

APOLONIA SANTIAGO, APPLICANT AND APPELLEE, VS. ANGELA DIONISIO ET AL., OPPOSITORS; ANGELA DIONISIO, OPPOSITOR AND APPELLANT.

G. R. No. L-4008. January 15, 1953

Ponente: REYES, J.

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REYES, J.:

This is an appeal from a decision of the Court of First Instance of Bulacan, decreeing the registration of a parcel of land situated in Obando of said province in the name of Apolonia Santiago. The appeal has been indorsed to this Court by the Court of Appeals on the ground that the questions raised are purely legal.

The application for registration was filed on January 9, 1936, and it was opposed by various persons, among them the appellant Angela Dionisio, who claimed title to the land as purchaser in a foreclosure sale. But the claim of the other oppositors need not be discussed since they have not appealed.

The evidence shows that the land in question was bought by the applicant in 1935 from its former owner, Roman San Diego, and the sale was recorded in the office of the register of deeds of Bulacan in accordance with section 194 of the Revised Administrative Code, as amended. It turned out, however, that prior to the sale Roman San Diego had already mortgaged the land to one Eulalia Resurreccion, and as the mortgage was also registered in accordance with the Administrative Code, it had precedence over the sale. As the mortgage debt was not paid, Eulalia Resurreccion had the mortgage foreclosed (civil case No. 5769, Court of First Instance of Bulacan) and the land was sold at public auction to satisfy the judgment and adjudicated to Angela Dionisio, as the highest bidder.

On learning of the sale, Apolonia Santiago, who had not been made a party to the foreclosure proceedings, brought an action to annul the judgment rendered therein, including the sale made in favor of Angela Dionisio, and she also intervened in the proceeding for the confirmance of the sale and filed her opposition thereto. Taking the view that the oppositor's claim might well be determined in the action for annulment which she had already filed, the court (Judge Pastor Endencia, presiding) confirmed the sale but without prejudice to whatever rights the oppositor might have. No appeal was taken from this resolution.

Thereafter the action for annulment was tried and decided by another judge of the same court, the Hon. Arsenic C. Roldan. The decision concludes:

"In view of these considerations, the Court finds that the judicial proceedings held in Civil Case No. 5769 cannot affect the rights of Apolonia Santiago who was not a party therein and, therefore, any sale of her property or the property in question over which she has rights, in which she has not been a party litigant is null and void and therefore the sale of this property in question made by the sheriff is null and void in civil case No. 5769 with regards to the right of Apolonia Santiago over the same; the ownership acquired by Apolonia Santiago over the land in question in Exhibit A is subject to the mortgage in favor of Eulalia Resurreccion (Exhibit 2). The defendants are sentenced to pay the costs. So Ordered."

No appeal appears to have been taken from this and the decision must have attained finality because counsel for the present appellant admitted in open court that a bill of cost had already been filed by the winning party.

Concurring in the opinion expressed in that decision Judge Potenciano Pecson, who subsequently heard the present case for registration, declared that the foreclosure sale did not affect the rights of the applicant Apolonia Santiago, who had not been made a party to the proceedings, and decreed the registration of the land in her favor. It is this decision that is now before us on appeal.

In the decision Judge Pecson makes the finding of fact that Apolonia Santiago was not impleaded in the foreclosure suit. And while it is true that her interest in the land in question was subordinate to that of the mortgagee, Eulalia Resurreccion, the rule of procedure in force at the time the foreclosure suit was instituted, which was section 255 of Act 190, required that in an action for foreclosure "all persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage * * * be made defendants in the action." This rule applied not only to a subordinate lienholder (*Sun Life Assurance Co. of Canada vs. Gonzales Diez*, 52 Phil., 271), but also to a purchaser of real property already mortgaged to another (*De la Paz et al. vs. McCondray & Co., Inc.*, 66 Phil., 402), and the effect of the failure to implead a subordinate lienholder or subsequent purchaser or both is to render the foreclosure ineffective as against them, with the result that there remains in their favor the "unforeclosed equity of redemption." But the foreclosure is valid as between the parties to the suit. (*Ibid.*; 2 Moran's Rules of Court, 3rd ed., p. 239.)

