

ARSENIO REYES, PLAINTIFF-APPELLANT, VS. ENRIQUE R. TOLENTINO AND LEONORA P. TOLENTINO, BENITO MACROHON, IN HIS CAPACITY AS PROVINCIAL SHERIFF OF RIZAL, BENJAMIN REYES, IN HIS CA...

G.R. No. L-29142. November 29, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal[1] from the decision of the Court of First Instance of Rizal (Quezon City), in its Civil Case No. Q-9145, rejecting, in the main, the appellant's contention that the redemption period in an extrajudicial foreclosure should be reckoned from the date of the auction sale, and not from the date of the registration of the sale in the office of the Register of Deeds.

The suit filed in the court below was, inter alia, for plaintiff-appellant Arsenio Reyes to be declared the absolute owner of a parcel of registered land, which he purchased in an extrajudicial foreclosure sale, conducted by defendant sheriff Benito Macrohon, and to declare as null and void the redemption of the said land by the defendants-appellees Enrique R. Tolentino and Leonora P. Tolentino, who were the mortgagors in the extrajudicially foreclosed mortgage.

The facts, deemed admitted by this direct appeal, are stated in the appealed decision to be as follows:

"From evidence adduced by the parties, the following facts are not disputed: that on 25 November 1957, defendants Enrique R. Tolentino and Leonora P. Tolentino, spouses, obtained a loan of P8,500.00 from the Government Service Insurance System in whose favor they executed a real estate mortgage over a parcel of land and all its improvements, situated in Quezon City and covered by Transfer Certificate of Title No. 39624, with a special power to sell the same in case of non-payment; that the defendants failed to pay some of the loan amortizations on their due dates, thus making the whole indebtedness due and payable; that because of their failure to pay the whole obligation, the Government Service Insurance System extrajudicially foreclosed the mortgage in accordance with the provisions of Act No. 3135, as amended; that on 11 November 1963, defendant Benito Macrohon, as Sheriff of Rizal, sold the property mortgaged at a public auction to plaintiff Arsenio Reyes as the highest bidder for the amount of P9,905.00; that on 26 December 1963, defendant Macrohon issued the corresponding certificate of sale dated 26 December 1963 containing a condition that the period of redemption would expire one (1) year from and after the date of registration thereof; that on the same day, plaintiff protested against such condition embodied in the certificate of sale; that on 14 May 1964, the Sheriff's certificate of sale was registered with the office of the Register of Deeds of Quezon City; and that on 4 March 1965, defendants Enrique R. Tolentino and Leonora P. Tolentino paid to the defendant Sheriff the total amount of P11,460.00, representing the redemption price of the property foreclosed.

"Plaintiff initiated this action because of the refusal of the defendants to vacate the property foreclosed and to pay to the plaintiff monthly rental therefor from the time the period for them to redeem expired, that is on 11 November 1964, up to the time they actually vacate the premises. . ."

According to appellant Reyes, since the auction sale took place on 11 November 1963, but the Tolentino spouses redeemed only on 4 March 1965, the redemption is invalid for having been made beyond the one-year period, as provided for in Section 6 of Act No. 3135, as amended by Act No. 4118, to wit:

"Section. 6. In all cases in which the extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors-in-interest, or any judicial creditor or judgment creditor of said debtor, 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 such redemption shall be governed by the provisions of sections 464 to 466, inclusive, of the Code of Civil Procedure, (now Sections 29 to 31, Rule 39 of the Revised Rules of Court) in so far as these are not inconsistent with the provisions of this Act."

The court below, however, held that since the sale was registered on 14 May 1964, the commencement date of the redemption period, the redemption on 4 March 1965 was timely made and valid. Hence, this appeal on points of law.

Appellant is aware of the quite recent decisions of this Court, more specifically *Reyes vs. Noblejas, etc., et al.*, L-23691, 25 November 1967,[2] and *Rosario vs. Tayug Rural Bank*, L-26538, 21 March 1968,[3] holding that the period of redemption of registered land sold at an extrajudicial foreclosure sale under Act 3135, as amended, should be counted from the date of registration of the certificate of sale in the office of the register of deeds concerned and not from the date of the public auction, but said appellant urges a re-examination of the foregoing doctrine on the basis of contrary or opposite pronouncements made by this Court in earlier cases with a view of reconciling them or laying down a distinction, if applicable. Thus, he cites *Metropolitan Insurance vs. Pigtail*, 101 Phil. 1110 (30 August 1957); *Manuel vs. Philippine National Bank, et al.*, 101 Phil. 968 (31 July 1957); and *Aparri vs. Court of Appeals*, L-15947, 30 April 1965.[4]

In the last cited case of *Aparri vs. Court of Appeals*, the issue on what date the period of redemption is reckoned, whether on the date of public auction or the date of registration of the sale, was not in issue; the decision merely referred to the wording of Section 6 of Act 3135, as amended, regarding the period of redemption, without correlating said wording with other legal provisions, such as those of the Rules of Court and the Land Registration Act. In fact, the decision states that "(T) here is no question that within the one-year period, Aparri tendered" a sum of money, by way of redemption, but set down no date when the auction sale was held (though it states when a certificate of sale was given) nor does it declare when said certificate was registered.

