

ARSENIO REYES, PLAINTIFF-APPELLANT, VS. LEONARDO MANAS, VICENTE ROXAS, BRIGIDA ROXAS VDA. DE GONZALVEZ AND JOSE SAN AGUSTIN, IN HIS OFFICIAL CAPACITY AS CITY SHERIFF OF MANILA, ...

G.R. No. L-27755. October 04, 1969

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

This is an appeal from the order of the Court of First Instance of Manila, Honorable Simeon M. Gopengco, presiding, dismissing the complaint in Civil Case No. 66722 of said court on three

grounds, namely, (1) plaintiff has no legal capacity to sue; (2) failure of the complaint to state a cause of action; and (3) pendency of another action, all alleged by the defendants as affirmative defenses in their answer.

Plaintiff-appellant has assigned only two alleged errors in his brief as follows:

"I

"THE HONORABLE LOWER COURT ERRED IN FINDING THAT THE COMPLAINT STATES NO CAUSE OF ACTION.

II

"THE HONORABLE LOWER COURT ERRED IN FINDING THAT THE DECISION IN THE FIRST CASE (CASE NO. 235 and 4004 BRANCH IV, CFI OF MANILA) IS RES JUDICATA TO THE CASE BROUGHT BEFORE IT."

The appeal is clearly without merit.

Relative to the first assigned error, it is to be noted that the pertinent allegations in the complaint read thus:

"5. On August 28, 1961, defendants Leonardo Manas, Vicente Roxas and Brigida Roxas Vda. de Gonzalvez, as security for the payment of a real, estate loan of P7,000.00 which they obtained from the Monte de Piedad and Savings Bank, plus interest and other charges, executed a real estate mortgage in favor of the said bank over a parcel of land with the building and other improvements thereon situated in the City of Manila and covered by Transfer Certificate of Title No. 64693 of the Register of Deeds of Manila, more particularly, described as follows:

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"6. Subsequent to the afore-mentioned mortgage, the rights, interest and participation of defendants Leonardo Manas, Vicente Roxas and Brigida Roxas Vda. de Gonzalvez over the above-described property were levied upon and sold to Leonor Espino as judgment creditor under Entry No. 4740/T-64693 of the Register of Deeds of Manila, and said defendants failed to exercise their right of redemption within the period and under the terms and conditions set forth in the corresponding Sheriff's Certificate of Sale issued to Leonor Espino;

"7. Defendants Leonardo Manas, Vicente Roxas and Brigida Roxas Vda. de Gonzalvez violated the terms and conditions of the aforesaid real estate mortgage by their failure to pay the loan amortizations on their due dates thereby causing the whole indebtedness to become immediately due and payable, so that the Monte de Piedad and Savings Bank foreclosed the said mortgage extrajudicially;

"8. On April 19, 1965, the Sheriff of the City of Manila, defendant Jose San Agustin, after due compliance with the rules and regulations governing sales of real estate, sold at public auction the property described in paragraph 5 hereof, together with all the improvements existing thereon, to the plaintiff as the highest bidder for the sum of P7,860.00;

"9. As a consequence of said sale at public auction, defendant Jose San Agustin issued to the plaintiff on April 29, 1965, the corresponding certificate of sale, a true copy of which is hereto attached as Annex 'A', and on the same date, plaintiff presented for registration the said certificate of sale to the Register of Deeds of Manila who caused it to be entered as P. E. No. 9272/V-39 and described accordingly at the back of TCT No. 64693;

"10. On April 28, 1966, without previous notice either to the Sheriff or to the plaintiff, defendant Leonardo Manas, acting for himself and his other co-defendants Vicente Roxas and Brigida Roxas Vda. de Gonzalvez, deposited with the defendant Jose San Agustin the sum of P8,803.20 as the alleged redemption price of the property abovementioned:

"11. Without the knowledge, consent and authority from the plaintiff or a showing that the latter has unlawfully refused redemption, defendant Jose San Agustin accepted said amount of P8,803.20 from defendant Leonardo Manas as redemption price of the property, and thereafter, issued a certificate of redemption to defendant Leonardo Manas on May 5, 1966, in violation of law and his own certificate of sale issued to the plaintiff; the certificate of redemption is herewith attached as Annex 'B';

