

PASTOR B. CONSTANTINO, PLAINTIFF AND APPELLANT, VS. BLAS AQUINO AND EUFEMIA POLICARPIO, DEFENDANTS AND APPELLEES.*G.R. No. L-16216. December 28, 1963*

Ponente: PAREDES, J.

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On September 28, 1954, a mortgage contract of real estate was entered into by and between the plaintiff Pastor B. Constantino and the defendants, Blas Aquino and Eufemia Policarpio, as mortgagors, to secure a loan of P2,000.00, payable two (2) years from said date. On February 3, and 23, 1955, defendants obtained additional loans of P1,000.00 and P2,000.00, respectively, both payable two (2) years from September 28, 1954 also. To secure these loans, an additional mortgage was constituted, on the same land, with identical terms and conditions as the first mortgage. Both mortgages were duly registered. On January 15, 1957, as no payment was made, despite repeated demands, plaintiff brought an action for "Foreclosure of Mortgage".

In their answer, defendants-claimed a supposed verbal promise of plaintiff to give them two (2) years extension, within which to pay, and stated that they were willing to make partial payments.

The case was tried on August 20, 1957, but neither defendants nor their counsel appeared. Plaintiff presented his evidence and on September 25, 1967, the following judgment was handed down: "WHEREFORE, the Court hereby renders judgment in favor of plaintiff and against the defendants ordering the latter to pay the former, jointly and severally, the sum of P2,000.00 with interest at the rate of 12% per annum from September 28, 1956; sum of P1,000.00 and P2,000.00, respectively, with interest at 12% per annum from February 3 and 23, 1956 plus the attorney's fees in the sum of P1,000.00 and the costs of this action." The above judgment was received by the defendants on September 30, 1957. Under date of December 27, 1957, plaintiff, thru counsel, petitioned for the execution of the judgment and presented a Bill of Costs which were granted by the lower court, in an Order dated Jan. 4, 1958, of the following tenor—

"Considering that the decision rendered in this case has already become final and executory:

As PRAYED FOR, let a writ of execution issue forthwith."

On January 20, 1958, the Court issued a "Writ of Execution of Foreclosure Mortgage." The property, subject of the mortgage, was sold on auction on February 11, 1958, after the proper notice. The property, covered by T-9156 of the Register of Deeds of Bulacan, was sold to plaintiff for P7,329.71, as the highest bidder. On March 21, 1958, the Ex-Oficio Provincial Sheriff of Bulacan, issued a Certificate of Sale of the property, in favor of plaintiff. The sale was subsequently confirmed by the lower court on March 31, 1958. On April 11, 1958, plaintiff's petition to have TCT No. 9165 (Exh. A-2) detached from the records of the case and delivered to plaintiff, was granted. On April 18, 1958, defendants presented a "Motion for Reconsideration" of the Order dated March 31, 1958, which confirmed the sale, and all the subsequent Orders issued in the case, predicated upon the alleged lack of knowledge of the proceedings. An opposition was registered by plaintiff, claiming that all the steps taken in the case were known to the defendants, thru their counsel; that the notice of auction sale was made by publication;

and that after the sale was confirmed, the defendants had lost their right of redemption. The motion was denied.

A second motion for reconsideration was presented, claiming that the order of March 31, 1958 was contrary to law and, therefore, void; and the order of April 11, 1958, was improper, considering that the sale could not be confirmed at that stage of the proceedings. Defendants further contended that the action was not for foreclosure of mortgage but an ordinary case of collection; that the rules provide that judgment in foreclosure cases, should require the defendants to pay the amount due to the Court within a period of not less than ninety (90) days from the date of the service of such order; and that the Court had not issued such order, and, therefore, the 90 day period provided for by the rules had not commenced to run at all, so that the sale of the mortgaged property and the confirmation thereof, had no force and effect.

In his opposition to the above motion, on June 16, 1958, Plaintiff maintained that the parties understood the case to be a Foreclosure of Mortgage; in fact, the defendants entertained such belief when they referred to the case in their Answer as a complaint for foreclosure of mortgage (par. 3 of Affirmative Defenses) that the issue had become academic, because the orders of the Court had already been executed and the title of the land foreclosed, had been transferred in the name of the plaintiff; and the failure of the trial court to provide a 90 day period in the decision, for the defendants within which to pay the indebtedness, had been cured by the fact that execution of the judgment was only petitioned after 90 days from the notice of the judgment dated September 23, 1957 and received by defendant's counsel on September 30, 1957. Execution was ordered on January 4, 1958 and the writ was actually issued on January 20, 1958, more than 90 days from service of the judgment. On June 24, 1958, the lower court issued the following order—

"x x It thus appears that; the foreclosure of the mortgaged property was improvidently made. When the Sheriff was ordered to issue a writ of execution, the Court did not intend that the execution would be on the foreclosure of the mortgage, for, under the law, the defendants have ninety (90) days within which to pay the judgment debt from notice of the writ of execution. When, therefore, the writ of execution foreclosing the mortgage was issued on January 4, 1958, it was premature, for the 90 day period had not yet expired. There was no telling that the defendants would not pay the amount of the judgment debt of P7,329.71 within the 90-day period which was supposed to expire sometime in April, 1958.