But in the cases of *Metropolitan Insurance Co. vs. Pigtail*, *supra*, and *Manuel vs. Philippine National Bank*, *supra*, both 1957 decisions, this Court, indeed, held, as appellant asserts, that the reckoning date for redemption is from the date of the auction sale, not from the registration of the sale. This doctrine, however, was impliedly abandoned as early as 1959, in *Garcia vs. Ocampo*, 105 Phil. 1102 (30 June 1959), and the reasons therefor were set forth, amplified and developed in subsequent decisions of this Court, the latest among which is *Quimson vs. Philippine National Bank*, L-24920, 24 November 1970.[5] Thus, in the aforesaid *Garcia* case, the rule was stated that the reckoning date for redemption is from registration of the sale, not the date of the auction sale. Actually, this was not a new doctrine, for it was already applied in *Santos vs. Rehabilitation Finance Corporation*, 101 Phil. 980 (31 July 1957) just a month before *Metropolitan Insurance Co. vs. Pigtail*.

The abandonment of the *Metropolitan Insurance Co. vs. Pigtail* doctrine was already impliedly stated in *Rosario vs. Tayug Rural Bank*, *supra*, when this Court, speaking through Justice Castro, said: "This Court has already spelled out with sufficient clarity its position on this matter", citing the very case of *Garcia vs. Ocampo*, *supra*, and other cases.[6]

A historical dissertation of consultas issued by the Land Registration Commission is traced by appellant in an effort to depict the state of affairs there and its adoption of one doctrine, only to reverse it subsequently, on the question when the redemption period commences in extrajudicial foreclosure sales. The dissertation does not strengthen appellant's cause, for the said consultas are not object of appeal nor are they material to the present case.

The argument of appellant that registration of the auction sale is not necessary as between immediate parties was rejected in *Reyes vs. Manas*, L-27755, 4 October 1969[7], which also involved an extrajudicial foreclosure sale, like the one at bar. The reason therein stated was that appellant's contention "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."

The remaining arguments of appellant that the period of redemption should start from the auction sale may be gathered together in this wise: In *Rosario vs. Tayug Rural Bank*, it was inferred that if the transaction is voluntary, like a contract of sale, pacto de retro, or quitclaim, no registration is necessary as between immediate parties because their actual notice is equivalent to registration; the mortgage contract signed by the Tolentino spouses in favor of the Government Service Insurance System, containing a clause appointing the latter as vendor in case of extrajudicial foreclosure, is also a voluntary transaction; the Tolentinos were the principals, having constituted the GSIS as their agent, with power to sell; therefore, no registration is necessary because the contract was voluntary and that the act of the agent in selling the property mortgaged at auction is as much the act of the principals, and being within their knowledge. These arguments are untenable because even if the mortgage contract is a voluntary transaction and the sale was known to the principal, the extrajudicial foreclosure of the mortgage, including the right of redemption by the owner-mortgagor, is governed, not by the general law or the Civil Code, but by a special law, Act 3135, as amended, in conjunction with the Land Registration Act and the pertinent provisions of the Rules of Court, that provide for registration as a mandatory requirement.[8]

After this case was submitted for decision without appellees' brief, on 3 February 1969, appellant, in a motion for admission of supplemental argument (which this Court noted on 11 June 1970), claims that a new decision, *Lazo, et al. vs. Republic Surety & Insurance Co.*, L-27365, 30 January 1970,[9] sustains his view. The facts of the cited case are entirely different from the present case, prominent among them being, in the cited case, that "the parties had abandoned entirely the concept of legal redemption . . . and converted it into one of conventional redemptions, in which the only governing factor was the agreement between them"; hence, said case is not applicable to the case at bar. In *Quimson vs. Philippine National Bank*, supra, it was even stated that "Even the dissenting opinion of Mr. Justice Teehankee in *Lazo vs. Republic Surety & Insurance Co.*, 31 SCRA 329, emphasized our unbroken adherence to it", referring to the rule that redemption is reckoned from registration of the sale. The rationale for the doctrine now prevailing was spelled out in *Santos vs. Rehabilitation Finance Corporation* to be as follows (101 Phil. 980, 987-988):

"This is a sound rule and will tend to counteract an allegedly anomalous practice which has been called to our attention. We quote from Professor Narciso Peña's book entitled *Land Titles and Deeds*, 1055 Rev. ed., Sec. 25, p. 278:

'25. When one-year period for redemption begins to run. - In cases of tax sales as well as those of other auction sales by virtue of attachments, the statutes generally provide for a period of one year for purposes of redemption. When sale involves registered land, the problem that may confront us is: When does that period commence to run? Is it from the actual date of the auction sale or from the date of registration of said sale?

