

BERNARDO TIGLAO, PLAINTIFF AND APPELLEE, VS. ENGRACIO BOTONES, DEFENDANT AND APPELLANT.*G.R. No. L-3619. October 29, 1951*

Ponente: PARAS, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/e3b4ee561763/>**PARAS, C.J.:**

In civil case No, 5115 of the Court of First Instance of Tarlac in which Bernardo Tiglao was the plaintiff and Engrado Botones the defendant, judgment was rendered on March 24, 1943, the dispositive part of which reads as follows: "El Juzgado, de acuerdo con dicho convenio, condena al demandado al pago de la cantidad de P4,000.00 con los intereses de 12 por ciento al año desde el 29 de Noviembre de 1937 hasta su pago completo y se le ordena que deposite esta cantidad en poder del Escribano dentro del plazo de 90 días, de lo contrario se ordenara la ejecución de la sentencia vendiendo en pública subasta los bienes hipotecados, con las costas a cargo del demandado."

Upon motion of the plaintiff, the Court of First Instance of Tarlac on July 20, 1943, ordered the issuance of a writ of execution. Accordingly, on October 9, 1943, the provincial sheriff sold at public auction the mortgaged properties to the plaintiff as the highest bidder. On March 7, 1944, the plaintiff filed an ex parte motion with the Court of First Instance of Tarlac, for the confirmation of the sale in his favor. On March 22, 1944, the court issued the following order; "As prayed for in the 'Motion for confirmation of the Sheriff's sale dated October 9, 1943, of lots Nos. 784 and 1146 of the cadastral survey of Concepcion, executed by the Provincial Sheriff of Tarlac in favor of Bernardo Tiglao, pursuant to the order of execution entered herein, the said sale is hereby APPROVED."

On May 7, 1948, the plaintiff filed with the Court of First Instance of Tarlac a motion for the issuance of a writ of possession. The defendant filed an opposition alleging (1) that the judgment of March 24, 1943, is null and void, because the defendant's former counsel had no special authority to settle the case in the manner stated in said judgment, and (2) that the sheriff's sale was not legally confirmed, because the defendant was not given notice of the motion for confirmation or its hearing. On June 30, 1948, the court granted plaintiff's motion for the issuance of a writ of possession. The defendant filed on July 7, 1948, a motion for reconsideration and under date of September 9, 1948, a motion invoking moratorium under Republic Act No. 342 and praying that all proceedings be suspended. In its order of October 12, 1948, the Court of First Instance of Tarlac denied the motion for reconsideration. The defendant appealed.

Appellant's first contention is that the trial court erred in sustaining the order confirming the sheriff's sale and in issuing the corresponding writ of possession in favor of the appellee. Under section 3 of Rule 70 of the Rules of Court, the sale of mortgaged property "when confirmed by an order of the court * * * shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law". The effect of confirmation was more elaborately explained in the case of Raymundo vs. Sunico, 25 Phil. 365, 368-369, as follows: "As the title to mortgaged real property does not vest in the purchaser until after the confirmation of the sale, he has, prior to that time, no right to the possession of such property, and no legal cause of complaint against the defendants, who remain in possession, exercising the rights

of ownership. On the other hand, the mortgagors have no means, until after the confirmation, of compelling the purchaser to comply with the terms of the sale. Should the mortgagors attempt to compel a purchaser to pay in his money, an answer on the part of the purchaser to the effect that the sale had not been confirmed would be sufficient. The confirmation operates to divest the title out of the former owner and to vest it in the purchaser. It is at this time when the right or title passes, and not before. Sales of mortgaged real estate should be more strictly scrutinized than ordinary sales under execution. In the former the title, as we have said, passes to the purchaser upon confirmation by the court, and the defendant or debtor has no right to redeem within the statutory period granted in cases of ordinary execution sales. In some of the States of the American Union there are statutes permitting the mortgagor to redeem after the foreclosure sale has been confirmed. There is no such privilege extended to him by statute in the Philippine Islands. The right of the mortgagor and those claiming under him to redeem from the mortgage is extinguished by the foreclosure when the same has been properly made. But, up to the time of confirmation the title remains in the mortgagor." In said case this Court already held that a hearing "is a very essential part of those proceedings because the hearing gives the interested parties an opportunity to lay before the court their reasons why the sale should or should not be confirmed, and it is the result of this hearing which divests the title if the sale is confirmed."

In the case of *Grimalt vs. Velazquez*, 36 Phil. 936, 938, this Court, relying upon its decision in *Raymundo vs. Sunico*, supra, ruled that "in order that a foreclosure sale may be validly confirmed by the court, it is necessary that a hearing be given the interested parties at which they may have an opportunity to show cause why the sale should not be confirmed; that a failure to give notice is good cause for setting aside the sale."

In the cases of *La Urbana vs. Belando*, 54 Phil. 930, and *Anderson vs. Reyes*, 54 Phil. 944, it was held, following the decision in *Grimalt vs. Velazquez*, supra, that after the sale of mortgaged property and before its confirmation, the court may still grant the judgment debtor an opportunity to pay the amount of the judgment. In other words, until a sheriff's sale is validly confirmed, the judgment debtor may exercise a right of redemption.

