

BERNABE B. AQUINO, PLAINTIFF AND APPELLEE, VS. MACONDRAY & CO., INC., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-5976. October 25, 1955

Ponente: JUGO, J.

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JUGO, J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan, the dispositive part of which reads as follows:

"(a) Declaring the certificate of sale, dated October 11, 1937 and the final deed of sale, dated December 20, 1938, to be null and void and did not transmit any right or title to the defendant corporation, Macondray & Co.;

"(b) Ordering the defendant Macondray & Co., to render an accounting to the mortgage debtor, the plaintiff herein, of the products of the forty (40) lots in question in Bayambang, Pangasinan, from the time of its occupancy on November 25, 1938 up to the actual return of said properties of the plaintiff;

"(c) Ordering defendant to restore the possession of the plaintiff, Bernabe B. Aquino, to the said lots in question as mortgage-debtor;

"(d) Declaring that the deed of mortgage dated May 6, 1935, is subsisting and in force which may be foreclosed at the instance of the defendant corporation as mortgage-creditor for having its terms violated; and

"(e) Directing the Register of Deeds of Pangasinan to cancel the Sheriff's certificate of sale and the Sheriff's final sale from the original certificates of title of the forty (40) lots of the plaintiff at Bayambang, Pangasinan.

"No cost in this instance.

"So ordered."

The parties submitted to the court below a stipulation of facts which is found on pages 93 to 103 of the printed record on appeal. On account of its length, we do not reproduce it here.

In addition to the stipulation, the parties introduced some evidence with regard to the posting of notices of the sale at public auction.

The essential facts of the case may be briefly stated as follows:

Through a series of transactions on different dates and in various ways, which are set forth in the stipulation of facts, the plaintiff-appellee, Bernabe B. Aquino, became indebted to the defendant-appellant, Macondray & Co., Inc., in various sums. Upon agreement of the parties these sums were consolidated on May 6, 1935 in the single amount of P15,585. On said date, Aquino signed a promissory note for this amount, payable in five instalments of P3,117 each, commencing on June 30, 1936, with interest at the rate of 12 per cent per annum on the unpaid balance, and stipulated 20 per cent attorney's fees in case of default. The non-payment of any of the instalments at the time due would make the whole amount payable forthwith. The lots which Aquino had acquired from Macondray, some situated in Bayambang, Pangasinan and some in the Singalong Subdivision, Manila, the price

of which constituted the greater part of the above mentioned amount of P15,585 were reconveyed by the Company to Aquino on said date and then they were mortgaged by Aquino to Macondray to guarantee the payment of the promissory note for 15,585, above stated. The mortgage deed contained a clause authorizing Macondray to sell extrajudicially said properties in case of default, in accordance with the provisions of Act No. 3135. As Aquino failed to pay any of the instalments, Macondray proceeded to sell extrajudicially the mortgaged properties by availing itself of the services of the Provincial Sheriff of Pangasinan, Guillermo Soriano. The Provincial Sheriff entrusted his functions with regard to the public auction to the Deputy Sheriff, Dominador C. Ungson.

At the trial in the court below Ungson testified that the notice of the public auction was published in the Agno Valley Times, a newspaper of general circulation in the Province of Pangasinan, and he sent three notices by mail to the Chief of Police of Bayambang with instructions to post them at the three proper places in accordance with law. Ungson issued a certificate of sale which reads as follows:

"CERTIFICATE OF SALE

"This is to certify that by virtue of the extrajudicial foreclosure of Real Estate Mortgage presented by Macondray & Co., Inc., subject to the provisions of sections 464 and 466 of the Code of Civil Procedure in relation to Act 3135 of the Philippine Legislature and in accordance with the notice of sale issued on September 6, 1937, which was posted in three public places in the municipality of Bayambang, Pangasinan, and published once a week, for three consecutive weeks in the Agno Valley Times, which is a newspaper of general circulation in this province, the following parcels of land were sold at public auction on October 9, 1937, in front of the Municipal Building of Bayambang, Pangasinan, by the undersigned Deputy Provincial Sheriff of Pangasinan, and same were adjudicated to Macondray & Co., Inc., a domestic corporation existing under and by virtue of the laws of the Philippines, with principal office at Manila, P. I., for the total amount of Twenty thousand forty three pesos and eighteen centavos P20,043.18) Philippine currency, to wit: * * * (pp. 46, 47, Record on Appeal).

Before the date set for the sale at public auction, Ungson had received from Macondray a letter bidding for the lots in the total sum of P20,043.18 specifying the amount for each lot. As at the hour set for the sale on October 9, 1937 nobody was present to offer any other bid, the mortgaged properties were awarded by him to Macondray.

