FRANCISCO G. ZARATE AND CORAZON TIROL-ZARATE, PETITIONERS, VS. REGIONAL TRIAL COURT OF KALIBO, AKLAN (BRANCH 2), SPOUSES TOMAS HAUTEA AND RHILYN HAUTEA, PROVINCIAL SHERIFF OF IL...

G.R. No. 102305. October 13, 1999

Ponente: GONZAGA_REYES, J.

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GONZAGA_REYES, J.:

Before us is a Petition for Review on Certiorari on pure questions of law (with prayer for the issuance of a restraining order and/or writ of preliminary injunction) of the Order of the Regional Trial Court[1] (RTC) of Aklan, Branch 2, dated June 26, 1991 dismissing petitioner's complaint in Civil Case No. 4184 entitled "Francisco G. Zarate, et. al. vs. Spouses Tomas Hautea and Rhilyn Hautea, et. al.".

The following facts are undisputed:

> Pursuant to a judgment rendered in Civil Case No. 16131 by the Regional Trial Court of Iloilo in favor of Tomas Hautea against Francisco Zarate[2] , the Provincial Sheriff of Iloilo in coordination with the Provincial Sheriff of Aklan, sold on execution a parcel of land, Lot 2, Plan Psu-136835, LRC Case No. A-56, L.R.C., Case No. N-9192, covered by TCT No. 5143 registered in the name of the plaintiffs-spouses Francisco Zarate and Corazon Tirol-Zarate. When the one (1) year period for redemption was about to expire, Francisco Zarate and his wife, Corazon Tirol-Zarate (ZARATES), the petitioners herein, filed a case for annulment of the execution sale with damages and prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order against the spouses Tomas and Rhilyn Hautea (HAUTEAS), the Provincial Sheriffs of Iloilo and Aklan, and the Register of Deeds of Aklan, the respondents herein. The ZARATES claimed that under the provisions of Section 14[3] , Executive Order No. 81 otherwise known as "THE 1986 REVISED CHARTER OF THE DEVELOPMENT BANK OF THE PHILIPPINES" and the rulings of the Supreme Court in the cases of Associated Insurance and Surety Co., Inc. vs. Register of Deeds of Pampanga[4] nd Development Bank of the Philippines vs. Leonardo Jimenez and Corazon Benito[5] , subject parcel of land is exempt from attachment and execution since said parcel of land was mortgaged to the Development Bank of the Philippines (DBP) by the ZARATES. A restraining order was issued by the court whereby the HAUTEAS were restrained for a period of twenty days from consolidating the title of the said parcel of land and from taking possession of the same from the plaintiffs and/or from alienating the same. To protect its interests, DBP filed a complaint in intervention with prayer for the issuance of a writ of preliminary injunction. The court admitted said complaint in intervention in Civil Case No. 4184. However, despite the presence of a temporary restraining order and during the pendency of the case, DBP foreclosed the mortgage of the ZARATES and enforced its superior lien over the property on the basis of its prior mortgage over the lot. DBP and its counsel could not be held in contempt since DBP's extrajudicial foreclosure and public auction sale of the subject property was in accordance with P.D. 385[6] and the mortgage agreement between ZARATES and DBP. Consequently, the HAUTEAS filed a "Motion To Drop Defendants-Spouses Hautea From The Case And/Or To Dismiss The Complaint And The Complaint In Intervention Against Defendants-Spouses Hautea" alleging that the complaints have been rendered moot and academic by DBP's foreclosure of the subject property. DBP

likewise filed a motion to withdraw their complaint in intervention, which was not opposed by either the petitioners or respondents. On the other hand, the ZARATES filed a motion to amend their complaint in order to allege that aside from the fact that the execution sale was invalid since the property subject of the sale was exempt from execution, the sale was invalid also because the respondents failed to comply with all the notice requirements prescribed by law particularly Sec. 18[7] , Rule 39 of the Rules of Court and Section 1[8] f P.D. 1079[9] .[10]