"12. The alleged redemption price of P8,803.20 deposited by defendant Leonardo Manas with defendant Jose San Agustin was insufficient, because the former did not pay within the period of one (1) year from and after the date sale the following necessary expenses and charges provided by law, to wit:

"(a) Interest of 1% of P7,860.00 from April 19, 1965, to April 28, 1966, in the amount of P78.60;

"(b) Assessment in the amount of P24.00;

"(c) Stamps in the amount of P21.75;

"(d) Revenue tax in the amount of P50.00;

"(e) Sheriff's fees for the auction price of P7,860.00 charged by the Monte de Piedad in the sum of P10.00;

"(f) Sheriff's fees in the amount of P59.02;

"(g) Power of Attorney in favor of the Bank in the amount of P8.50;

"13. Defendant Jose San Agustin acted without justification and with undue haste in accepting said alleged redemption price of P8,803.20 and issuing the certificate of redemption to defendants Leonardo Manas, Vicente Roxas and Brigida Roxas Vda. de Oonzalvez, because:

"(a) In so doing, defendant Jose San Agustin waived part of the redemption price due to plaintiff, which he (defendant Jose San Agustin) had no legal authority to do so;

"(b) In so doing, defendant Jose San Agustin arbitrarily and beyond the authority of his office, amended, thru the exercise of a ministerial duty, the period of redemption expressly provided by law and as stated in the Sheriffs certificate of sale which he himself fixed as early as April 19, 1965, to the prejudice of the plaintiff;

"(c) Defendants Leonardo Manas, Vicente Roxas and Brigida Roxas Vda. de Gonzalvez had already forfeited all their rights and interest over the property described in paragraph 5 thereof when they failed to redeem the same from Leonor Espino in accordance with the terms and conditions set forth in the certificate of sale duly registered, issued to Leonor Espino by the defendant City Sheriff under Entry No. 4740/T-64693 of the Register of Deeds of Manila as purchaser of said property at an execution sale pursuant to a notice of levy on said property;"

The affirmative defenses alleged in the answer of defendants which constitute grounds for dismissal and which were ruled upon by the lower court are the following:

"SPECIAL AND/OR AFFIRMATIVE DEFENSES

"Herein defendants incorporate by reference and make an integral part hereof all the foregoing allegations of this answer and further state that:

"17. That the plaintiff has no legal capacity to sue.

"The plaintiff has no legal capacity to sue because:

"a) In so far as the right, if any of an alleged Leonor Espino is concerned the herein plaintiff has not been duly authorized, neither has he succeeded, nor subrogated to whatever right Leonor Espino has in the property. The plaintiffs allegation that the period of redemption has expired and no redemption has been made by the herein defendants is an unauthorized assumption of a right of Leonor Espino and it is not shown by any scintilla of evidence that the herein plaintiff has been so authorized.

"b) Granting that said Leonor Espino has an actionable right, the term 'lack of legal capacity to sue' means either 'that the plaintiff does not have the necessary qualifications to appear in the case because he is not in full exercise of his civil rights, as, for instance . . . when he does not have the character or representation which he claims.' (Lunsod vs. Ortega, 46 Phil. 664, page 413, Vol. I, Rules of Court by Moran).

"It is ironic that the plaintiff bases his claim of ownership of the property in question on the alleged right of Leonor Espino, he possesses no authority whatsoever to act in her behalf and furthermore, said Leonor Espino has not been included as a party plaintiff, nay a party to the case. Neither it is alleged that the herein plaintiff has succeeded to her right in the property, if any.

"In a dilatory and last ditch move to save face, he now resorts to the alleged right of Leonor Espino and not his own and beclouds the only issue of this case and that is, when does the one year period of redemption begin? Is it from the date sale or is it from the date of the registration of the sale? The herein plaintiff certainly is not duly authorized to act for and in behalf of said Leonor Espino and therefore acts without any authority and subsequently the plaintiff has no legal capacity to sue on behalf of said Leonor Espino;

"18. THAT THE COMPLAINT STATES NO CAUSE OF ACTION. "The plaintiff has no cause of action because:

"a) He anchors his alleged claim to the property on the alleged right of a certain Leonor Espino of which neither is he a successor in interest nor has he been subrogated into the alleged right of said Leonor Espino;

"b) The herein defendants have redeemed the property in question within one year from the date of the registration of sale with the Sheriff of Manila who is an officer duly authorized under and by virtue of the clear

provisions of Section 31, Rule 39 of the New Rules of Court.