WHEREFORE, the Court hereby suspends the effects of its orders dated March 31 and April 11, 1958, until such time as the defendants shall have failed to make good the said amount."

Plaintiff moved to reconsider the above Order on three (3) grounds, all of which bring to the fore the issues of whether the ninety (90) day period provided for by the Rules had been complied with; and whether a decision in a foreclosure case should contain a directive requiring the mortgagors to pay the debt within 90 days from receipt of the order.

On July 18, 1958, the lower court denied the motion for reconsideration, filed by plaintiff, Holding—

"In this particular case the Court had not fixed the period of ninety days for the foreclosure of the mortgage. It banked on the possibility before the decision had become final the defendant would be able to settle this indebtedness. Should she fail to do so it was to be expected from the plaintiff to make a report of that fact to the court in order that the court could fix the limit of not less than ninety days within which the amount should be paid before the foreclosure of the mortgage. This period has not been fixed by the court for the reason that the writ of execution was immediately issued and the mortgage was foreclosed without giving the defendant time to prepare for it. However, considering that the amount of the judgment has already been deposited with the court everything now has become academic and the question now mooted."

On August 22, 1958, defendants presented a motion with the lower court, praying that the plaintiff be directed to deliver to the Clerk of Court, for the defendants, their Owner's Duplicate of Transfer Certificate of Title No.

21927, issued by the Register of Deeds of Bulacan; to cancel the Certificate of Sale and declare the same without force and effect; to direct the Register of Deeds to cancel TCT No. 21927 in the name of the Plaintiff; and issue and deliver a new certificate of title over the property, in the name of the defendants.

Over the opposition of the plaintiff, on the ground that (1) the cancellation of the sale to plaintiff at foreclosure will be illegal, as a collateral attack of the Order of Execution is not permissible; (2) the cancellation will amount to illegal taking of property without due process; and (3) the claim of right of redemption and deposit of redemption money being improper and without legal basis, the lower court granted the motion of defendants on September 18, 1958. Plaintiff appealed the Orders of the lower court, to the Court of Appeals, to wit: the order granting the motion for reconsideration and suspending the effects of its order of confirmation; the order of July 18, 1958, denying the motion for reconsideration of the order of June 24, 1958 and the order of September 18, 1958, canceling the TCT issued to plaintiff pursuant to the certificate of sale issued by the Sheriff and confirmed by the Court. The, Court of Appeals certified the case to this Court, stating that the issues involved are purely of law.

Stripped of non-essentials, the dominant issue presented by the appeal is the interpretation and application of Sec. 2, Rule 70, of the Rules of Court, which provides—

"If upon the trial in such action, the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debts or obligation, including interest and costs, and shall render judgment for the sum so found due and order that the same be paid, into court within a period not less than ninety days from the date of the service of such order, and that in default of such payment, the property he sold to realize the mortgage debt and costs." (Italics supplied).

There seems to be no dispute regarding the fact that the action is a foreclosure of mortgage. The complaint specifically designated it as such. Defendants considered it in like manner, and the lower court unmistakably deemed it to be so. The crux of the case, upon which all issues devolve, is whether or not the trial court in a foreclosure of mortgage case should provide for an express order in the decision that the mortgagor pay the indebtedness within ninety (90) days.

The defendants in their second motion for reconsideration advanced the theory that a decision in a foreclosure case should contain such directive, otherwise it will be considered as an ordinary action. The trial court, not only shared the idea, but went further to say, that since it has not fixed the period within which the mortgagor pay the mortgage debt, the 90 day period provided by the Rules has not as yet commenced to run.

In the case of *Herrera vs. Arellano*, G. R. No. L—8164, October 27, 1955, this Court voided the order of execution, as well as the order confirming the sale of the same, for the reasons given in the earlier case of *Ponce de Leon vs. Ibanez and Syjuco* (G.R. No. L-6967), holding—

"The issue thus raised has been settled in *Jose Ponce de Leon vs. Judge Fidel Ibanez and Santiago Syjuco, Inc.* (supra), decided on May 24, 1954 x x.

