

**HIPOLITA DULAY CATBAGAN, REPRESENTED BY JULIANA C. DULAY,
PLAINTIFF-PETITIONER, VS. THE PHILIPPINE NATIONAL BANK,
LOURDES MOYA, FE MOYA, AIDA MOYA, JOSE MOYA, ROMEO
MOYA, NELLY ...**

G.R. No. L-30400. December 12, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of the decision of the Court of First Instance of Pangasinan, Branch X, dated October 14, 1968, dismissing the complaint for redemption and damages filed by plaintiff-petitioner.

The factual background of the case is as follows:

On two occasions, particularly on November 14 and 22, 1962, plaintiff-petitioner Hipolita Dulay Catbagan purchased a 15-hectare land, more or less, from the defendants-respondents, Lourdes, Fe, Aida, Jose, Romeo, Nelly, Jesus and Milagros, all surnamed Moya (hereinafter referred to as respondents Moya). The land covered by the two above mentioned contracts of sale of 1962 was, however, mortgaged previously by respondents Moya to the other defendant-respondent, the Philippine National Bank (PNB for short). The mortgage debt not having been paid, respondent PNB foreclosed the mortgage and had the property sold at public auction on July 10, 1968, where defendant-respondent PNB, being the highest bidder at the public auction, was awarded the sale of the property. Juliana Dulay, plaintiff-petitioner's attorney-in-fact, tried to redeem the foreclosed property for and on behalf of petitioner, but respondent PNB refused as there was no written authority given by the respondents Moya who remained the registered owners of the land despite the sale in 1962. Because of this refusal plaintiff-petitioner filed Civil Case No. SCC-109/or redemption and damages in the Court of First Instance of Pangasinan, Branch X, which was, however, dismissed by the trial court on October 14, 1968, on the ground that the power of attorney relied upon by plaintiff therein was not sufficient in form and substance to vest authority and power in Juliana Dulay to prosecute the action in representation and/or as attorney-in-fact of Hipolita Dulay Catbagan. The afore-stated order of dismissal reads as follows:

"The defendants MOYA, represented by Atty. Bernardino Gubatan filed a motion to dismiss the present action claiming that the plaintiff has no capacity to sue and that she has no cause of action against them. The Philippine National Bank in its answer also alleges that the plaintiff has no capacity to sue and has no cause of action against the Philippine National Bank. The plaintiff, after promptings from the Court, presented a purported general power-of-attorney to show that she was empowered to bring this suit in favor of Hipolita Dulay Catbagan. The said power-of-attorney appeared to have been executed before a Notary Public of the First Circuit Court, State of Hawaii. By this power-of-attorney the plaintiff claims that she is empowered to bring the present action either as trustee or as agent of Hipolita Dulay Catbagan. An examination of the general power-of-attorney shows that it makes no mention at all of the particular parcel of land which is the object of the present complaint. Upon questioning by the court the plaintiff's counsel admitted that the mortgage made by the defendants Moya over the property in question in favor of the Philippine National Bank was executed

before the sale was made in favor of the said Hipolita Dulay Catbagan. The same was duly registered. The plaintiff or her principal cannot therefore plead ignorance of the same. It is further noted by this court that the power-of-attorney relied upon by the plaintiff is not sufficient in form and substance to vest authority in plaintiff enough powers to represent Hipolita Dulay Catbagan in the present suit.

"IN VIEW OF THE FOREGOING, finding the motion to dismiss is meritorious, this court hereby dismisses this action, without pronouncement as to costs."

Plaintiff-petitioner, not satisfied with the order of dismissal rendered by the trial court, filed a motion for reconsideration which was denied.

Hence this petition for review on certiorari.

On October 21, 1969, defendant-respondent PNB filed a Motion to dismiss the appeal against itself on the ground that redemption had already been granted by the PNB in favor of plaintiff-petitioner in a Deed of Redemption dated June 3, 1969, and it is therein provided and agreed upon by the respondent PNB and plaintiff-petitioner "to cause the dismissal in toto as against the PNB of the case entitled 'Catbagan vs. PNB et al, G.R. No. L-30400,' the issue therein having been rendered academic and moot."