"Furthermore, the act of the City Sheriff in accepting the redemption price and issuing a Certificate of Redemption in favor of the herein defendants enjoy the presumption of legality and that he acted within the bounds of the law.

"Pertinent is the provision of the Certificate of Sale issued by the Sheriff of Manila in favor of the herein plaintiff which is attached as Annex 'A' of the complaint;

'The period of redemption of the real property described above will expire one year from and after the date of sale thereof.'

"This phrase having been judicially interpreted with consistency by our Supreme Court in a coterie of cases, more specifically the case of Salazar vs. De Lis Menesis, G.R. L. No. 15378, Prom. July 31, 1963, (wherein it was held) that the one year period of redemption should be counted from the date of the registration of the sale. For the Sheriff to close his eyes to the clear decision of our Supreme Court on this matter would have been a legal transgression on the part of the Sheriff and certainly for him to allow redemption in pursuance with this decision is within the bounds and limits of the law.

"It is further pertinent to state the last paragraph of Annex 'A', to wit:

'It is hereby required of said highest bidder (plaintiff in this case) that a statement of any amount of Assessments or Taxes which may have been paid on account of this purchase, and such other liens chargeable to a redemptioner, with proof, all in accordance with Section 26 of Rule 39 of the Rules of Court of the Philippines, should be submitted to this office, for purposes of computing the actual amount payable by the mortgagor/redemptioner, in case of redemption,' (Italics supplied.)

"It is crystal clear, therefore, the herein plaintiff failed to submit these statements as required of him under the Certificate of Sale, and if he did submit, he must have submitted only those which were computed as redemption price and paid for by the herein defendants. As regards, the Revenue Tax of P150.00 which he now claims not to have been paid, certainly his failure to present any receipt of this payment would have been sufficient on the part of the Sheriff to exclude the same with the redemption price considering that to be so included in the computations, proofs are required.

"Therefore, the redemption having been made in accordance with law, the herein plaintiff has no right whatsoever in the present property, the effect of a valid redemption being that of terminating the extra judicial foreclosure sale and restoring the herein defendants to their estate in accordance with the provisions of Section 31 of Rule 39 of the Rules of Court. Unless and until the plaintiff could show by clear and convincing evidence that there was apparent fraud, that the act of the Sheriff and the redemption are patently illegal, there is no reason to disturb the validity of said redemption.

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"21. THAT THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE.

"Sometime on July 8, 1966 the herein defendants filed a verified petition with the Court of First Instance of

Manila, Branch IV, to compel the herein plaintiff to surrender the owner's duplicate copy of the Transfer Certificate of Title No. 64693 which was in his possession by virtue of being the highest bidder in an extrajudicial foreclosure sale on April 19, 1965, or if he does not surrender said title, that a new title be issued in favor of the herein defendants. In his opposition and motion to dismiss of that petition the herein plaintiff alleged among others that the redemption has expired and that the herein defendants have not exercise any redemption and if they had, the redemption was filed out of time. The plaintiff alleged that the extrajudicial foreclosure sale was made on April 19, 1965 and that it was registered with the Office of the Register of Deeds of Manila on April 29, 1965. The redemption by the herein defendants having been made on April 28, 1966, the herein plaintiff alleged that the redemption was out of time because the one year period should be counted from the date of the sale on April 19, 1965. The petitioners (herein defendants) took exception and alleged that the redemption was made seasonably because the one year period should begin from the date of the registration of the sale as contained in the decision of our Supreme Court in the case of *Salazar vs. De Lis Menesis*, O.R. L. No. 15378, Prom. July 31, 1963.

