

**LLANES & COMPANY, PETITIONER, VS. HON. JUAN L. BOCAR,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, CARLOS G.
ALFARO AND MAGGIE CAPEN, RESPONDENTS.**

G.R. No. L-26992. February 12, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

As a consequence of the failure of respondent spouses Carlos G. Alfaro and Maggie Capen to comply with their obligations under the agency contract, petitioner Llanes & Company instituted on August 15, 1962, with the Court of First Instance of Manila, Branch XVI, in Civil Case No. 51272,[1] an action for recovery of the sum of P18,178.94 representing the value of pianos delivered to said respondent spouses on consignment, with the interest thereon at 6% per annum from November 26, 1959 until fully paid, and for foreclosure and sale at public auction of the mortgaged property should defendants fail to pay said amount. The copy of the "Deed of Real Estate Second Mortgage" of March 20, 1956, executed by respondent spouses to secure the faithful compliance of their obligations under the Contract of Agency and which was duly registered on March 21, 1956 with the Office of the Register of Deeds of Manila, was attached to the complaint as "Annex 'B'" and made part thereof.

After trial, decision was rendered on April 2, 1963 wherein respondent spouses were ordered to pay petitioner the sum of P16,778.94, with interest thereon at the rate of 6% per annum from August 15, 1962 until the date of payment, attorney's fees and costs, with the admonition that in default of such payment within ninety (90) days from receipt of a copy of the decision, the Court shall order that the property "described in the complaint" be sold at public auction to realize the mortgage debt and costs.

On September 12, 1963, the trial court, on motion of the petitioner, issued an order for the sale of the mortgaged property, and on October 25, 1963, the Sheriff of Manila sold at public auction the real property covered by Transfer Certificate of Title No. 8814 to the petitioner, Llanes & Company, for the sum of P18,950.00. The Sheriff's Sale was confirmed by the same court on November 4, 1963.

After the Sheriff's Certificate of Sale was registered in the land records of the City of Manila on January 20, 1964 and a new transfer certificate of title, TCT No. 73813, was issued to the petitioner, the latter moved for the issuance of the writ of possession. On April 16, 1964, respondent spouses opposed its issuance, claiming that the same was premature as they have still "seven months to redeem the properties in question under section 35, Rule 39 of the Rules of Court." This contention was rejected by the court a quo, however, who thereafter issued, on April 24, 1964, an order directing the Clerk of Court to deliver the possession of the mortgaged property to the petitioner.

On October 26, 1964, the respondent spouses filed a petition for relief from said order, but this was denied on November 2, 1964. Hence, a petition for certiorari was filed with this Court in G.R. No. L-23962,[2] by the respondent spouses, to annul the afore-cited order of April 24, 1964, petitioners insisting that the action in Civil Case No. 51272 was not "one of foreclosure of mortgage" but an ordinary action for collection and, therefore, the

said spouses had the right to redeem said property within twelve (12) months after the sale, pursuant to section 35 of Rule 39 of the Rules. This petition was dismissed by this Court on January 5, 1965 for lack of merit. The motion for reconsideration was denied and entry of judgment was made on February 25, 1965.

About a year later, or on February 17, 1966, the petitioner filed a petition with the trial court, praying that the original decision of April 2, 1963 be amended to insert after the clause "the Court shall order the sale at public auction of the property described in the complaint" the following: "together with the building and other improvements thereon" and that the same clause be inserted in the Certificate of Sale dated October 25, 1963 after the words "parcel of land". This motion was first granted by the trial court on February 21, 1966, but on April 13, 1966, the said court set aside its afore-mentioned order of February 21, 1966 on the ground that at that stage "the decision of the Court could no longer be amended or corrected", as the same was not just a clerical error, considering that the description of the property in the complaint for foreclosure of the mortgage did not include the "building or other improvements" and in the Order of Execution, as well as in the Notice and the Certificate of Sale, "only the land is mentioned, and nothing is stated about the improvements". Petitioner's motion for reconsideration was denied by said court on June 20, 1966. Hence, the present petition for certiorari.

