

HON. WALFRIDO DE LOS ANGELES, JUDGE, COURT OF FIRST INSTANCE OF QUEZON CITY, BRANCH IV, BENITO MACROHON, SHERIFF OF QUEZON CITY, AND MARCELO STEEL CORPORATION, PETITIONER, VS. ...

G.R. No. L-34317. September 30, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Second motion for reconsideration of the decision in these cases dated November 25, 1973.

Movants contend that Our decision disregards the findings of fact of the Court of Appeals. They do not point out however, what are those facts which the Court has not taken into account. The truth is that Our decision is based exclusively on the facts found by the Court of Appeals. In them, We cannot perceive any irregularity in the actuations of the Sheriff. In Our decision, We have held that in conducting the foreclosure sale impugned by respondents, the Sheriff merely did what is incumbent upon him under Act 3135 as amended by Act 4118, trial court having lifted the status quo order it had issued upon the inception of the case. Movants have not shown any reason at all why this ruling of the Court should be reconsidered and set aside.

Contrary to the impression of movants, the property herein involved is not in custodia legis. The trial court did not acquire jurisdiction over it by virtue of respondents' complaint. The action to enjoin the foreclosure sale of said property is a personal action in personam. The court did not acquire jurisdiction over said property by virtue of the status quo order, the only sanction behind said order being merely to punish anyone who would violate the same.

The pendency in this Court of G.R. No. L-35851, another certiorari case between the same parties has no bearing on the issues of the instant cases. As already demonstrated in Our decision, the fact that respondent Farins have appealed from the decision of the trial court is not by itself a bar to the foreclosure sale in question. We reiterate that pursuant to the ruling of this Court in *De Garcia vs. San Jose*, 94 Phil. 623, it is implicit in Section 8 of Act 3135 that it is ministerial upon the court to issue a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property and the only remedy of the mortgagor is "to question the validity of the sale in the manner provided by law", namely, by a petition to set aside the sale and to cancel the writ of possession, which should be disposed of in accordance with the summary procedure prescribed in Section 112 of the Land Registration Act, provided the petition is filed "not later than thirty days after the purchaser was given possession." Considering that in the cases at bar, private respondents have not followed this procedure, it is obvious that the sale and writ of possession in favor of petitioner Marcelo Steel Corporation must be respected.

Private respondents' above-mentioned second motion for reconsideration is denied for lack of merit.

Fernando, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

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