"There herein plaintiff in his opposition and motion to dismiss further alleged that the redemption price was insufficient and that the Sheriff of Manila has no authority to accept said payment. To which allegations, the herein defendants countered that the redemption price was sufficient and that the Sheriff of Manila is authorized under and by virtue of the provision of Section 31, Rule 39 of the Revised Rules of Court. The questions at issue then were: Was there a valid redemption? Was the redemption price sufficient and made within the reglcmetary period of one year? Was the act of the Sheriff valid and binding? Same questions which are in issue in this instant case.

"It is therefore clear that: (1) there is an identity of parties or at least such as representing the same interest in both actions; (2) there is an identity of rights asserted and relief prayed for, the relief being founded on the same facts; (3) there is an identity on the two preceding particulars as such that any judgment which may be rendered on the action will, regardless of which party is successful, amount to res adjudicate in the action under consideration.

"Furthermore, on August 20, 1966, the Honorable Court of First Instance, Branch IV, has issued an order after hearing, dispositive part of which has been quoted and stated in paragraph 13 of this pleading."

As may be easily seen in the light of these quoted allegations, all three grounds of the motion to dismiss may be sustained. It is, however, sufficient to rule on only one of them, the failure of the complaint to state a cause of action.

On this score, the contention of appellees is that on the face of the complaint itself, it is obvious that, contrary to the allegation of the appellant, the disputed redemption was, made within the period fixed bylaw, which, according to appellant himself, is "one year after the date of sale." (par. 12, Complaint) This contention is correct. Of course, appellant insisted in the court below that the one year should be computed from the date of the Sheriff's certificate of sale and not from the date of registration. He pointed out that the date "stated in the Sheriff's certificate of sale and not which he (sheriff) himself fixed" (par. 13 [c], Complaint) is "one (1) year from and after the date hereof." [1] (Annex A of Complaint, p. 16, Record on Appeal) He further argued that as the sale herein involved was an extrajudicial one, the governing law is Section 6 of Act 3135 which provides:

"In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors-in-interest or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale "

and which is not the legal provision involved in the cases already decided by this Court wherein it was held that the period of redemption should be computed from the date of registration of the certificate of sale in the Office of

the Register of Deeds, which, in the case at bar, as alleged in the complaint (par. 9, Complaint, pp. 5-6, Record on Appeal), is April 29, 1965.

There is no reason to make the distinction proposed by appellant. In fact, his argument in the lower court that the case of *Salazar vs. Meneses*, supra, does not apply to extrajudicial sales is not correct because it was precisely held there that the rule laid down in the previous decisions of this Court beginning from *Tuason vs. Raymundo*, 28 Phil. 635 to *Garcia vs. Ocampo*, 105 Phil. 1102, "is squarely applicable to the present case which involves also registered land, in spite of the fact that the sale in question is not an execution sale but a foreclosure sale." Of course, appellant maintained that the said ruling is good for third parties but should not apply to a case "where no third party to the sale is involved." This contention, however, overlooks that the rule laid down is precisely for the person entitled to exercise the right of redemption, who necessarily is the owner of the property sold and not any third party.

Indeed, appellant must have already realized the error of his position in this respect because in his brief, there is no discussion of this point under his first assignment of error regarding failure to state a cause of action. Instead, his discussion thereunder is centered on his point that under the facts alleged in the complaint, it appears that he had legal capacity to sue, contrary to the ruling of the court a quo. Thus, We have here a situation wherein appellant has assigned one alleged error of the trial court but has discussed another error not assigned, which is a violation of Section 16, paragraphs (b) and (f) of Rule 46, and strictly speaking, therefore, should not be considered. (Sec. 7, Rule 51). We opt to overlook this irregularity, however, as well as the other violations alleged in appellee's motion to dismiss appeal (pp. 37-39, Appellee's Brief). We prefer to overrule this appeal on the more substantial ground already discussed. For the reasons already stated, We hold that the lower court did not err in ruling that appellant's complaint states no cause of action. This result makes it unnecessary to pass upon the other grounds of dismissal upheld by the court a quo.

WHEREFORE, the order of dismissal appealed from is affirmed, with costs against appellant.

Conception, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee and Barredo, JJ., concur.

Reyes, J.B.L., is on leave.

[1] April 27, 1965.

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