Excepting to the motion to dismiss filed by respondent PNB, defendants-respondents Moya pray for the issuance of an order punishing the PNB and herein petitioner for contempt of court for having executed the Deed of Redemption without court authority in spite of the pendency of this case and Civil Case No. SCC-111 between the herein private respondents Moya, as plaintiffs, and the herein petitioner and her husband, as defendants, for Rescission and Damages with Writ of Injunction, the latter having been elevated to the Court of Appeals.

The PNB on November 25, 1969, filed its Opposition to the Motion for Contempt and Damages of the Moyas and alleges therein —

"2. That, as mentioned in par. 4 of said Motion for Contempt and Damages, there is another case which involves the same parcel of land, the same parties (with the exception of the PNB) and the same right of redemption as this instant one on appeal: SSC No. 111 entitled Lourdes Moya et al. vs. Hipolita Dulay Catbagan, et al. for Rescission, Damages and Injunction which was decided in favor of the defendants in a decision dated May 14, 1969 (certified copy annexed herewith) the dispositive portion of which reads as follows, viz:

'IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows: (a) dismissing plaintiffs complaint and defendants' counterclaim; (b) holding the two Deeds of Sale, Exhibits 1 and 2 valid and effective between the parties; (c) declaring the defendants the owner entitled to full possession of the parcel of land described in paragraph 2 of the plaintiffs' complaint; (d) permitting defendants or their representatives to redeem and the Philippine National Bank, Dagupan Branch to allow redemption of the parcel of land in suit upon payment by the former to the latter of the amount of the mortgage loan plus accrued interests as of the day of redemption; (e) ordering that at copy of this decision be furnished said Bank for its information and guidance of its officials; (f) in the event of failure of the Bank official to comply with this decision, the Clerk of Court of this Court shall execute, upon consignment of the amount, the corresponding deed at the expense of the Bank; and (g) plaintiffs to pay the costs.

'SO ORDERED;

"3. That when the aforecited decision was furnished defendant Bank by Hipolita Catbagan's counsel and her representative, the Bank referred the matter to Lourdes Moya who has been dealing with the Bank in all matters regarding the property under power-of-attorney executed in her favor by the other Moyas, her co-owners;

"4. That Lourdes Moya, through Teofilo Zarate her husband, who was then the Chief of the Loans Department of

the Bank, informed undersigned Counsel of their decision not to appeal anymore and to go ahead with the redemption;

"5. That in view thereof, on June 3, 1969, the Deed of Redemption was executed, duly signed by the parties and their instrumental witnesses, one of whom was Teofilo Zarate himself; all in a manner which is regular and above-board; and a copy thereof submitted to this Honorable Tribunal attached to our Motion to Dismiss;

"6. That from the time defendant Bank received the copy of the decision above-cited, it has never been informed nor notified in any manner whatsoever of the fact that said decision has, it appears, been elevated on appeal after all;

"7. That the redemption was therefore executed with the full knowledge and consent of the Moyas and on the basis of a decision of the court;

"8. That their posture of righteous indignation as contained in the Motion for Contempt is therefore empty and fraudulent and their prayer for damage legally and equitably unreasonable and without basis;

"9. That it is indeed ironic that defendant Bank should now be assailed by the Moyas considering that: a) the contract of sale of the land mortgaged to the Bank which they entered into, caused the inclusion of the Bank in this instant case as a party defendant; b) that it was their initial decision not to appeal from the adverse judgment in Civil Case No. SCC-111 which resulted to the execution of the Deed of Redemption; and c) that all of these complications started because they borrowed money from the Bank and failed to pay upon maturity."

Likewise, on November 25, 1969, plaintiff-petitioner filed her answer to the Motion for Contempt of respondents Moya dated November 11, 1969, alleging that respondents Moya committed gross misrepresentation in their motion for contempt when they claimed that they first came to know of the redemption only on November 11, 1969, when in truth and in fact they knew of the redemption all the while as evidenced by their Urgent Motion of July 13, 1969, in Civil Case No. SCC-111 for the surrender of the title of the land involved to the custody of the court, which motion was, however, "denied for lack of merit" by the Court of First Instance of Pangasinan, Branch X, in an order dated July 16, 1969.

Simultaneously on November 25, 1969, plaintiff-petitioner filed her comment on the Motion to Dismiss filed by respondent PNB wherein she admits having been able to redeem the land in question and that she had agreed to have the instant petition dismissed only in so far as the PNB is concerned, but without including respondents Moya, for there are still other vital issues to be resolved if and when the Court revokes the order of dismissal of the trial court and remand the case for trial on the merits.

