ALBERTO LOOYUKO, JUAN C. UY AND ATTY. VICTORIA CUYOS, PETITIONER, VS. COURT OF APPEALS, F.G.U. INSURANCE CORPORATION AND ANTONIO GUTANG, HEIRS AND SUCCESSORS-IN-INTEREST, RESPON...

G.R. No. 102696. July 12, 2001*

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Disputed in these consolidated cases is a house and lot located in Mandaluyong, Rizal (now Mandaluyong City), formerly covered by Transfer Certificate of Title (TCT) No. 1702, and previously owned by the Spouses Tomas and Linda Mendoza. Bitterly contesting the property are the spouses' various creditors as well as the creditors' alleged assignee.

One set of creditors includes Albert Looyuko and Jose Uy. Their lawyer, Atty. Victoria Cuyos, has also annotated her attorney's lien over the property. Antonia Gutang and her children David and Elizabeth, who have substituted their father,[1] comprise another set. Both sets of creditors rest their claim upon separate levies on execution and their supposed purchase of the property at public auction.

A more detailed background that gave rise to Looyuko et al.'s and the Gutangs' claims over the property is set forth below. Thereafter, a recital of the antecedents that gave rise to the consolidated petitions, including the claims of another creditor, FGU Insurance Corporation, as well as Schubert Tanuliong, who purports to be Looyuko et al.'s and the Gutangs' assignee, follows.

Civil Case No. 82-5792, RTC Manila
(Looyuko and Uy vs. Spouses Mendoza)[2]

On April 22, 1977, Albert Looyuko and Jose Uy, through their counsel, Atty. Victoria Cuyos, filed a complaint against the Spouses Mendoza before the Regional Trial Court (RTC) of Manila. The Manila RTC issued a writ of preliminary attachment over the property and a notice of levy on attachment bearing the date April 22, 1977 was annotated at the back of the TCT No. 1702.

Evidently, Looyuko and Uy prevailed in that action. On February 12, 1986, the Manila RTC issued a writ of execution and the property was sold at public auction with Looyuko and Uy as the highest bidders.

On June 30, 1995, the Register of Deeds of Mandaluyong issued a new TCT over the property, TCT No. 10107, in the name of Looyuko and Uy. The TCT bears the date February 6, 1992, the date of inscription of the final deed of sale in favor of Looyuko and Uy.

Civil Case No. 13122, RTC Iloilo
(Antonia Gutang vs. Tomas Mendoza)

LRC Case No. R-3613, RTC Rizal

Antonia Gutang filed a complaint for a sum of money with damages against Tomas Mendoza with the RTC of Iloilo (Civil Case No. 13122). Judgment was rendered in favor of Antonia Gutang and the decision later became final and executory. On July 1, 1981, Antonia Gutang caused to be annotated on the same TCT No. 1702 a notice of levy on execution. On June 8, 1984, the property was sold at public auction to Antonia Gutang. The Deputy Sheriff executed a final deed of sale on November 5, 1985.

Antonia Gutang, by virtue of the certificate of sale, filed with the RTC of Rizal a petition for the cancellation of TCT No. 1702 and the issuance of a new title in her name. The case was docketed as LRC Case No. R-3613. On June 15, 1987, the Rizal RTC issued an order granting the petition. Consequently, TCT No. 1702 was cancelled and TCT No. 242 in the name of Antonia Gutang, married to Jose Gutang, was issued on December 23, 1987. The issuance of TCT No. 242, as will be seen later, spawned other cases.

Civil Case No. 82-9760, RTC Manila
(FGU vs. Spouses Mendoza)

CA-G.R. No. 23849, 7[th] Division, Court of Appeals
(FGU vs. Judge Bayhon and Spouses Gutang)

G.R. No. 102696, Supreme Court
(Looyuko et al. vs. Court of Appeals, FGU, et al.)

G.R. No. 102716, Supreme Court
(FGU vs. Court of Appeals, Spouses Gutang, et al.)

On December 2, 1976, spouses Tomas and Linda Mendoza executed a mortgage over the subject property in favor of FGU Insurance Corporation. The mortgage was registered with the Register of Deeds of Pasig, Rizal on December 3, 1976.

As the spouses failed to satisfy the obligation secured by the mortgage, FGU on June 1, 1982 filed an action (Civil Case No. 82-9760) with the RTC of Manila against said spouses. The latter filed an Answer but failed to appear during the pre-trial. Consequently, the Spouses Mendoza were declared as in default and evidence were received ex-parte.