On June 26, 1991, the respondent trial court issued the Order now questioned in this appeal denying the ZARATES motion to amend the complaint and ordering the dismissal of the case for annulment of the execution sale in favor of the HAUTEAS. The order states:

"After a careful consideration of the foregoing facts and the intervening circumstances of this case, the Court noted the following observations. Firstly, the instant complaint filed by the plaintiff spouses, Francisco and Corazon Zarate, for annulment of execution sale over their aforesaid property covered by Transfer Certificate of Title No. T-5143, may be noted, was primarily premised on the alleged violation by the defendants of the provisions of Sec. 14 of Executive Order No. 81, otherwise known as the 1986 Revised Charter of the Development Bank of the Philippines (DBP), and the provisions of Sec. 2, Commonwealth Act No. 489 in relation to Sec. 9 of RA No. 85, which specifically provides that properties mortgaged with the DBP are exempt from attachment and execution. The aforementioned property of plaintiffs, Zarate, has been mortgaged with the DBP in the original amount of P136,000.00 and P44,000.00 on November 19, 1976 and on March 23, 1981, respectively. This mortgage, however, during the pendency of this case was extrajudicially foreclosed by the DBP on January 11, 1991 and the property was sold at public auction with the DBP adjudged as the highest bidder. As a consequence of this foreclosure and auction sale of the property, it has rendered the position of the DBP untenable and was constrained to withdraw their complaint in intervention. So, what remains of the case, was the original complaint of the plaintiffs.

Secondly, the aforecited provision of the 1986, revised charter of the DBP and the provisions of CA No. 489 in relation to RA No. 85, are believed intended only to protect the interests of the DBP as a government corporation and do not apparently apply or cover private persons as the herein plaintiffs. It follows therefore that any violation of these laws by the defendants, the same constitutes an infraction only against the legal rights of the DBP and do not apply to herein plaintiffs Zarate. Similarly, with the foreclosure and sale of the subject property, it has also rendered this action unenforceable. Likewise, no further allegations have been stated in the complaint as to what legal rights of the plaintiffs Zarate may have been violated nor has reflected any particular act or omission by the herein defendants in violation of said rights by the plaintiffs. In sum, the complaint states no cause of action.

Primary is the rule that "every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claims or defenses xxx." (Section 1, Rule 8. Revised Rules of Court of the Philippines).

In the case at bar, these are wanting, the allegations or recital of facts contained in the complaint as the alleged violation by the defendants of the revised DBP Charter and other pertinent laws could not be availed of by the herein plaintiffs as the same is only intended to protect the interests of the DBP as a government entity. Likewise, any proposed amendment to be made on the complaint is believed could not also cure the defects.

IN VIEW OF THE FOREGOING grounds and observations, the motion to amend the complaint is hereby DENIED and this case is ordered as it is hereby ordered DISMISSED.

SO ORDERED."[11]

Motion for reconsideration was denied;[12] hence this petition on pure questions of law wherein the ZARATES assign the following errors:

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"I. THE RESPONDENT TRIAL COURT GRAVELY ERRED IN HOLDING THAT PETITIONERS ARE NOT THE REAL PARTIES IN INTEREST TO FILE THE COMPLAINT BASED ON E.O. NO. 81. PETITIONERS AS OWNERS-MORTGAGORS OF THE SUBJECT PROPERTY, HAVE THE REQUISITE STANDING AND INTEREST TO INVOKE E.O. NO. 81.

II. THE RESPONDENT TRIAL COURT GRAVELY ERRED IN DISMISSING THE COMPLAINT ON THE GROUND OF FAILURE TO STATE A CAUSE OF ACTION UNDER E.O. NO. 81, DESPITE THE FACT THAT THE COMPLAINT STATED NOT JUST ONE BUT SEVERAL VALID PRINCIPAL CAUSES OF ACTION AGAINST PRIVATE RESPONDENTS AND RESPONDENT PUBLIC OFFICIALS.