It is true that the deed of mortgage included the building and other improvements existing thereon, and, therefore, ordinarily such building and other improvements should have been deemed as included in the foreclosure proceedings. It appears, however, that both in the order of foreclosure and the Sheriff's Notice of Sale, only the residential lot was specifically mentioned. Thus, the Sheriff of Manila was specifically directed by the court, in its order of September 12, 1963, to sell at public auction the parcel of land registered under the Transfer Certificate of Title No. 8814.

Similarly, The Sheriff's Notice of Sale of September 17, 1963 (Exhibit "1", Manifestation) contained verbatim the afore-mentioned description of the residential lot. There was no statement whatsoever in both documents of the existence of any "building and other improvements" on the property.

Finally, the Certificate of Sale (Annex "C", Exhibit "2", Manifestation) of October 25, 1963, specifically confined the description of the property sold to the technical description of Lot No. 26, Block 25 of the subdivision plan Psd-7570, of Tondo, Manila. Notwithstanding the non-inclusion of the building in the Certificate of Sale, petitioner did not ask for the correction or amendment of the Certificate of Sale and instead moved for its confirmation. As a result, the sale was confirmed by the court on November 4, 1963. This Certificate of Sale was subsequently registered by petitioner with the Register of Deeds on January 20, 1964 and on the basis of that deed, Transfer Certificate of Title No. 73813 was issued. It was only on February 17, 1966, or three (3) years after the confirmation of the Sheriff's Sale that petitioner filed an ex parte motion to correct "the clerical error" in the decision of the court of April 2, 1963, and all subsequent orders of said court, including the Sheriff's Certificate of Sale for the purpose of inserting therein, after the description of the residential lot, the following words: "together with the building and other improvements existing thereon".

The only issue is whether the non-inclusion of the "building and other improvements" in the decision of foreclosure, writ of execution, Notice of Sale and the Certificate of Sale as confirmed by the order of the court is a mere clerical error which may be corrected at any time.

Pursuant to Section 3 of Rule 68 of the Rules of Court, when the judgment debtor fails to pay the principal, interest and costs at the time directed in the order, "the Court shall order the property to be sold in the manner and under the regulations that govern sale of real estate under execution." In the sale of real property under execution, the rule requires that notice "particularly describing the property" shall be posted for twenty (20) days in three (3) public places in the municipality or city where the property is situated; but where the assessed value of such

property exceeds P200.00, the notice shall be published once a week for the same period in newspapers having general circulation in the province.[3] The principal object in publishing notices of sale of mortgaged property is not so much to notify the mortgagor as to inform the public generally, so that a sufficient number of people may be present thereat, to insure the fairness of the sale and to promote competitive bidding.[4] The notice should direct the attention of the public to any important fact or facts connected therewith which have a tendency to increase the value of the property, especially those facts which would ordinarily be unknown to the public.[5] Since the claim of respondent spouses that the residential house erected on the lot is actually worth "no less than P40,000.00" is not disputed, it is not improbable that the non-inclusion of the building and improvement in the notice of sale could have deterred other parties from participating in the auction sale, thus preventing competitive bidding. Certainly, if the petitioner was of the belief that the building existing in the premises was included in the auction sale of October 25, 1963, the aforesaid company could have moved for the correction of the Sheriff's Certificate of Sale. This it failed to do. Since the court had already confirmed the sale, such confirmation has concluded all controversies about the sale. For it is settled that the doctrine of *res judicata* applies to confirmation of a sale, as it does to other judicial proceedings.[6]