On January 22, 1988, the Manila RTC rendered a decision in favor of FGU, thus:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants, ordering the latter, jointly and severally, to pay the plaintiff the following:
>
> - The amount of P368,785.80 with interest at 12% per annum compounded monthly from May 5, 1982 until the same is fully paid;
>
> - The amount of P22,501.60 with interest at 12% per annum compounded monthly from December 7, 1977 until the same is fully paid;
>
> - P5,000.00 as attorney's fees;
>
> - The costs of suit.
>
> SO ORDERED.[3]

FGU filed a motion for partial reconsideration, pointing out that the action was not for a sum of money but for foreclosure of mortgage. It prayed that in accordance with Section 2, Rule 68 of the Rules of Court, "the decision be amended by ordering the sale of the property mortgaged in case defendant should not satisfy the judgment in

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favor of plaintiff within ninety (90) days from notice of decision."

On May 19, 1988, the RTC issued an Order granting FGU's motion:

> Acting on the partial motion for reconsideration of the Decision rendered by the Court on January 22, 1988 and finding the same to be meritorious, the same is hereby granted.
>
> Accordingly, the first paragraph and the dispositive portion of said Decision are hereby ordered amended to read as follows:
>
> "This is an action for foreclosure of real estate mortgage filed by plaintiff, FGU Insurance Corporation against Spouses Tomas Mendoza and Linda A. Mendoza, filed way back on June 1, 1982."
>
> "WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants, ordering the latter, jointly and severally, to pay the plaintiff the following: 1. The amount of P368,785.80 with interest at 12% per annum compounded monthly from May 5, 1982 until the same is fully paid; 2. The amount of P22,501.60 with interest at 12% per annum compounded monthly from December 7, 1977 until the same is fully paid; 3. P5,000.00 as attorney's fees; 4. the costs of suit. Should defendants fail to pay said amounts within 90 days from receipt of the Decision dated Jan. 22, 1988, the mortgaged property described in par. 6 of the complaint shall be sold in the manner and under the regulations governing sales of real estate under execution. The proceeds of the sale, after deducting the cost of the sale shall be applied to the judgment and any balance shall be turned over to the defendants or their agent."
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> SO ORDERED.[4]

No appeal was taken from the above Order and the same subsequently became final and executory.

On September 14, 1988, the Manila RTC issued a writ of execution. On November 24, 1988, the deputy sheriff in a public bidding sold the parcel of land covered by TCT 1702 to FGU, the highest bidder. A certificate of sale was thereafter issued in FGU's favor, which was confirmed by the RTC on March 2, 1989. On August 23, 1989, the RTC issued an order for the cancellation of TCT No. 242 and the issuance of a new TCT in FGU's name.

Before the new TCT could be issued, however, the Spouses Gutang filed a motion for intervention and to set aside the judgment of the RTC, alleging that they are the new registered owners of the property. In an Order dated February 9, 1990, the RTC allowed the motion for intervention, holding that the failure of FGU to implead the Spouses in the action for foreclosure deprived the latter of due process. The RTC thus set aside its Decision and all orders issued subsequent and related thereto.

> WHEREFORE, the motion to intervene filed by the Spouses Gutang is granted and the decision on May 19, 1988 is reconsidered set aside together with all orders subsequent and related thereto.[5]

On October 11, 1990, Looyuko et al. filed a motion for intervention, which the RTC granted in its Order dated October 18, 1990.

In an Order dated November 16, 1990, the RTC denied FGU's motion for the reconsideration of the order setting aside its decision.

FGU filed a petition for certiorari, prohibition and mandamus in the Court of Appeals, arguing that the trial court committed grave abuse of discretion in granting the Spouses Gutang's motion for intervention since the RTC decision, as amended, was already final and executory.

On March 13, 1991, the Court of Appeals received an Urgent Motion by Juan Uy, Alberto Looyuko and their counsel, Atty. Cuyos, praying for leave to file a motion for intervention. They alleged that they were attachment creditors of the spouses Tomas and Linda Mendoza whose property covered by TCT No. 1702 was attached as

per entry No. 11728 duly inscribed on April 22, 1977 and subsequently carried over to TCT No. 242 in the name of the Spouses Gutang. On April 26, 1991, the court issued a resolution allowing Looyuko et al.'s motion for intervention.