III. THE RESPONDENT TRIAL COURT GRAVELY ERRED IN DENYING PETITIONERS' MOTION TO ADMIT THE AMENDED COMPLAINT."[13]

Both public and private respondents agree that the present case has been rendered moot and academic since the foreclosure and sale of the subject property to the DBP completely nullified the levy on execution and subsequent sale of the same property to the HAUTEAS which is precisely what the ZARATES prayed for in their complaint. The ZARATES failed to exercise their right to redeem the foreclosed property thus enabling DBP to consolidate ownership thereon[14] . To pursue the case would be an exercise of futility since any judgment that may be rendered in the case will not bind DBP who withdrew from the case as intervenor, without opposition from the petitioners. Consequently, there is nothing more to litigate between the parties as DBP has already acquired the subject property by the enforcement of its lien through the extrajudicial foreclosure of mortgage.[15]

Petitioners-ZARATES however believe that the case is not moot and academic as DBP has not yet consolidated ownership over the subject lot. It appears that on January 22, 1992 (prior to the expiration of the redemption period on February 7, 1992), the ZARATES filed a complaint against DBP for annulment of foreclosure and damages with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction with the Regional Trial Court, Branch 8, Kalibo, Aklan docketed as Civil Case No. 4435 entitled "FRANCISCO G. ZARATE and CORAZON TIROL-ZARATE vs. DEVELOPMENT BANK OF THE PHILIPPINES". At the same time, they made a consignation of the redemption price in the amount of P448,726.03 in escrow with the Far East Bank & Trust Company to show that the said case was filed in good faith. The ZARATES therefore believe that the DBP has not yet consolidated ownership over the disputed lot considering that they still have the right to redeem said lot since the period of redemption in the foreclosure sale had not yet expired. Thus, the petition is not yet moot and academic as the validity of DBP's foreclosure is still in question.[16]

We are not persuaded by the arguments of petitioners ZARATES.

Under Section 14 of E.O. No. 81[17] , any property mortgaged to DBP is exempt from attachment, execution or any other court processes. When DBP successfully foreclosed and caused the disputed lot to be sold during the pendency of the instant action for annulment of the sale on execution by the HAUTEAS, DBP was effectively claiming and asserting the exemption granted to properties mortgaged to it under the DBP charter. And when DBP withdrew its complaint in intervention in the case, without opposition from the petitioners, the petition became academic as judgment therein could no longer bind DBP or be enforceable against it. The timeliness and propriety of DBP's claim of its right to the exemption is not questioned by the HAUTEAS who concede that DBP enforced its superior lien over the mortgaged property by foreclosing on the mortgage. Since the property was exempt from execution, the certificate of sale in favor of the HAUTEAS cannot prevail and the cause of action of the ZARATES in this case to annul the sale in favor of the HAUTEAS can no longer be pursued. DBP's right to claim the exemption granted to it under Section 14 of E.O. No. 81 appears to be self-executing. Thus, the exemption from attachment or execution arises from the mere execution of the mortgage in favor of DBP. Inasmuch as DBP has already effectively enforced the exemption granted to it under the said executive order, it is

academic to rule on whether the execution sale in favor of the HAUTEAS, who themselves have conceded superiority of DBP's lien, is valid. It is also not necessary at this point to determine whether the ZARATES have the standing to invoke the exemption in favor of DBP.

It bears stress that when DBP withdrew its complaint in intervention, the court lost jurisdiction over DBP and any judgment on whether the subject property is or is not exempt from execution cannot bind DBP. The ZARATES and the HAUTEAS effectively conceded the dismissal of the case considering that DBP is an indispensable party or a party without whom no final determination of the case can be had.[18] An action cannot proceed unless the indispensable parties are joined and unless such indispensable parties are joined, the case must be dismissed.[19] The validity of the foreclosure by DBP is raised squarely in Civil Case No. 4435, where DBP is itself impleaded.