Notice and hearing of a motion for confirmation are therefore essential to the validity of the order of confirmation, not only to enable the interested parties to resist the motion but also to inform them of the time when their right of redemption is cut off.

It is argued for the appellee that because section 3 of Rule 70 does not carry the last part of section 257 of Act 190 to the effect that "should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law," the cases hereinabove cited are no longer efficacious. We disagree. The fact that the present rules still require confirmation of the sheriff's sale implies the power of the court to either confirm the same or not, when asked. And the court may properly exercise its judgment on the matter only after hearing both parties. Indeed, there is reason to suppose that the omitted provision is superfluous.

The case of *Commonwealth of the Philippines vs. Ching Yap*, 70 Phil. 116, citing *So Chu vs. Nepomuceno*, 29 Phil. 208, *Jaranillo vs. Jacinto*, 43 Phil. 588, *Price vs. Sontua*, 60 Phil. 410, and *National Investment Board vs. Pena*, G. H. No. 46448, May 29, 1939, invoked by the appellee, is obviously not controlling. In said case this Court found that notice of the motion for confirmation was sent to the judgment debtors at their address of record and when said notice was returned to the judgment creditor, the latter filed it with the clerk of court in accordance with Rule 20 of the Rules of Courts of First Instance. What the creditor did was held sufficient, because if the debtors failed to receive the notice sent to their address appearing in the record, it was their fault. The statement in said case, therefore, that lack of notice does not deprive the court of its jurisdiction to approve a sheriff's sale, was purely an obiter dictum. Moreover, the cases of *So Chu vs. Nepomuceno*, *Jaranillo vs. Jacinto*, *Price vs. Sontua*, and *National Investment Board vs. Pena*, did not involve situations in which confirmation of sheriff's sales was upheld although there was no notice or hearing.

In the more recent case of *Somera vs. Navarro*, February 11, 1946, 42 O. G. 2106, it was contended that no 3-day notice of the motion for confirmation was given, because the hearing of the motion was set for July 26, 1941, the notice was mailed to the appellants on July 23 and received by them on July, 24. It appears, however, that at the hearing on July 26, the appellants were present and at their instance said hearing was postponed to August 9. Other postponements were conceded and the motion was not heard until December 4, 1942. This Court held: "Resulta evidente, por tanto, que la regla sobre notificaciones se cumplio substancialmente, y que toda discusion ahora sobre el particular viene a ser meramente academica, porque, aun suponiendo que la primera notificacion haya sido irregular, de ella no se siguio ningun perjuicio para los apelantes, toda vez que la mocion no se considero y resolvio sino despuls de varias transferencias, de los cuales aquellos habian sido debidamente avisados." We have thus inferentially recognized the essential need for notice of a motion for confirmation of a sheriff's sale, for, on the contrary supposition, we would have summarily dismissed appellant's contention and held that notice and hearing were unnecessary.

In the case at bar, the lower court undoubtedly had acquired jurisdiction over the foreclosure proceedings but, in confirming the sheriff's sale without the essential requisite as to notice of the motion for confirmation, it exceeded its power, with the result that the order of confirmation is null and void. As stated by Mr. Justice Feria in *Caluag et al. vs. Pecson et al.*,[*] October 29, 1948, (J. R. No. L-1403, "a wrong, or for that matter a correct, decision is void, and may be set aside either directly or collaterally, where the court exceeds its jurisdiction and power in rendering it." In *Ang Lam vs. Rosillosa*,[*] May 22, 1950, G.R. No. L-3595, it was held that "a void judgment may be assailed or impugned at any time either directly or collaterally, by means of a petition filed in the same case or by means of a separate action, or by resisting such judgment in any action or proceeding wherein it is invoked." Hence there is no merit in appellee's contention that the order of confirmation had become final and cannot be set aside after the 6-month period provided in Rule 38 of the Rules of Court, within which re-lief could be asked, had expired.

The second contention of the appellant is that the trial court erred in not suspending the proceedings because of the Moratorium law (Republic Act No. 342). This contention is untenable. The foreclosure judgment had long become final. By his motion for confirmation of the sheriff's sale and his motion for a writ of possession, the appellee sought to recover, not a monetary obligation, but the properties sold to him at public auction. What was held in *Barrozo vs. Macaraeg*, April 25, 1949, G.R. No. L-1282, is decisive against appellant's position. "The debt moratorium merely prohibited the enforcement by action of the debts therein included; and in this case no one is attempting to force anybody to pay his debt. The judgment debtor whose property has been sold is not in debt for the redemption money. He could not be required by action to redeem. Hence, he is not entitled to invoice the suspension,"

Wherefore, the order of March 22, 1944, confirming the sheriff's sale of the mortgaged properties, being null and void, the order of June 30, 1948, granting appellee's motion for the issuance of a writ of possession is hereby set aside, without prejudice to appellee's right to move anew for the confirmation of the sheriff's sale in his favor, with due notice and hearing. So ordered, without costs.

Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[*] 82 Phil., 8.

[*] 86 Phil., 447.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.