In a Decision dated August 12, 1991, the Court of Appeals rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the petition for certiorari, mandamus and prohibition is hereby (1) GRANTED insofar as that portion of the Order of February 9, 1990 is concerned reconsidering and setting aside the money judgment is concerned, which judgment [is] final and executory, and in the process of satisfaction, should be maintained and remains as such; and (2) DISMISSING insofar as that portion of the same Order allowing the private respondents to intervene is concerned.
>
> SO ORDERED.[6]

The Court of Appeals ruled that the action before the RTC was not actually an action for foreclosure but one for collection of a sum of money. The court also affirmed the order of the RTC allowing intervention, thus:

> The Court, both from the factual, procedural and substantive points, finds that respondent court had just and valid reasons to allow the private respondents to intervene in the case. Had it denied the intervention, the execution in satisfaction of the money judgment against the judgment debtors, would be violative of section 15 of Rule 30, that should be "on all the property, real and personal, x x x of the judgment debtor x x x." when, in the case, the ownership of the parcel of land, covered by TCT 45066 is claimed by private respondents as well as movants-intervenors. Finally, even if it is considered, as petitioner claims, petitioner should have impleaded in its action "all persons having or claiming an interest in the (mortgage) premises subordinate in right to that of the holder of the mortgage, all of whom shal be made defendants in the action" (sec. 1, Rule 68, Rules of Court) and without their inclusion there can be no final determination in the action. Petitioner did not include private respondents as well as movants-intervenors, both of whom hold liens on the same property. Even under this aspect, respondent court should not be faulted for allowing private respondents to intervene, considering its reason that "what (is) sought to be safeguarded (is) x x x the provision of Rule 68 of the Rules of Court." And while the time to intervene, under section 2, of Rule 12, is before or during a trial, x x x, in its discretion x x x", or even on the day when the case is submitted for decision (Falcasantos vs. Falcasantos, L-4627, May 13, 1952), or at any time before the rendition of final judgment (Lichauco vs. C.A., ET AL., L-23642, Mar. 13, 1975), in Director of Lands vs. C.A., et al. (L-45168, Sept. 25, 1979), intervention was permitted pending appeal "in order to avoid injustice" which must have impelled the respondent court to allow the intervention.
>
> Be that as it may, insofar as the default judgment dated January 27, 1988, ordering the defendants spouses Mendoza, jointly and severally, to pay petitioner the judgment debt, interest, attorney's fees and costs, and which money judgment was restated in the Order dated may 19, 1988, since that judgment had already become final and executory and in the process of execution, what cropped up in the interim - on the question of whether or not the money judgment can be enforced against the parcel of land covered by TCT 450666, it appearing that petitioner, private respondents and herein movants-intervenors are all having and claiming interest in that property, a question which has no relevance and would not affect the correctness of the money judgment, the respondent court had no reason to reconsider and set aside the judgment which had already become final and executory, can no longer be altered, amended, reconsidered, set aside. Nothing more can be done therewith. The court which rendered it has no more authority to modify or revoke it, except for its execution, otherwise, there would be not end to the litigation. Hence, the money judgment should be maintained and set at rest as and all that remains to be done in connection therewith is to have the same properly executed against the judgment debtors.[7]

On August 16, 1991, the Court of Appeals noted a motion for leave to intervene by Schubert Tanunliong.

Subsequently, FGU and Looyuko et al. filed their respective motions for reconsideration. On October 31, 1991 the Court of Appeals issued a resolution denying both motions for reconsideration.

Looyuko et al. thus filed a petition for certiorari, prohibition and mandamus before this Court, contending in the main that the failure of FGU to implead them as defendants in Civil Case No. 82-9760 deprived them of due process. Consequently, the entire proceedings conducted before the RTC should have been declared void. The case was docketed herein as G.R. No. 102696.

FGU, for its part, filed a petition for review on certiorari with this Court, which was docketed as G.R. No. 102716. FGU contends that the Court of Appeals erred in characterizing Civil Case No. 82-9760 as an action for a sum of money, and not one for foreclosure of mortgage, and in allowing the intervention of the Spouses Gutang and Looyuko et al. in the proceedings before the trial court.

LRC Case No. R-4212, RTC Rizal
(Gutang vs. Register of Deeds, et al.)