II

While courts have the power to correct errors and mis-prisions in final judgments, such authority is limited to the correction of clerical errors.[7] The office of a *nunc pro tunc* amendment to a judgment is not to correct judicial errors, however flagrant and glaring they may be, in the judgment rendered by the court.[8] The test to determine "whether an error in a judgment is a judicial one, not open to correction on motion in the court which made it, or a mere clerical one, which may be corrected any time on application in the court where it occurred, is whether the mistake relates to some-thing the court did not consider and pass on, or considered and erroneously decided, or whether there was a failure to preserve or correctly represent in the record, in all respects, the actual decision of the court." [9] The phrase "clerical error" has been employed in a broad sense to cover all errors, mistakes, or omissions which are not the result of the exercise of the judicial function.[10] The "power to correct clerical errors in judgments, orders or decrees, does not authorize the addition of terms never adjudged, or the entry of orders never made, although the court should have made such additions or entered such orders, and any error in that regard is a judicial error." [11] It is obvious from the foregoing that the errors which petitioner seeks to correct are not clerical errors.

Wherefore, in view of the foregoing, the petition is hereby dismissed for lack of merits.

Fernando (Chairman), Aquino and Concepcion, Jr., JJ., concur.

Barredo, J., see concurring opinion.

[1] Entitled "Llanes & Co., Plaintiff, v. Carlos G. Alfaro and Maggie Capen and Philippine National Bank, Defendants."

[2] Entitled "Carlos Alfaro and Maggie Capen, Petitioners, versus Hon. Carmelino Alvendia as Judge of the Court of First Instance of Manila and Llanes & Co., Respondents."

[3] Section 18(c), Rule 39, Rules of Court.

[4] *Standley v. Knapp*, 298 P. 109, 113 Cal. App. 91 59 C.J.S. 929, Sec. 563; *Johnson v. Balantakbo*, 9 Phil. 647; *Macondray & Co. v. Polito*, 61 Phil. 73.

[5] *Md.-Kres v. Hornstein*, 155 A. 171, 161 Md. 1; *Welch v. Byerly*, 132 A. 616, 150 Md. 107.

[6] "The doctrine of res judicata applies to confirmation of a sale as it does to other judicial proceedings; and objections heard and determined, or available, therein are conclusively settled as against the party making them, and he cannot thereafter raise the same objections in any collateral proceedings." (Feigner v. Slingluff, 71 A. 978, 109 Md. 474; Watson v. Home Owners' Loan Corporation, 3 A. 2d 715, 176 Md. 36; Dill v. Satterfield, 34 Md. 474, 59 C.J.S. 989). "2. Law and jurisprudence have formulated the rule that confirmation of sale of real estate in judicial foreclosure proceedings cuts off all interests of the mortgagor in the real estate sold and vests them in the purchaser. Confirmation retroacts to the date of the sale. An order of confirmation in court foreclosure proceedings is a final order, not merely interlocutory. The right to appeal therefrom has long been recognized. In fact, it is the final order from which appeal may be taken in judicial foreclosure proceedings. No appeal was taken. It follows that said order is final, binding." (Ocampo v. Domalanta, 20 SCRA 1136, 1139, citing: Binalbagan Estate, Inc. v. Gatuslao, 74 Phil. 128, 131; Clemente v. H.E. Heacock Co., L-12786, October 29, 1959; Piano v. Cayanong, L-18603, February 28, 1963; Warner, Barnes & Co., Ltd. v. Santos, 14 Phil. 446; Raymundo v. Sunico, 25 Phil. 365; Philippine Sugar Estates Development Co. v. Camps, 34 Phil. 426, 428; Salazar v. de Torres, L-13711, May 25, 1960.)

[7] "The power of courts to correct clerical errors and misprisions in judgments and decrees, and to make records speak the truth by nunc pro tunc amendments after the term ends, and in cases not continued beyond them for further action, unaided by legislation, does not enable them to change their judgments in substance or in any material respect." (10 A.L.R. 548).

[8] Robertson v. King. 120 Ala. 459, 24 So. 929. "Nor does the power of a court which rendered a judgment, to amend it after the term expires, to rectify a clerical mistake, supply an obvious omission or to conform it to the decision actually and purportedly pronounced, authorize it to correct a judicial error." (10 A.L.R. 551).

[9] Bostwick v. Van Vleck, 106 Wis. 387, 82 N.W. 302; 67 A.L.R. 826, 842; 126 A.L.R. 956, 977.

