

JUAN L. CLEMENTE, PETITIONER, VS. COURT OF APPEALS AND H. E. HEACOCK CO., RESPONDENTS.

G.R. No. L-15233. October 25, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Petitioner Juan L. Clemente, against whom a final judgment for a sum of money was obtained in a foreclosure suit, appeals by certiorari from the decision of the Court of Appeals affirming the order of the Court of First Instance of Rizal confirming the sale at public auction of the mortgaged properties in favor of the judgment creditor, herein respondent H. E. Heacock Company. The main contention of petitioner is that he was not given a hearing on the merits of the opposition to the confirmation of the sale of his properties.

On March 25, 1955, after the judgment of the Court of Appeals in CA-G.R. No. 20460-R sentencing petitioner to pay respondent H. E. Heacock Co. the sum of P9,319.21, plus interest, attorney's fees, and costs had become final, H. E. Heacock Co. applied for and obtained a writ of execution by virtue of which the Provincial Sheriff of Rizal, on May 23, 1955, sold at public auction petitioner's mortgaged properties (3 parcels of land covered by TCT Nos. 1182, 11773, and 19365 of the Register of Deeds of Rizal) to respondent H. E. Heacock Co., the highest bidder, for P14,301.34, and issued to the latter the corresponding certificate of sale.

On June 27, 1956, respondent H. E. Heacock Co. filed a motion for confirmation of sale, with due notice to petitioner that said motion was to be heard on June 30, 1956. On the date of the hearing, petitioner appeared by counsel and requested that he be given 7 days within which to present his written opposition, which the court granted. On July 6, 1956, petitioner filed his written opposition which in part states:

"III. That the confirmation of the sale would be contrary to Art. 1619 of Rep. Act 386 and deprive him (petitioner) of the right to extinguish the judgment sale by reimbursing plaintiff (respondent H-E. Heacock Co.) as well as Second Mortgagee of the price paid thereof.

"It is submitted that the foregoing grounds need not be argued. They are self-explanatory and in themselves sufficient to inform this Honorable Court of the rights of defendant and of which law and equity would not deprive him.

"One point however, cannot be overlooked in this case, and it is that there is apparent collusion between plaintiff Heacock and the Second Mortgagee, ostensibly for the purpose of defeating the chances of the defendant in redeeming his properties, through the Motion for Confirmation of Sale. * * *."

The incident was thus submitted for resolution and on September 17, 1956, the court issued the following order of confirmation of sale:

"ORDER

"After hearing and consideration of the motion for confirmation of sale, dated June 27, 1956, filed by the plaintiff, thru counsel, and the opposition thereto by counsel for the defendant, and the Court, finding the

reasons given in support thereof to be well-founded, hereby confirms the sale at public auction made by the Sheriff of Rizal on May 23, 1955.

"It is so ordered."

On October 2, 1956, petitioner filed a motion for reconsideration of said order of confirmation of sale, on the ground that it is contrary to law.

On November 6, 1956, respondent H. E. Heacock Co. filed an urgent motion for writ of possession, to which petitioner filed an opposition on November 9, 1956.

On December 20, 1956, the court issued an order denying petitioner's motion for reconsideration of the order of confirmation of sale dated October 2, 1956. On the same date, the court issued an order granting respondent H. E. Heacock Co.'s urgent motion for writ of possession of November 6, 1956.

From these orders, petitioner appealed to the Court of Appeals, and said court, on October 31, 1958, rendered a decision affirming the same, in part stating:

"The alleged collusion between the H.E. Heacock Co. and Amparo Helen de Guzman was not shown. Appellant contends that he has been deprived of the opportunity to prove it, but such contention is untenable, as the record fails to reveal that he had even attempted to offer evidence during the hearing held to determine whether or not the sale should be confirmed.

"The truth, after all, is that appellant definitely lost his right to redeem the foreclosed properties when he failed to do so during the ninety (90) days period from notice of the decision of the Court of Appeals referred to above. Article 1619 of the Civil Code is not applicable here.