LRC Case No. R-4643, RTC Rizal
(Gutang et al. vs. Looyuko et al.)

CA-G.R. SP No. 36825, 9[th] Division, Court of Appeals
(Gutang vs. Judge Trampe, Tanunliong)

G.R. No. 120954, Supreme Court
(Tanunliong vs. Court of Appeals, Gutang)

On November 28, 1989, Antonia Gutang filed with the RTC of Rizal an Amended Petition under Section 108 of Presidential Decree No. 1539 for the cancellation of TCT No. 242 in the name of the Spouses Gutang and the issuance of a new one in the name of Antonia Gutang and her children David and Elizabeth. The cancellation of the TCT was sought on the grounds that the husband, Jose Gutang, had already died, and that the property covered by the TCT was paraphernal. The case was entitled "Antonia Gutang versus Register of Deed, Galvanizers Marketing, Inc., Victoria Alcantara Cuyos, Alberto Looyuko and Juan Uy, LRC Case No. R-4212."

On August 29, 1991, Schubert Tanunliong, the alleged assignee of FGU and Looyuko et al., filed a motion for leave to intervene, attaching his opposition to the amended petition.

On June 1, 1992, Antonia Gutang and her children filed another petition with the Rizal RTC against Cuyos, Looyuko and Uy praying for the cancellation of certain entries annotated in TCT No. 242. The case was docketed as LRC Case No. 4643.

On July 12, 1993, the RTC ordered the setting of the cases for hearing and for compliance with jurisdictional requirements. On October 11, 1993, the court issued an order allowing the intervention of Tanunliong. The Gutangs moved for a reconsideration of both orders. On July 19, 1994, the court issued an Omnibus Order in LRC Case Nos. 4214 and 4643, the dispositive portion of which reads:

> "WHEREFORE, in view of all the foregoing, the Petitioners two (2) Motions for reconsideration dated August 30, 1993 and October 27, 1993; and Respondents' Motion for Reconsideration dated November 3, 1993 and the Opposition and Motion to Dismiss dated June 23, 1991, are all DENIED for lack of merit.
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> On the other hand, movant Intervenor's Motion for Leave to Intervene with Opposition dated August 29, 1991 is Granted.
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> In the meantime, let a notice of hearing be issued setting these cases for hearing in accordance with the provisions of P.D. 1529.

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> Let copies of the same be furnished the parties in this case, thru their counsels, the Register of Deeds of Mandaluyong, Metro Manila; the Office of the Solicitor General; and Intervenor Schubert Tanunliong, thru his counsel Atty. Nelson Ng."[8]

On March 6, 1995, the court issued another order in both LRC cases, thus:

> Accordingly, let the questioned Omnibus Order dated July 19, 1994 stand, and the Branch Clerk of Court is directed to issue the notice of initial hearing in [this] case with notice to the Office of Solicitor General, the Registry of Deed of the City of Mandaluyong, herein respondents and intervenor Ng, pursuant to Section 108 of the Presidential Decree No. 1529.[9]

Yet another order was subsequently issued by the RTC in LRC Case No. 4212, the dispositive portion of which reads:

> FURTHERMORE, let a copy of this order and the petition be furnished the Solicitor General, Makati, Metro Manila.[10]

Antonia Gutang went to the Court of Appeals and questioned, among others, the allowance of the intervention by Tanunliong (CA-G.R. SP No. 36825). In a Decision dated June 30, 1995, the Court of Appeals, through the Special Ninth Division, set aside and declared void the Orders of the Land Registration Court insofar as they allowed the intervention of Tanunliong.

Tanunliong now challenges the decision of the Court of Appeals in G. R. No. 120954. He submits that the decision in LRC Case No. R-3613, which issued TCT No. 242 in the name of the Spouses Gutang is void, citing specific grounds therefor. Accordingly, intervention should have been allowed on the principle that a void judgment can be attacked either directly or collaterally.

Civil Case No. 61209, Pasig RTC
(Tanunliong vs. Gutang et al.)

CA-G.R. SP NO. 27972, 4[th] Division, Court of Appeals
(Gutang et al. vs. Judge Molina and Tanunliong)

G.R. No. 108257, Supreme Court
(Tanunliong vs. Court of Appeals, Gutang et al.)

