JOSIE R. FERRERA, PLAINTIFF-APPELLANT, VS. BANGKO LUZON, INC., REPRESENTED BY DANILO C. CABIEDES AS MANAGER AND PRESIDENT, DEFENDANT-APPELLEE.

Ponente: VILLON, J.

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VILLON, J.:

This appeal seeks the reversal and setting aside of the order[1] dated September 30, 1999 of Branch 25, Regional Trial Court (RTC) of Cabanatuan City and the reinstatement of Civil Case No. 3616-AF entitled "Josie Ferrera, plaintiff, vs. Bangko Luzon, Inc., etc., defendant" for Annulment of Extrajudicial Foreclosure, Annulment of Certificate of Sale, Annulment of Transfer Certificate of Title (TCT) No. T-96167 and Injunction.

The pertinent facts of the case are:

Sometime in 1993, plaintiff obtained a loan from defendant in the amount of One Hundred Thousand (P100,000.00) Pesos. As a security for the payment of the said loan, plaintiff mortgaged a parcel of land containing an area of Five Hundred Ninety Five (595) square meters, more or less, covered by TCT No. T-65051, registered in the name of plaintiff, and issued by the Register of Deeds for Cabanatuan City.

As plaintiff failed to pay her loan obligation to defendant, the latter instituted an extrajudicial foreclosure of the mortgaged property through a notary public pursuant to the provisions of Act No. 3135.[2] On January 20, 1995, an auction sale was conducted and, being the highest bidder, a Certificate of Sale was issued in favor of defendant which was registered on February 26, 1996. After the redemption period expired, plaintiff not having exercised her right to redeem the foreclosed property, the Register of Deeds for Cabanatuan City cancelled TCT No. T-65051 and, in lieu thereof, issued TCT No. T-96167 in the name of defendant.

Defendant filed an ex-parte petition for the issuance of a writ of possession with the RTC which granted said petition. Thus, on September 7, 1999, plaintiff filed the instant case with the RTC alleging that the said extrajudicial foreclosure, which was conducted by the ex-officio notary public, was null and void as it was not made in accordance with the provisions of Administrative Order No. 3[3] dated October 19, 1994 which requires that all applications for foreclosure of mortgage must be filed before the Executive Judge through the Clerk of Court as the ex-officio sheriff. Plaintiff prayed for the issuance of a writ of preliminary injunction to stop defendant from taking possession of the subject property and, after due hearing, for the revocation of the extrajudicial foreclosure, certificate of sale, and TCT No. T-96167 and the award of damages and expenses of litigation.[4]

Defendant opposed the application for a writ of preliminary injunction at the hearing thereof on the ground that the court a quo has no jurisdiction to issue an injunction restraining the implementation of an order issued by another branch of the RTC and that the complaint should be dismissed as the plaintiff has no cause of action against defendant since Administrative Order No. 3 is not applicable to foreclosure proceedings conducted by a notary public.[5]

Acting on plaintiff's Motion for the Issuance of a Temporary Restraining Order/Writ of Preliminary Injunction and defendant's Motion to Dismiss, the RTC, in its assailed order dated September 30, 1999, dismissed the complaint disposing the case as follows:

> "WHEREFORE, premises considered, the motion for the issuance of a restraining order and injunction is not only denied but it is clear that there is no more leg for the complaint to stand, hence, the same should be dismissed."

Aggrieved, plaintiff comes to Us ascribing to the trial court the sole error:

> THE LOWER COURT COMMITTED AN ERROR WHEN IT ISSUED THE ASSAILED ORDER DATED SEPTEMBER 30, 1999 BY DISMISSING INSTANT CASE WITHOUT HEARING, THUS, A CLEAR VIOLATION OF DUE PROCESS OF LAW.[6]

The contention of plaintiff that his right to due process of law had been violated when the court a quo dismissed the complaint is untenable. It is settled that due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[7] Record shows that during the hearing for the issuance of a writ of preliminary injunction, defendant's counsel verbally moved for the dismissal of the complaint which was then and there opposed by plaintiff's counsel. Both counsels were allowed to verbally raise their arguments in support of their respective positions. Moreover, elementary due process merely demands that the parties to a litigation be given information on how the case was decided as well as an explanation of the factual and legal reasons that led to the conclusions of the court.[8] The assailed order on its face shows both the facts and the law upon which the dismissal of the complaint was based.