As Aquino failed to redeem the properties within one year after the sale, Ungson executed a final certificate of sale on December 20, 1938.

But before that date, or on November 25, 1938, more than one year after the sale at public auction, which took place on October 9, 1937, Aquino addressed a letter to Macondray which reads as follows:

"MANILA, November 25, 1938

"Messrs. Macondray & Co., Inc.
Manila

"Gentlemen:

"I hereby confirm arrangement made with you today whereby I turn over to you immediately the possession of the Bayambang, Pangasinan, property of about four hundred five hectares, which has been the object of an extra judicial foreclosure against me. Not having repurchased it within the period of one year. I hereby recognize that you are now the absolute owner thereof. However, you granted me the privilege to repurchase it together with the four Singalong lots which were also foreclosed, by paying the whole; amount of the purchase prices with interest at the rate of 12 per cent per annum from date of foreclosure sales, in addition to the taxes and expenses paid by you plus 12 per cent interest from date of payment, the same to be payable as follows:

P5,000 on or before January 31, 1939, and the balance on or before June 30, 1939. After making the payment of P5,000, you are to turn over to me the possession of all the above mentioned properties, and a proper deed of sale will be made after completing the full amount agreed upon. If, however, I shall fail to pay any of the installments herein agreed, I shall lose forever any right thereto and any payment made shall be forfeited to you. You may keep at your option the present laborers and fishermen working on the Bayambang property under the same terms and conditions made with me, but they will account to you direct without my intervention for their actions in the premises.

"Please confirm the above by signing at the bottom hereof.

Yours very truly.

(Sgd.) Bernabe B. Aquino

"Confirmed:

Macondray & Co., Inc.

(Sgd.) Carlos Young,

General Manager.'

It will be noticed that the above letter was confirmed by Macondray through its General Manager, Carlos Young, and so it constituted, a formal and perfected written contract of purchase and sale with Macondray as vendor and Aquino as vendee.

Aquino made no attempt to pay any installment of the price agreed upon for the lots which he expressly recognized in said letter to belong to Macondray. But on June 1, 1945, that is, almost seven years after the perfection of the contract of purchase and sale, when conditions and prices had greatly changed, Aquino wrote to Macondray another letter which reads as follows:

Manila, P. I.

June 1, 1945

"Mr. Carlos Young,

President, Macondray & Co., Inc.

Manila.

Sir:

"Permit me to apply for the repurchase of the land in Bayambang, Pangasinan, which the Macondray & Co., Inc., had acquired from me in the month of December, 1938, in consequence of extra-judicial foreclosure proceedings for failure on my part to pay the indebtedness I then owed the Company and secured by a mortgage on said land.

"The land contains some 400 hectares and consists of 40 continuous and adjoining lots of the Bayambang Cadastre, being lota Nos. 71, 72, 73, 75, 76, 77, 78, 79, 88, 89, 90, 91, 92, 93, 94, 95-(2), 96, 97, 98, 99, 100, 101, 102-(1), 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 116, 117, 118, 119, 120, and 166. Twenty-two of these lots, to wit, lots 5, 90, 92, 93, 96, 97, 98, 99, 100, 101, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, and 120, are covered by Original Certificate of Title No. 50866, issued in my name in February, 1937; while the balance of eighteen lots being lots Nos. 71, 72, 73, 75, 76, 77, 78, 79, 88, 89, 91, 94, 95-(2), 102-(1), 105, 106, 107, and 166 are still without certificate of title.

"Due to the lapse now of a considerable length of time since the taking place of the transactions which led finally to your acquisition of the land; I am taking the liberty to relate as far as I can remember the

circumstances surrounding said transactions, in the hope of refreshing your memory regarding same.

"Sometime prior to the year 1933, I entered into a contract for the purchase from you of four lots in the 'Singalong Subdivision', and signed and executed in your favor, in lieu of cash down payment a promissory note for the amount of P300 payable on a certain date I do not now recall. The total cost price of the four lots was around P7,000 payable in installments through a stated number of years.

"On my failure to redeem the promissory note for P300, action was brought on the note in the Municipal Court of Manila in February, 1933, being Civil Case No. 77757 of said Court. Opportunely, preliminary attachment was sued out on four of the lots above enumerated, to wit, lots Nos. 90, 93, 110 and 111.

"In the meantime, I became guarantor for a customer of Macondray & Co., Inc., by the name of Jose Tiongson who owed your Company the amount of P1,686.03, this being the sum total of his indebtedness for flour taken from the Company plus the sum of about P1,000 which advanced to Wise & Co. for Tiongson's indebtedness to the latter Company, the payment of which I had guaranteed to the said Wise & Co.