[10] Hubbard v. Hubbard, 213 Or. 482, 324 P. 2d 469, cited in 46 Am. Jur. 2d 446.

[11] 126 A.L.R., 978, 979, italics supplied.

CONCURRING OPINION

BARREDO, J.:

As I see the problem in this case, what petitioner is seeking to have amended is not really the basic decision of Judge Carmelino Alvendia in Civil Case No. 51272 ordering the foreclosure of the mortgage here in question and providing that "if the defendants do not pay . . . within 90 days ..., the Court shall order the sale at public auction of the property described in the complaint" which could fairly be construed to refer to the property described in turn in the deed of mortgage attached to the complaint and which indeed is the "land, (technically described) together with the building and other improvements thereon," but actually the certificate of sale. The decision, as I see it, includes the building and improvements, but it is the certificate of sale that is limited exclusively to the land alone. So, the legal question posed by the situation on hand is, is there any legal basis for petitioner's claim that the certificate of sale should be deemed to conform with the decision?

In my considered view, the answer to such question is in the negative. To start with, the certificate of sale is evidence only of what was actually sold. In this connection, it is indisputable that what the sheriff sold was only the land. The sheriff could not have done otherwise because the order of execution of the foreclosure sale textually reads thus:

"WHEREFORE, WE command you to sell at public auction to the highest bidder the described property to wit:

TCT NO. 8814 OF THE CITY OF MANILA

'A parcel of land (Lot 26, Block 25 of the subdivision plan Psd-7570, Sheet 6, being a portion of Block 25 described on plan Psd-6910, G.L.R.O. Cad. Record No. 278), situated in the District of Tondo, City of Manila. Bounded on the NE and SE. by Lot 108 (Road), Block 25 of the subdivision plan; on the SW. by Lot 35, Block 25 of the subdivision plan and on the NW. by Lot 25 Block 25 of the subdivision plan. Beginning at a point marked "1" on plan, being N. 20 deg. 35'E., 964.88 m. from B. L. L. M. No. 53, Manila Cadastre, thence N. 23 deg. 58'W., 17.07 m. to point 2; thence N. 66 deg. 02'E., 10.69 m. to point 3; thence S. 23 deg. 58'E., 14.50 m. to point 4; thence S. 52 deg. 30'W. 11.00 m. to the point of beginning; containing an area of ONE HUNDRED SIXTY EIGHT SQUARE METERS AND SEVENTY SQUARE DECIMETERS (168.70), more or less. * * *'

And that from the proceeds of said sale you cause to be made the sum of SIXTEEN THOUSAND SEVEN HUNDRED SEVENTY EIGHT PESOS AND NINETY FOUR CENTAVOS – – – (P16,778.94), Philippine currency, together with interest thereon at the rate of six (6%) per cent per annum, from the 15th day of August, 1962, until the date of payment, and the further sum of P300.00 as attorney's fees; ONE HUNDRED SIX PESOS – – – (P106.00), Philippine currency, for costs of suit, together with your lawful fees; and to make return of your proceedings with this writ within the time prescribed by law." (Pp. 15-16, Record.)

It is in my opinion unnecessary to discuss whether or not the decision of Judge Alvendia can be substantially amended at this stage. What is decisive is that there is absolutely no basis at all for petitioner to obtain by the present petition more than what it actually bought at the foreclosure sale. To be more specific, petitioner did not buy the property described in the complaint, but the property described in the writ of execution aforementioned which was quoted verbatim in the notice of sale. As already stated, the writ of execution referred to the land alone. Accordingly, I hold that petitioner cannot complain that what was delivered to him by the sheriff is less than what he bidded for or bought. Besides, as well observed by Mr. Justice Aquino, it is not claimed that the price of P18,950.00 petitioner paid for the land in question is unconscionable. In other words, petitioner got its money's worth. It is but fair that respondents be left with something for themselves, their obligation to their creditor having been fully satisfied. Justice does have ways of emerging triumphant even through unintentional mistakes of judges and court officials and employees.

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