

TOMMY REYES AND ANDREA C. REYES, PETITIONERS, VS. COURT OF APPEALS, NICANOR G. SALAYSAY, AS PROVINCIAL SHERIFF OF RIZAL, AND CONCHITA P. DIONISIO, RESPONDENTS.

G.R. No. L-52043. August 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the foreclosure of a real estate mortgage. On December 15, 1964, the spouses Carlos Ramirez and Emilia G. Ramirez and Teodora P. Geronilla executed in favor of Conchita P. Dionisio a second mortgage over their registered lot (with an area of 461 square meters) and the two-story house and two-door apartment thereon, located at 705 Boni Avenue, Barranca, Mandaluyong, Metro Manila. That mortgage was given as security for a loan of five thousand pesos.

The Government Service Insurance System, as first mortgagee, consented to the mortgage. It was duly registered. An additional loan of P3,600 was given by Conchita to the Ramirez spouses and Teodora P. Geronilla on September 2, 1966. It was also secured by the second mortgage (50-52, Record on Appeal).

About three years later, or on January 30, 1968, the Ramirez spouses sold the mortgaged property to Jaime Y. Reyes and Tommy Y. Reyes for sixty-three thousand pesos. Out of that price, the sum of P19,873.11 was paid to the Ramirez spouses. The vendees agreed to assume the mortgage debts consisting of P34,059.89 to the GSIS and P6,850 to Conchita. The GSIS did not consent to that sale. It was not registered. The record does not show what happened to Teodora P. Geronilla's interest in the mortgaged property.

In an affidavit of adverse claim dated January 9, 1969, Conchita alleged that the additional loan obtained from her by the Ramirez spouses amounted to P8,600 (not P3,600) and that the total obligation secured by the second mortgage was P13,600 (54-57, Record on Appeal).

As the debt to Conchita was not paid, she extrajudicially foreclosed the mortgage. The extrajudicial foreclosure sale was scheduled by the sheriff at ten o'clock in the morning of March 2, 1970. He posted the notice of sale in three public places in Mandaluyong and published it for three consecutive weeks in the *Bayanihan Weekly News*, a periodical edited and published in Sta. Cruz, Laguna and circulating in Rizal and Bulacan and in the Cities of Caloocan, Quezon and Manila. That newspaper was registered with the Philippine Council for Print Media and was authorized to publish legal notices.

At the auction sale, Conchita submitted a bid for P16,581.45 which amount was "credited to the full satisfaction" of the mortgage debt. The sheriff issued to her a certificate of sale wherein it was indicated that the period for redemption would expire one year from the date of the registration of the said certificate (30-34, Record on Appeal). It was registered on March 6, 1970 (Exh. 1).

Before the expiration of the one-year period, or on December 28, 1970, Jaime Y. Reyes assigned for P10,000 to his brother Tommy his interest in the mortgaged property (34-37, Record on Appeal).

On February 24, 1971, or ten days before the expiration of the redemption period, Tommy tendered to the sheriff the sum of P9,200 as redemption price. The sheriff rejected it (p. 6, Appellants' Brief).

On March 4, 1971, Tommy and his wife Andrea G. Cervo filed an action against Conchita and the sheriff in the Court of First Instance of Rizal, Pasig Branch 6, to annul the fore-closure sale and to compel them to accept the said sum of P9,200. The complaint was later amended to include a prayer for the cancellation of Conchita's title (Civil Case No. 14482).

The sheriff had issued to Conchita on March 11, 1971 a final certificate of sale. She registered it and obtained a new title in her name for the mortgaged lot (Exh.9).

Conchita in her amended answer alleged that she paid to the GSIS P61,398.49 on account of the first mortgage but in her alternative prayer she merely asked for the reimbursement to her of P16,581.45, the amount credited to her as the purchase price at the auction sale (77-79, Record on Appeal).

After trial, the lower court dismissed the complaint, declared the foreclosure sale as valid and regarded Conchita as the rightful owner and possessor of the mortgaged property. The Court of Appeals affirmed that judgment (Reyes vs. Salaysay, CA-G.R. No. 59682-R, July 16, 1979). The Reyes spouses appealed to this Court.

In their brief argument, they contend that there was no compliance with the notice and publication requirements prescribed in section 3 (not 66) of Act No. 3135. That contention cannot be entertained in this Court because it is a factual issue. The Court of Appeals found that there was public posting of the notice of sale, as shown in Exhibits 7, 7-C and F, and publication of the notice of sale in a news-paper of general circulation, as shown in Exhibits C, 1, 1-A, 1-13, 1-C and 13.

The Appellate Court said that "the presumption that the law had been complied (with) as far as the publication is concerned has not been overcome by herein appellants". The Reyes spouses assail that holding and argue that, as held in Valencia vs. Jimenez, 11 Phil. 492 and Camo vs. Riosa Boyco, 29 Phil. 437, Conchita had the onus of proving that the statutory requirements regarding publication had been strictly complied with.

That dictum of the Appellate Court, even if not altogether correct, does not justify the reversal of its judgment. As noted above, it found as a fact that there was compliance with the publication requirement and the posting in public places of the notice of sale. Hence, the compliance with the statutory requirements is a proven fact and not a matter of presumption.

What the Appellate Court meant is that Conchita, by means of her documentary evidence, sustained the burden of proof as to the posting and publication requirements and that, thereafter, the burden of the evidence was shifted to the Reyes spouses. They failed to present countervailing evidence to prove that there was no compliance with the posting and publication requirements.

The rule is that if the mortgagor alleges that there was no proper publication of the notice of the sheriff's sale, he has the burden of proving that factum probandum (Ruiz vs. Sheriff of Manila, L-24016, July 31, 1970, 34 SCRA 83).

The trial judge, Guardson P. Lood, noted that the testimony of the managing editor of the Bayanihan Weekly News established the fact that it is a newspaper of general circulation in Rizal (95-96, Record on Appeal).

The appellants' other contention refers to their timely tender of the redemption price. The Appellate Court found that the redemption price was P16,581.45 and that the amount of P9,200, tendered by the Reyes spouses, was not sufficient. That finding is also conclusive on this Court.

The contention of the Reyes spouses is that the redemption price should be P9,200 because to the principal of

P5,000 should be added the sum of P4,200 as twelve percent interest from December 15, 1964 to February 24, 1971 (when the re-demption price was tendered to the sheriff).

That contention is a factual issue which, as a rule, cannot be raised in this Court under Rule 45 of the Rules of Court. It is not well-taken.

Since the appeal is devoid of merit, the decision of the Court of Appeals is affirmed. Costs against the petitioners.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Fernandez, and De Castro, JJ., concur.

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