Finally, an order granting or denying a motion to amend the complaint on substantial matters is discretionary with the court.[20] In the present case, the RTC committed no reversible error when it denied ZARATES' motion to amend the complaint in order to allege that the execution sale in favor of the HAUTEAS was invalid due to the failure of the respondents to comply with the notice requirements since it correctly ordered the dismissal of the case.

WHEREFORE, the instant petition is hereby DENIED.

No pronouncement as to costs.

SO ORDERED.

Melo, (Acting C.J.), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Penned by Judge Amalia Resterio-Andrade.

[2] The action was entitled "Tomas Hautea; et. al. vs. Francisco Zarate".

[3] "Sec. 14. Exemption from Attachment. – The provisions of any law to the contrary notwithstanding, securities on loans and/or other accommodations granted by the Bank or its predecessors-in-interest shall not be subject to attachment, execution or any other court process, nor shall they be included in the property of insolvent persons or institutions, unless all debts and obligations of the debtor to the Bank and its predecessors-in-interest have been previously paid, including accrued interest, penalties, collection expenses, and other charges, subject to the provisions of paragraph (c) of Section 9 of this Charter."

[4] 105 PHIL. 123.

[5] 36 SCRA 426.

[6] REQUIRING ALL GOVERNMENT FINANCIAL INSTITUTIONS TO FORECLOSE MANDATORILY ALL LOANS WITH ARREARAGES, INCLUDING INTEREST AND CHARGES, AMOUNTING TO AT LEAST TWENTY PERCENT (20%) OF THE TOTAL OUTSTANDING OBLIGATION."

[7] "SECTION 18. Notice of sale of property on execution. – Before the sale of property on execution, notice thereof must be given as follows:

xxx

(c) In case of real property, by posting for twenty (20) days in three (3) public places in the municipality or city where the property is situated, a similar notice particularly describing the property and stating where the property

is to be sold, and if the assessed value of the property exceeds FIFTY THOUSAND PESOS (P50,000.00), by publishing a copy of the notice once a week for two (2) consecutive weeks in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in English and/or Filipino, then the publication shall be made in one such newspaper.

(d) In all cases, written notice of the sale shall be given to the judgment debtor."

[8] "SECTION 1. All notices of auction sales in extra-judicial foreclosure of real estate mortgage under Act. No. 3135 as amended, judicial notices such as notices of sale on execution of real properties, notices of special proceedings, court orders and summonses and all similar announcements arising from court litigation required by law to be published in a newspaper or periodical of general circulation in particular provinces and/or cities shall be published in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of general circulation applies: Provided, that the province or city where the publication's principal office is located shall be considered the place where it is edited and published Provided, further, that in the event that there is no newspaper or periodical published in the locality, the same may be published in the newspaper or periodical published, edited and circulated in the nearest city or province: Provided, finally, that no newspaper or periodical which has not been authorized by law to publish and which has not been regularly published for at least one year before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices."

[9] "REVISING AND CONSOLIDATING ALL LAWS AND DECREES REGULATING THE PUBLICATION OF JUDICIAL NOTICES, ADVERTISEMENTS FOR PUBLIC BIDDINGS, NOTICES OF AUCTION SALES AND OTHER SIMILAR NOTICES."

[10] Decision, pp. 1-2; Petition, pp. 7-13.

[11] Decision, pp. 2-3; Rollo, pp. 53-54.

[12] ORDER dated October 8, 1991; Rollo, pp. 50-51.

[13] Memorandum for the Petitioners, p. 12; Rollo, p. 395.

[14] Manifestation dated May 18, 1992; Rollo, pp. 310-311.

[15] Memorandum for Private Respondents, pp. 9-10; Memorandum for Public Respondents, pp. 9-10.

[16] Memorandum for Petitioners, pp. 25-32.

[17] See footnote 3, Supra.

[18] § 7, Rule 3, Rules of Court.

[19] United Paracale Mining Company vs. Court of Appeals, 232 SCRA 663 at 666 [1994].

[20] § 3, Rule 10, Rules of Court.

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