'Upon the assumption that in the case of a tax sale the period commences from the actual date set for the auction, it has been the common practice among purchasers, from whom the property may be redeemed, to

withhold the registration of the deed or certificate of sale until after the lapse of one year, when the sale becomes final thinking that if registration were to be done earlier the owner or holder of the title would be awakened in time, for incidentally he would be advised by the Register of Deeds to surrender the title for annotation of the sale, preparatory to its consolidation in the vendee after the lapse of one year. On the other hand, if registration takes place after the lapse of the statutory period, the owner would no longer have any more opportunity to exercise his legal right of redemption."

No reason is given why this salutary view should now be abandoned in favor of the strict construction of the law; and in so far as contrary thereto, the *Pigtain* and *Manuel* cases should be deemed *pro tanto* overruled.

In his second assignment of error, appellant contends that even though redemption was timely made, the money tendered to the sheriff was allegedly short by P29.71. We decline to pass upon this alleged error for two reasons: not only is the amount too unsubstantial but appellant did not explain to the court a quo how he computed the alleged shortage. It follows that the foreign authorities he has cited on the effect of redemption when the amount paid is less than the required amount need not now be discussed. He further argues that the redemption price should have included taxes, assessments, documentary stamps and registration expenses, but the lower court found no evidence that appellant Reyes paid for those items. He also states that the sheriff had no authority to accept for him the redemption money and no authority to accept that which is less than the proper amount, but under the last sentence of Section 31, Rule 39, of the Revised Rules of Court (formerly Section 27, Rule 39 of the old Rules, which, also, was formerly Section 466 of the Code of Civil Procedure), it is expressly provided that the tender of the redemption money may be made either to the purchaser or redemptioner, or to the sheriff who made the sale, and it is the duty of the sheriff to accept the tender and execute the certificate of redemption.[10]

Appellant advances another theory, which is that his relationship with the Tolentinos is that of creditor-debtor with respect to the redemption and their tender of the redemption money is not valid because the tender was not made to him, citing Article 1256, regarding tender of payment to a creditor, and Article 1257, regarding consignment of a thing for the release of an obligation, of the Civil Code. The theory is flatly erroneous. The relationship is not that of creditor-debtor, appellant did not lend any money to appellees; nor was he made the assignee of the mortgagee corporation. He merely purchased the property at the auction sale and his relationship with the appellees is, to repeat, governed by special law.

It appears that an answer for defendant sheriff Macrohon, alone, was filed within the reglementary period through the common counsel of Macrohon and the Tolentino spouses. A motion to dismiss, dated 3 August 1965, was filed by the Tolentinos, which was denied on 16 August 1965. In a motion to set case for hearing, dated 6 October 1965, the Tolentinos manifested that they were adopting the answer filed for sheriff Macrohon as their own. On 13 January 1966, plaintiff-appellant Reyes moved to declare the Tolentinos in default, but it was denied by the trial court on the ground that they had substantially complied with the requirements of the Rules. This denial, according to appellant, is error (per his 3rd assignment of error) because Section 1, Rule 18, of the Rules of Court, reading --

"Section 1. Judgment by default. - If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default . . . "

is said to be mandatory upon the court to declare the defendant in default upon motion and proof of the defendant's failure to file his answer on time.

The record does not show if at the time the Tolentinos adopted Macrohon's answer it was already late for them to have filed their answer, but appellant claims it was belated; and the claim is not denied by the Tolentinos since they filed no brief. But, assuming that it was late, and even if the Tolentinos had actually been declared in default, it would have made no difference because there is no substantial question of fact involved. In other words, even if

all the allegations of fact of plaintiff-appellant were proved or admitted, appellant would not have been entitled to a judgment in his favor anyway, because the issue involved was a legal one and his complaint could have been dismissed for lack of cause of action, as was done in the case of Reyes vs. Manas, supra.

The fourth assignment of error is but a recapitulation of the previous ones, which have already been disposed of.

FOR THE FOREGOING REASONS, the appealed decision is hereby affirmed, with costs against appellant Arsenio Reyes.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] The order, dated 25 May 1968, of the court a quo, states that the appeal, notice of which is dated 20 April 1968, was perfected on time (Record on Appeal, page 56).

[2] 21 SCRA 1027.

[3] 22 SCRA 1220.

[4] 13 SCRA 611.

[5] 36 SCRA 26.

[6] Agbulos vs. Alberto, L-17483, 31 July 1962, 5 SCRA 790; Salazar vs. Flor de Lis Meneses, L-15378, 31 July 1963, 8 SCRA 495.

[7] 29 SCRA 736.

[8] Reyes vs. Noblejas, supra.

[9] 31 SCRA 329

[10] Enage vs. Vda. e Hijos de Escaño, 38 Phil. 657

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