"x x In rejecting the mortgagee's pretense We said:" It must be noted that the 90-day period granted the mortgage debtor within which to pay the amount of the mortgage is in Sec. 2, Rule 70 of the Rules of Court, and it is to be counted 'from the date of the service of the order, not from the date thereof. The order referred to in the Rule is the order requiring the debtor to pay the judgment debt within 90-days. The 90-day period given in the rule is not a procedural requirement merely; it is a substantive right granted to the mortgage debtor as his last opportunity to pay the debt and save his mortgaged property from final disposition at the foreclosure sale. It is one of the two steps necessary to destroy what in law is known as the mortgagor's 'equity of redemption, the other being the sale. It may not be omitted. As the writ of execution or the order allowing the sale of the mortgaged property was issued without granting the mortgaged debtor the said 90-day period, the order for the

sale of the property would be a denial of substantial right and void.'

x x x x x

"At any rate, the 90-day period, prescribed in Sec. 2, of Rule 70 of the Rules of Court should be counted from the date of the service of the order, directing the mortgagors to pay their obligation to the mortgagees mid no such order having, as yet been issued, it follows that the orders complained of, directing the sale of the mortgaged property and denying the motion for reconsideration prayed for by petitioners herein, are 'null and void' as held in the aforementioned De Leon case."

Of course, appellants endeavored to draw some factual distinctions between these cited cases and, the case at bar, but the principle announced which is, indeed, sound and in conformity with the spirit and the letter of the rule, remains intact and is still a living force.

In the case at bar, the tower Court had not issued the 90-day order prescribed in sec. 2, Rule 70. Nevertheless, a writ of execution was issued, the mortgaged property sold, and sale confirmed. Aware, albeit belatedly, of a lapsus in the decision, the lower court correctly reconsidered its previous orders, ruling that the writ of execution of January 4, 1958, was prematurely issued. A judgment in an action for foreclosure of mortgage, could only be executed in a manner prescribed in the Rules. The execution ordered in the present case, not being in conformity with the Rules, as heretofore interpreted and construed, is null and void (Diaz vs. Mendezona, 43 Phil. 472).

Appellant makes mention of the fact that appellees had ninety-six (96) days from receipt of the decision up to and until the issuance of the writ of execution and concluded that the issuance of said writ was not premature, inasmuch as appellees had more than 90 day to pay the debt. Appellants invite error. This very game issue had already been raised in the Ponce de Leon case, (supra):

"In answer to the petition, respondents allege as special defense that since the debt by its terms fall due on May 5, 1949 and it was being executed only in July 1953 petitioner cannot complain that he has not had sufficient time to pay it; that the petition has become moot because assuming that the judgment should have started to run on June 9, 1953, the 90-day period expired on September 7, 1953, without the obligation having: been paid and the action, therefore, is purely dilatory."

Nevertheless, this Court overruled said contention stating—

"It must be noted that the 90-day period granting the mortgage debtor within which to pay the amount is in Sec. 2 of Rule 70 of the Rules of Court and it is to be counted from the date of service of the order and not from the date thereof. x x x "

As the Court had correctly ruled in the cited cases, this 90-day order is a substantive requirement which cannot be omitted. And there could be no service of an order which did not exist.

On July 7, 1958, appellant moved to reconsider the trial Court's order of June 24, 1958, which was received by the appellees on July 15, 1958. In the meantime, on July 10, 1958, to be specific, appellees paid into the lower court the amount of P7,622.91 to cover not only the judgment, interests, costs, attorney's fees and Sheriff's fees, but also interest at the rate of 12% per annum on the auction price of P7,329.71 from March 21, 1958, the date of the auction sale, to July 10, 1958. This payment was made upon directives of the trial court and within the 90 days from the date of such directives, in order to give the mortgage debtor a last opportunity to pay the debt and save his mortgaged property from the final disposition at the foreclosure. This being: the case, it would seem that, if there is any error at all on the part of the trial court, in denying the motion for reconsideration in its order dated July 18, 1958, and in declaring "everything now has become academic and the question now mooted because the judgment had already been paid, the same did not affect the substantive rights of the plaintiffs-appellants who got

back their money plus all its increments sans foreclosure which, as has been seen, is what the Rules wanted to forestall, as long as it can be lawfully done.

Having reached the above conclusion, We deem it unnecessary to pass upon the other issues raised in the appeal.

Wherefore, the appeal is Dismissed, and the Orders dated June 24, 1958, July 18, 1958 and September 18, 1958, are affirmed, without pronouncement as to costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Regala and Makalintal, JJ., concur.

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