It is argued that Apolonia Santiago did in fact intervene in the foreclosure suit and was therefore bound by its results. But it appears that her intervention consisted merely in opposing the confirmation of the sale upon learning that such a sale had been made. This is not the same as being a party to the suit to the extent of being bound by the judgment. That judgment had already been rendered and was already in the process of execution when the intervention took place. In any event, though the sale was confirmed, the court took pains to specify that the confirmation was to be without prejudice to the rights of Apolonia Santiago.

There is much discussion in the briefs as to whether Judge Roldan's decision in the annulment case has been duly proved with the presentation of what purports to be a carbon copy thereof stamped as follows:

"ES COPIA:

M. DE LOS SANTOS
Escribano del Juzgado

Por:

(FDO.) JOSE A. SANTOS
Clerk"

It appears that the original of the decision is no longer in the record, a great portion of this having been lost as a result of the last war. There is also dispute as to whether the decision, if there was one, has already become final, although it was admitted at the trial that the bill of costs had already been filed in court by the winning party. The appellee's apparent object in urging consideration of said decision is to give it the effect *res judicata* on the question of whether the foreclosure sale should be regarded as void or not. But we see no useful purpose in pursuing inquiry in that direction. As we understand it, Judge Roldan did not declare the foreclosure sale entirely void. He did say that it was null and void "with regards to the rights of Apolonia Santiago," but this is only one way of saying that the foreclosure was ineffective as against her although it may be valid as between the parties to the suit. Given this interpretation, the decision accords with the pronouncements of this Court in the cases above cited and does not have the effect of completely nullifying the foreclosure sale in favor of Angela Dionisio. That

sale is valid with respect to the parties to the foreclosure suit, though subject to Apolonia Santiago's unenclosed equity of redemption.

This unenclosed equity, which Judge Endencia saw fit to protect in his order confirming the foreclosure sale by means of a proviso that the said sale was to be without prejudice to the rights of Apolonia Santiago, still exists and must be recognized.

It has been suggested that one way of giving it recognition is to allow the land to be registered in the name of Apolonia Santiago but subject to the mortgage in favor of Eulalia P. Resurreccion. Another way is to register the land in the name of the oppositor Angela Dionisio subject to redemption by Apolonia Santiago. To keep to the beaten path, our preference is for the second method, which has already received the sanction of this Court in the case of *De la Paz et al. vs. McCondray & Co., Inc.*, supra. In that case the purchaser of land sold at public auction to satisfy the judgment in a foreclosure suit applied for the registration of said land. The application for registration having been opposed by a married couple who had previously purchased the land from its owner but had not been impleaded in the foreclosure suit, a situation was presented similar to the one confronting us here. Deciding the case, this Court granted the registration applied for but subject to the prior purchasers' equitable right of redemption, for the exercise of which right they were given a period of three months from the date the decision should become final.

The only difference between that case and the present one is that there the applicant for registration was the purchaser at the foreclosure sale, whereas here the applicant is the previous purchaser. But in principle the two cases are identical and applies to both. It is not an obstacle to this solution that it is the previous purchaser, Apolonia Santiago, that has applied for the registration of the land. Both by statute and by jurisprudence, registration may be decreed in favor of an oppositor whose ownership has been established (Section 37, Act 496, as amended by Section 2, Act 3621; *Balme vs. Sales*, 43 Off. Gaz., 3191, 3194; *Garchitorena vs. Sotto*,^[*] 44 Off. Gaz. 3783), and the more so in the present case where the record shows that the opposition of Angela Dionisio in effect prays for the registration of the land in her favor by asking that she be substituted in place of Apolonia Santiago in the application for registration. Registration of the land in question in the name of Angela Dionisio, the herein oppositor, is thus legally feasible, subject, of course, to Apolonia Santiago's equitable right of redemption.

This, in fact, is the proper solution in the present case. For registration of the land in the name of Apolonia Santiago, who does not become its owner until she has exercised her right to redeem, could be subject to the objection that it is premature, if not altogether anomalous. Her equity of redemption is, of course, registerable, but only as an incumbrance on a registered title of ownership.

Wherefore, it is our decision that the judgment appealed from be revoked and another one entered decreeing the registration of the land in the name of Angela Dionisio, but subject to Apolonia Santiago's equitable right of redemption, which right should be exercised by her within three months from the date this decision becomes final, without special pronouncement as to costs. So ordered.

Paras, C. J., Pablo, Bengzon, Tuason, Bautista Angelo and Labrador, JJ., concur.

[*] 78 Phil., 432.

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