"To secure the payment of the stated indebtedness of P1,686.03, I executed on March 30, 1935, a mortgage in favor of Macondray & Co., Inc., on lots Nos. 111, 112 and 113.

"Shortly previous to the execution of the last mentioned mortgage of March 20, 1935, I entered into a transaction with you whereby, to secure the payment not only of the judgment in Civil Case No. 77757 but also the entire cost price of the four lots in the 'Singalong Subdivision', I executed on March 15, 1933, in your favor a mortgage on lots Nos. 90, 93 and 110, guaranteeing the payment of the total sum of p7,636.74 pesos. The four Singalong lots were thus considered paid, and transfer certificates of title covering the said lots were then issued to me.

"In September, 1933, action was filed in the Court of First Instance of Pangasinan, being Civil Case No. 6605, to collect from me the amount of P7,636.74, cost price of the four Singalong lots, payment of which was secured by the mortgage of March 15, 1933, already referred to. Then, in January, 1935, in addition to lots Nos. 90, 93 and 110 covered by the mortgage of March 15, 1933, sixteen other lots, to wit, lots Nos. 92, 96, 97, 98, 99, 100, 101, 108, 109, 114, 115, 116, 117, 118, 119, and 120, were also attached to satisfy the judgment in Civil Case No. 6605.

"In October, 1933, Civil Case No. 6649 was filed in the Court of First Instance of Pangasinan, to collect from me the sum of P1,686.03, total amount to Tiongson's indebtedness secured by the mortgage in March 20, 1933, on lots Nos. 111, 112 and 113.

"The combined result of the three collection cases above referred to was that, by January, 1935, as a consequence of the non-payment of the judgments in the said cases, all the twenty-two lots covered by my Certificate of Title No. 50865 fell into the hands of the Macondray & Co., Inc.

"At this juncture, I approached the Company with a proposition for the novation of my obligations, whereby in consideration of being given an extension of time until October, 1937, to pay the accumulated amounts constituting my unpaid obligations, I offered to give as additional security the four Singalong lots transferred to me after the execution of the mortgage of March 15, 1935, and also the remaining eighteen unencumbered lots of my land in Bayambang. The proposition was agreeable to the Company, consequently on May 6, 1935, the following transactions were entered into.

"The twenty-two lots covered by Original Certificate of Title No. 50866 were sold back to me in two separate documents: one for the sum of P2,507.32 representing the total sum of Tiongson's indebtedness together with accumulated interests; another for the sum of P7,600 representing the total price of the four Singalong lots. On the same day, May 6, 1935, I executed a public instrument mortgaging to Macondray & Co., Inc. the twenty-two lots sold back to me, as well as the eighteen remaining lots of my land not yet covered by Torrens Title, and also the four Singalong lots, thereby securing the payment in October, 1937, of the sum of P15,585

representing the combined total of the Tiongson indebtedness together with the unpaid price of the four Singalong lots, plus estimated interests and cash payments made by the Company for land taxes.

"On failure to payment of the above amount in October, 1937, the mortgage of May 6, 1935, was extra judicially foreclosed, the final total of indebtedness and obligations covered by the foreclosure amounting up to P20,043.15, which sum includes the original obligation of P15,585 together with vested interests thereon, plus attorney's fees and notarial costs. Failure on my part to repurchase the foreclosed properties within the period of one year vested in the Company absolute title over the forty lots of my land in Bayambang, and reverted to the Company the four Singalong lots as well.

"However, on my application, you gave me an opportunity to repurchase the Bayambang land together with the four Singalong lots on terms and conditions appearing in a document dated November 25, 1938, which is hereunder copied verbatim, to wit.—

(Reproduction of his dated November 25, 1938 here, which is already transcribed above.)

(Reproduction of his letter dated November 25, 1938 here, which is already transcribed above.)

"I was, however, in such bad financial straits at the time that I was unable to avail myself of the privilege of repurchasing the properties in the manner granted to me in the above quoted agreement.

"Subsequently, the Company sold to a buyer the four Singalong lots, but kept the Bayambang lands, which the Company owns and holds until the present.

"Mr. Young, I now appeal to the same benignity of which you had given abundant evidence in my previous dealings with you regarding the Bayambang lands, to give me another chance to repurchase the Bayambang lands on installment basis, the installments to be payable within the same length of periods you granted to me in the agreement of November 25, 1938, above transcribed. I fondly hope, Sir, that you will not find it difficult to do me this kindness which, I assure you, will bind me obliged to you for all time by the bonds of eternal gratitude.

"I propose, then, to repurchase the Bayambang property in the amount of P20,000, which I hope you would take as adequate and reasonable, in view of the fact that, although this sum is practically the same amount for which the mortgage of May 6, 1935, was finally foreclosed, this amount included the unpaid price of the four Singalong lots totalling around P7,000 of which, however, the Company became fully reimbursed when the said four lots were sold after their reversion to the Company in consequence of the foreclosure.