Schubert Tanunliong claims that on December 19, 1985, the Spouses Mendoza sold the subject house and lot to him. Subsequently, on January 9, 1986, Alberto Looyuko and John Uy, the plaintiffs in Civil Case No. 82-5792, allegedly assigned to Tanunliong their rights and interests over the property. The validity of the assignment, however, is refuted by Looyuko, et al.[11]

On January 29, 1987, FGU, the plaintiff in Civil Case No. 82-9760 likewise assigned all its rights and interest over said property to Tanunliong. The assignment is not denied by FGU. On August 23, 1991, Tanunliong filed before the RTC of Pasig a complaint for the cancellation of title, accounting and issuance of a writ of preliminary injunction against Antonia Gutang, David Gutang, Elizabeth Gutang Ledesma, Atty. Ramon Gonzales (the counsel for the Gutangs), and Atty. Victoria Cuyos. The case was docketed as Civil Case No. 61209. Tanunliong alleged, among others, that Antonia Gutang obtained the Order in LRC Case No. R-3613, canceling TCT No. 1702 and ordering the issuance of TCT No. 242 in favor of the Gutangs, through fraud and misrepresentation and without notice to FGU. Consequently, said Order was void.

The defendants filed a motion to dismiss Tanunliong's complaint on the ground that the RTC had no jurisdiction over the case, the complaint in reality being an action for the annulment of the Order of the Pasig RTC in LRC

Case No. R-3613. The RTC denied said motion but the Court of Appeals, upon a petition for certiorari and prohibition by the Gutangs and Gonzales, ruled otherwise. The appellate court held that Tanunliong's action, though denominated as one for cancellation of title, accounting and for issuance of preliminary injunction is, in truth, a case for annulment of judgment. The dispositive portion of the Decision, dated December 16, 1992, reads:

> WHEREFORE, the Petition for Certiorari and Prohibition, with Temporary Restraining Order, is hereby GRANTED. The Order of the RTC-Pasig, Branch 152, dated May 14, 1992, in Civi9l Case No. 61209, is SET ASIDE, for being null and void. The RTC-Pasig, Branch 152, is ENJOINED from proceeding with Civil Case No. 61209 and is ORDERED to dismiss said case, for lack of jurisidiction.
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> IT IS SO ORDERED.[12]

Tanunliong thus assails the ruling of the Court of Appeals in G.R. No. 108257, maintaining, in essence, that the action for cancellation of title, accounting and issuance of a writ of preliminary injunction is proper.

The Court finds the principal issue raised in G.R. Nos. 102696 and 102716 dispositive of the consolidated petitions. Was the motion for intervention filed by the Spouses Gutang and Looyuko et al. in Civil Case No. 82-9760 proper considering that the case was already final and executory?

We do not deem it necessary to address the issue of whether the complaint filed by FGU against the Spouses Mendoza was an action for foreclosure of mortgage or one for a sum of money. Clearly, if it were the latter, the Gutangs and Looyuko et al. would have no right to intervene therein since the action for sum of money, i.e., damages, would have arisen from the contract secured by mortgage, to which they are not parties. Then Section 2, Rule 12 of the Rules of Court, the law prevailing at the time, read as follows:

> Intervention. - A person may, before or during a trial be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof. [Underscoring supplied.]

None of the grounds underscored above are present to warrant their intervention. Accordingly, we assume for purposes of discussion that the action was indeed for the foreclosure of the mortgage over the subject property.

The rule stated above also requires that a motion for intervention should be made "before or during a trial." Because of varying interpretations of the phrase, the present Rules have clarified that the motion should be filed "any time before rendition of judgment."[13]

> 1. The former rule as to when intervention may be allowed was expressed in Sec. 2, Rule 12 as "before or during a trial," and this ambiguity also gave rise to indecisive doctrines. Thus, inceptively it was held that a motion for leave to intervene may be filed "before or during a trial" even on the day when the case is submitted for decision (Falcasantos vs. Falcasantos, L-4627, May 13, 1952) as long as it will not unduly delay the disposition of the case. The term "trial" was used in its restricted sense, i.e., the period for the introduction for intervention was filed after the case had already been submitted for decision, the denial threof is proper (Vigan Electric Light Co., Inc. vs. Arciaga, L-29207 and L-29222, July 31, 1974). However, it has also been held that intervention may be allowed at any time before the rendition of final judgment (Lichauco vs. CA, et al., L-23842, Mar. 13, 1975). Further, in the exceptional case of Director of Lands vs. CA, et al. (L-45168, Sept. 25, 1979), the Supreme Court permitted intervention in a case pending before it on appeal in order to avoid injustice and in consideration of the number of parties who may be affected by the dispute involving overlapping of numerous land titles.
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> 2. The uncertainty in these ruling has been eliminated by the present Sec. 2 of this amended Rule which permits the filing of the motion to intervene at any time before the rendition of the judgment in the case, in line