In a resolution of this Court dated November 28, 1969, "the Court RESOLVED: (1) to defer consideration of the bank's motion to dismiss until the decision on the merits; and (2) to deny the motions for contempt filed by both petitioner and respondents Moya."

In a motion dated January 15, 1970, defendant-respondent PNB prayed to be excused from filing its brief and have the case considered submitted for decision, there being no contentious issue between the bank and the petitioner as can be seen in the Motion to Dismiss of the bank dated October 8, 1969, and the Comments on the Motion to Dismiss of the petitioner dated November 19, 1969. On the other hand, respondents Moya failed to file their brief within the period which expired on January 17, 1970.

This Court, in order to arrive at a judicious and equitable decision of this case, verified with the Court of Appeals the status of Civil Case No. SCC-111 which was appealed to it. On October 23, 1975, the Clerk of Court of the Court of Appeals issued the following certification, to wit:

"This is to certify that the appeal interposed by the plaintiffs in Civil Case No. SCC-111, entitled LOURDES MOYA, et al. versus HIPOLITA DULAY CATBAGAN and BIBIANO CATBAGAN of the Court of First Instance of Pangasinan, San Carlos City, was dismissed on May 12, 1970, for failure to pay the docketing fee as per resolution of the Special Eighth Division on even date.

"This is to certify further that the resolution aforesaid dismissing the appeal was entered on June 18, 1970, and that the records of the case were remanded to the lower court on August 14, 1970."

Clearly the judgment in Civil Case No. SCC-111, under date of May 14, 1969 (see pp. 126-134, Rollo), which has already become final and executory, settled once and for all the issues of damages between the parties and the right of redemption and ownership of the land involved. The issues raised by plaintiff-petitioner as to whether or not she is entitled to a reimbursement of the amount she used in redeeming the property involved, as well as the other damages she claims to have suffered, had been finally disposed of because of the failure of herein petitioner and her husband to interpose an appeal from the decision in Civil Case No. SSC-111 wherein their counterclaim for damages was dismissed.

FOR ALL THE FOREGOING, and considering the fact the the land in dispute has been redeemed by petitioner, this case has become moot and academic. Hence, the petition is hereby dismissed.

Without costs.

SO ORDERED.

Castro (Chairman), Makasiar, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., files a separate opinion.

CONCURRING OPINION

TEEHANKEE, J. :

I concur in the result, insofar as the decision dismisses the case for having become moot and academic, since redemption of the land in dispute (sold by respondents Moyas to petitioner) has already been granted by respondent PNB (as mortgage creditor of the Moyas).

Petitioner herself has manifested her agreement to the dismissal of her suit for redemption, only insofar as the PNB is concerned.

But as petitioner's suit against the Moyas, she claims that there are still vital issues and claims to be prosecuted by her against the Moyas, should the Court set aside the lower court's order of dismissal (for alleged insufficiency of the power of attorney relied upon by Juliana Dulay to file the complaint in behalf and in the name of petitioner) and remand the case for trial on the merits viz, reimbursement by the Moyas of the amount expended by petitioner to redeem the property and pay off the mortgage loan plus interests and payment of damages suffered by her. Should petitioner show that the Moyas had indeed sold the property to her free from all liens, she could validly claim reimbursement of the redemption amount and damages.

I am, therefore, not prepared to concur with the obiter dictum in the decision that such claims of petitioner were "settled once and for all" by the judgment in the separate action for rescission filed by the Moyas against petitioner (Civil Case No. SCC-111) which likewise recognized petitioner's right of redemption but dismissed petitioner's counterclaim for damages therein, since petitioner did not interpose an appeal from such dismissal —

for the simple reason that the records of the said case are not before this Court so as to enable us to tell whether petitioner's dismissed claim therein for damages refers to the same damages sought by her in this case.

The dismissal of the petition at bar should be limited to its having become moot and academic since the land has already been redeemed by petitioner, as expressly declared in the judgment (dispositive portion) of this Court. Petitioner should be left free to prosecute her claim for reimbursement and damages in a separate action, subject of course to such defenses as may properly be available to the Moyas as the adverse party.

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