"The confirmation of the sale as sought by appellee is, therefore, due. The writ of possession is only a sequence of the confirmation of the sale.

"There being no reversible error in the order appealed from, the same is hereby affirmed, without further costs."

On December 6, 1958, petitioner filed a motion for reconsideration of said decision, on the ground that the Court of Appeals erroneously assumed that the lower court held a hearing on the motion for confirmation of sale in question and the opposition thereto. Said motion was denied and, on February 27, 1959, petitioner filed a second motion for reconsideration, on the grounds that (1) his claim that there was no hearing on said motion for confirmation of sale, is confirmed by the letter dated November 5, 1957, of the Clerk of Court of First Instance of Rizal; and (2) the court overlooked the fact that he is allowed by law to repurchase the properties "foreclosed under equity of redemption.

Said second motion for reconsideration, having been denied by the Court of Appeals, petitioner filed with us this present petition for certiorari.

We find no merit in the petition.

The records reveal that respondent corporation's motion for confirmation of the sale (dated June 26, 1956), which was set for hearing on June 30, 1956 at 8:30 a.m., was actually heard on said date, wherein the trial court, not only heard petitioner's oral objection thereto, but also, upon his own motion, granted him sufficient time to prepare and submit a written opposition, which he duly filed on July 6, 1956. After filing said written opposition, petitioner had no reason to expect another (or second) hearing on the same motion for confirmation, especially so when he never asked for a second hearing thereon. Indeed, he in fact expressly waived the same when he stated in his written opposition that-

"It is submitted that the foregoing grounds need not be argued. They are self-explanatory and in themselves sufficient to inform this Honorable Court of the rights of defendant (herein petitioner) and of which, law and equity would not deprive him."

Following well-established rules of procedure, the trial court rightly considered said motion and opposition thereto submitted for decision.

That there was in fact a hearing on the motion for confirmation of sale in question, is evident from the trial court's order of September 17, 1956 confirming the sale, to wit:

"After hearing and consideration of the motion for confirmation of sale, dated June 27, 1956, filed by plaintiff (herein respondent H. E. Heacock Co.) thru counsel, and the opposition thereto by counsel for the defendant (herein petitioner), and the Court finding the reasons given in support thereof to be well-founded, hereby confirms the sale at public auction made by the Sheriff of Rizal on May 23, 1955." (Italics supplied.)

In this connection, respondent Court of Appeals also stated:

"The alleged collusion between the H. E. Heacock Co. and Amparo Belen de Guzman was not shown. Appellant contends that he has been deprived of the opportunity to prove it, but such contention is untenable, as the record fails to reveal that he had even attempted to offer evidence during the hearing held to determine whether or not the sale should be confirmed." (Italics supplied.)

In support of his stand that no hearing on the motion for confirmation of sale was made in the trial court, petitioner makes capital of the letter dated November 5, 1957 (Annex E-1) of the Clerk of the Court of First Instance of Rizal addressed to the Deputy Clerk of Court of the Court of Appeals, reading as follows:

"In reply to your letter of the 29th ult., please be informed that no hearing on the merits was held in this case and consequently no minutes were prepared by the Deputy Clerk of Court in connection with the appealed orders both dated Dec. 10, 1956, the first denying motion to set aside order confirming auction sale, and the second directing issuance of writ of possession." (Italics supplied.)

But the above-quoted letter of the Clerk of the Court of First Instance of Rizal, makes no reference whatsoever to the motion for confirmation of sale dated June 27, 1956, but specifically and definitely mentions (1) the order dated December 20, 1956 denying the motion to set aside the order confirming the sale; and (2) the order of the same date directing the issuance of writ of possession.

Wherefore, finding no error in the decision of respondent Court of Appeals, the same is hereby affirmed in all respects, with costs against the petitioner. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Gutierrez David, and Paredes, JJ., concur.

Decision affirmed.

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