"Thus, in effected and for all practical purposes, of the amount of P20,000 covered by the extrajudicial foreclosure, only the sum of 13 or 14 thousand pesos remained as the unpaid credit debited to the foreclosure of the Bayambang property.

"Adhering to the terms of payment fixed in the agreement of Nov. 25, 1938, I offer to make the first down payment of P5,000 two months from the date of your agreeing to resell, which is the same length of time you agreed to give me within which to make the first down payment of P5,000 agreed in the document above referred to. The balance of P15,000, I promise to pay five months after making the first down payment of P5,000, which is practically the same length of time you gave me within which to pay the balance of the repurchase price agreed upon in the document of November 25, 1938, several times referred to above.

"After making the first payment of P5,000, I promise to be allowed to have the possession of the Bayambang property, on the condition that if I shall fail to pay the balance of the repurchase price in the manner agreed upon, the first payment of P5,800 shall be forfeited to the Company.

"I am submitting to your consideration, Mr. Young, this offer of repurchase hoping that, out of the bountifulness of your good feelings, you will see your way to doing me an act of immense kindness by permitting the repurchase on the terms and conditions above submitted, for which I am reiterating to you Sir,

my lasting obligations.

"Yours very sincerely,

(Sgd.) "Bernabe B. Aquino"

About four months later, or on September 28, 1945, Aquino filed an amended complaint with the Court of First Instance of Pangasinan in which he prayed for the annulment of the sale at public auction and for an accounting of the products of the land from Macondray to which he had voluntarily delivered the lots after the sale. In said amended complaint he did not allege the non-posting of the notices but based his action on the ground that the Sheriff sold the lots en masse, and not separately. But the decision of the lower court in annulling the sale was based on the alleged failure to post the notices.

It should be noted that Ungson sent notices of sale to the Chief of Police of Bayambang with instructions to post them at the proper places. In the ordinary course of events the notices must have been received by the Chief of Police who, in compliance with his duties, must have posted them at three proper places.

Ungson received the bid of Macondray for each parcel of land to be sold. He did not call bids at the place and hour set for the sale because nobody appeared to offer bids and it would have been useless to call for bidders.

Whatever defects might have existed in the sale at public auction they were wiped out by the letter of Aquino of November 25, 1938, above-quoted, in which he recognized the ownership of Macondray acquired through the auction sale, and made an offer to repurchase the properties. This offer having been accepted by Macondray, the contract of purchase and sale between Macondray as vendor and Aquino as purchaser, became perfected and executory. The offer contained in said letter was reiterated by Aquino by its reproduction in the other letter dated June 1, 1945. If any contract of purchase and sale can be perfected, this one, without doubt, became perfected and executory. The perfection of this contract puts an end to all other questions raised by Aquino with regard to the auction sale. However, Aquino did not make any attempt to comply with the terms of said letter of November 25, 1938.

We will now consider certain minor objections of Aquino. He says that the price for which the properties were foreclosed is unconscionable. This cannot be so for the reason that Aquino could have mortgaged those properties to a bank or sold them to any other person in order to pay his mortgaged indebtedness to Macondray. For this purpose he had more than sufficient time; but the fact that he made no such effort or did not succeed in selling the properties to any other person or entity for a higher price shows that the amount for which they were sold at public auction was not unconscionable.

With regard to the objection that the lots were sold en masse and not piece by piece, it should be considered that Macondray offered a price for each lot. Furthermore, the mortgage obligation is indivisible; that is, it could not be divided among the different lots.

Aquino cannot contend with success that when he made the offer to repurchase the properties in his letters of November 25, 1938 and June 1, 1945, he has not aware of the alleged defects in the notices. This is unbelievable for he is, according to the stipulation of facts, "58 years old, married to Fe Morales, Filipino citizen and resident of Mangaldan, Pangasinan, passed the bar examination as attorney and counselor of law in 1916, having engaged in the practice of his profession from that time until he was elected Provincial Governor of Pangasinan, and served his full term of office in 1928 to 1931; he resumed the practice of law after the expiration of his term of office until he was appointed Judge of the Court of First Instance in 1947". If he did not know of the existence of the alleged defects, ordinary prudence and self-interest would have prompted him to make the inquiry.

As to the contention that Macondray under the Corporation Law could not acquire and hold real estate, Aquino is

not the proper party to raise such question. That question would be incumbent upon the Government.

In view of the foregoing, the judgment appealed from is reversed, with costs against the appellee. It is so ordered.

Paras, C. J., Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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