Be that as it may, the issue raised by plaintiff is purely a legal question, the appeal from which is not cognizable by this court under Rule 41, Section 2(c) of the 1997 Rules of Civil Procedure. The trial court dismissed the complaint holding that "it has no more leg to stand," though the more appropriate ground under Rule 16 of the 1997 Rules of Civil Procedure is that the complaint states no cause of action[9]. Thus:

> "Moreover, it is very clear from the complaint that the plaintiff mortgaged her piece of land with the defendant-bank and that she failed to pay the loan when it became due and a foreclosure of the mortgage was made through a Notary Public. Such being the case, it is very clear that the plaintiff has no more direct right to protect, what is very clear here is that the defendant has a right to foreclose the mortgage as the plaintiff failed to pay her loan with the bank on time or as stipulated."

In a motion to dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations assuming them to be true.[10] The rule is that only the allegations in the complaint may properly be considered in ascertaining the existence of a cause of action.[11]

A scrutiny of the complaint shows that the basis for the foreclosure of the mortgaged property was not disputed by plaintiff who admitted that she failed to pay her loan obligation to defendant. Plaintiff disputes the manner of foreclosure of the mortgaged property by a notary public which she alleged must conform to Administrative Order No. 3 of the Supreme Court. This argument was not sustained by the trial court which granted defendant's motion to dismiss on the ground that Administrative Order No. 3 of the Supreme Court is not applicable to foreclosure of mortgage by a notary public.

In a motion to dismiss based on failure to state a cause of action, there cannot be any question of fact or doubt or difference as to the truth or falsehood of facts, simply because there are no findings of fact in the first place. What the trial court does is to apply the law of the facts as alleged in the complaint assuming such allegations to be true. It follows then that any appeal therefrom could only raise questions of law or doubt or controversy as to what the

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law is on a certain state of facts.[12] Considering this, We are precluded by the Rules from taking cognizance of the main question in the complaint as to whether or not the foreclosure of mortgage undertaken by a notary public must be made in accordance with Administrative No. 3 of the Supreme Court, the question being purely legal.

In the case of China Road and Bridge Corporation vs. Court of Appeals,[13] the Supreme Court had the occasion to rule in this wise:

> "We agree with private respondent that in a motion to dismiss due to failure to state a cause of action, the trial court can consider all the pleadings filed, including annexes, motions and the evidence on record. However, in so doing, the trial court does not rule on the truth or falsity of such documents. It merely includes such documents in the hypothetical admission. Any review of a finding of lack of cause of action based on this documents would not involve a calibration of the probative value of such pieces of evidence but would only limit itself to the inquiry of whether the law was properly applied given the facts and these supporting documents. Therefore, what would inevitably arise from such a review are pure questions of law, and not questions of fact."

There is a question of law when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented, if any, by the parties-litigant.[14] It bears stressing that it is the Supreme Court which has the sole jurisdiction to entertain an appeal which raises only pure question of law. On the other hand, appeals involving both questions of law and fact fall within the exclusive appellate jurisdiction of this Court.[15]

The Rules of Court aptly provides that an appeal under Rule 41, as in this case, which is taken from the RTC to this Court raising only pure questions of law shall be dismissed as issues purely of law are not reviewable by this Court. Similarly, an appeal erroneously taken to Us shall not be transferred to the appropriate court but shall be dismissed outright.[16]

WHEREFORE, in view of all the foregoing, the instant appeal is hereby DISMISSED for lack of jurisdiction.

SO ORDERED.

Sabio, Jr., (Chairman) and Asuncion-Vicente, JJ., concur.

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[1] Rollo, p. 13

[2] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages, approved on March 6, 1924

[3] Procedure in Extra-judicial Foreclosure of Mortgage, addressed to all executive judges of the RTC for the management of courts within his administrative area.

[4] Record, pp.1-4

[5] Record, pp. 19-22

[6] Plaintiff-Appellant's Brief, p. 1, Rollo, p. 9

[7] Factoran, Jr. vs. Court of Appeals, 320 SCRA 530

[8] Velarde vs. Scial Justice Society, 428 SCRA 283

[9] Section 1 (g), Rule 16 of the 1997 Rules of Procedure

[10] China Road and Bridge Corporation vs. Court, G.R. No. 137898, December 15, 2000

[11] Equitable Philippine Commercial International Bank vs. Court of Appeals, 425 SCRA 544

[12] China Road and Bridge Corporation vs. Court, supra

[13] supra

[14] Clement L. Cucueco vs. Court of Appeals, G.R.No. 139278, October 25, 2004

[15] Clement L. Cucueco vs. Court of Appeals, supra

[16] Rule 50, Section 2, 1997 Rules of Civil Procedure

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