a proceeding for the sale; but that action cannot be taken to mean a waiver of its

right to demand the payment of the whole debt before the property can be redeemed: The record contains nothing to show that the bank made this waiver of said right."

Nothing in Register of Deeds of Iloilo vs. Hodges, L-18178, 31 January 1963, 7 SCRA, 149, operates counter to the rulings rendered in Nepomuceno vs. Rehabilitation Finance Corporation, Sumerariz vs. Development Bank of the Philippines, and Medina vs. Philippine National Bank, previously quoted. The sole issue involved in the Hodges case was whether a Court of First Instance, sitting as land registration court, could validly act on a petition to cancel entries appearing in a certificate of title if there was a serious opposition to the petition, and We ruled that the court could not do so under Section 112 of Act 496, since contro-versial matters must be settled in ordinary actions. Any reference in said Hodges decision to Section 26 of Commonwealth Act No. 459, or to Section 9 of Republic Act No. 89, was beside the issue raised and, there-fore, mere obiter without binding effect.

FOR THE FOREGOING REASONS, the Order appealed from is reversed. The Deed of Redemption and entry thereof (No. 270696) in the Office of the Register of Deeds are hereby declared void and of no effect. Appellee Josefina B. Jimenez, however, is given a grace period of thirty (30) days from notice hereof within which to redeem the subject property covered by Original Certificate of Title No. 14483 of Pangasinan if she so desires, by paying to the Development Bank the balance of its credit secured by said property as of the date of the sale, plus the expenses and the agreed rate of interest, in the event that the Bank has not as yet disposed of the property in favor of a third person. Costs against appellee Josefina B. Jimenez.

Dizon and Makasiar, JJ., on leave, did not take part.

Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Concepcion, C.J., on leave.

[1] "Sec. 111. In every case where the clerk or any register of deeds is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the clerk or register of deeds shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the court. The court, after hearing, may order the registered owner or any person withholding the duplicate to surrender the same, and direct the entry of a new certificate of title upon such surrender.

"If in any case the person withholding the duplicate certificate is not amenable to the process of the court or if for any reason the out-standing owner's duplicate certificate cannot be delivered up, the court may by decree annul the same, and order a new certificate of title to be entered. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

"If in any case an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when a mortgage is discharged or extinguished or the lease is terminated, like proceedings may be had to obtain registration as in the case of the non-production of an owner's duplicate."

[2] G.R. No. L-18178, 23 November 1960.

[3] "Section 31. The mortgagor or debtor to the Agricultural and Indus-trial 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 indebted-ness at the rate agreed upon in the obligation from said date, unless the bidder has taken material possession of the property or

unless this had been delivered to him, in which case the proceeds of the property shall compensate the interest. If the Agricultural and Industrial Bank was not the highest bidder at the auction sale, the Bank shall, in case of redemption, return to the bidder the amount it received from him as a result of the auction sale with the corresponding interest paid by the debtor." (Effective 9 June 1939)

[4] Now Section 30, Rule 39, of the Revised Rules of Court.

[5] "SEC. 26. 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 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;. "

[6] Underscoring supplied.

[7] Underscoring supplied.

[8] Pages 37-38, Record on Appeal.

[9] G.R. No. L-23764, 26 December 1967, 21 SCRA 1374.

[10] Formerly Section 26, Rule 39, of the Rules of Court, *supra*.

[11] Should be Section 31 of Commonwealth Act No. 459.

[12] "SEC. 9. Transfer of functions, assets and liabilities of the Agricultural and Industrial Bank. - All the powers vested in and the duties conferred upon the Agricultural and Industrial Bank by Commonwealth Act No. 459, as amended, the funds and properties heretofore placed under the administration of the said Agricultural and Industrial Bank by said Act, and all its capital, assets, accounts, contracts and choses in action, are transferred to the Rehabilitation Finance Corporation, which shall exercise said powers and duties in accordance with the provisions of said Act, except as herein otherwise provided, and shall administer, dispose of, handle and execute said funds, properties, capital, assets, accounts, contracts, or agreements and choses in action in the manner the Corporation may determine in the interest of the funds concerned, and the Corporation shall assume all the liabilities of the Agricultural and Industrial Bank as such or as trustee, as the case may be. The total amount of the unimpaired capital of the Agricultural and Industrial Bank shall stand abolished on the date when the Corporation shall begin its operations."

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