> with the doctrine in Lichauco above cited. The justification advanced for this is that before judgment is rendered, the court, for god cause shown, may still allow the introduction of additional evidence and that is still within a liberal interpretation of the period for trial. Also, since no judgment has yet been rendered, the matter subject of the intervention may still be readily resolved and integrated in the judgment disposing of all claims in the case, and would not require an overall reassessment of said claims as would be the case if the judgment had already been rendered.[14]

In the present case, the motions for intervention were filed after judgment had already been rendered, indeed when the case was already final and executory. Certainly, intervention can no longer be allowed in a case already terminated by final judgment.[15]

Intervention is merely collateral or accessory or ancillary to the principal action, and not an independent proceeding; it is an interlocutory proceeding dependent on or subsidiary to the case between the original parties.[16] Where the main action ceases to exist, there is no pending proceeding wherein the intervention may be based.[17] Here, there is no more pending principal action wherein the Spouses Gutang and Looyuko et al. may intervene.

> A decision was already rendered therein and no appeal having been taken therefrom, the judgment in that main case is now final and executory. Intervention is legally possible only "before or during a trial," hence a motion for intervention filed after trial--and, a fortiori, when the case has already been submitted, when judgment has been rendered, or worse, when judgment is already final and executory--should be denied.[18]

In exceptional cases, the Court has allowed intervention notwithstanding the rendition of judgment by the trial court. In Director of Lands vs. Court of Appeals,[19] intervention was allowed even when the petition for review of the assailed judgment was already submitted for decision in the Supreme Court. Recently in Mago vs. Court of Appeals,[20] the Court granted intervention despite the case having become final and executory.

> Admittedly, petitioners' motion for intervention was filed on 2 August 1988 after the amended order of 30 March 1988 had already become final.
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> It must be noted however that petitioners were unaware of the proceedings in Civil Case No. Q-52319. Aside from the obvious fact that they were never impleaded, they were also lulled into believing that all was well. After all, there was a previous agreement or "Kasunduan ng Paghahati ng Lote" which private respondent Asis executed in ther favor on 23 May 1980 or before the disputed lot was awarded to Asis by the NHA. In that agreement private respondent voluntarily agreed to divide the awarded lot into two (2)-on-half (1/2) to be retained by him, and the other one-half (1/2) to belong to petitioners. It can be seen from this that private respondent acted in bad faith when he accepted the award erroneously made to him by NHA knowing fully well that a perfected agreement had been forged earlier between him and petitioners. As a matter of record, the NHA even acknowledged its mistake.
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> These matters should have been taken into account by the courts a quo for being of utmost importance in ruling on petitioners' motion for intervention. The permissive tenor of the provision on intervention shows the intention of the Rules to give to the court the full measure of discretion in permitting or disallowing the same. But needless to say, this discretion should be exercised judiciously and only after consideration of all the circumstances obtaining in the case.
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> But it is apparent that the courts a quo only considered the technicalities of the rules on the intervention and of the petition for relief from judgment. The denial of their motion to intervene arising from the strict application of the rule was an injustice to petitioners whose substantial interest in the subject property cannot be disputed.

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> It must be stressed that the trial court granted private respondent's petition for prohibition with injunction without petitioners being impleaded, in total disregard of their right to be heard, when on the face of the resolution of the Community Relations and Information Office (CRIO) sought to be enjoined, petitioners were the ones directly to be affected. We need not belabor the point that petitioners are indeed indispensable parties with such an interest in the controversy or subject matter that a final adjudication cannot be made in their absence without affecting, nay injuring, such interest.
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> In Director of Lands v. Court of Appeals where the motions for intervention were filed when the case had already reached this Court, it was declared:
> It is quite clear and patent that the motions for intervention filed by the movants at this stage of the proceedings where trial had already been concluded x x x and on appeal x x x the same was affirmed by the Court of Appeals and the instant petition for certiorari to review said judgment is already submitted for decision by the Supreme Court, are obviously and manifestly late, beyond the period prescribed under x x x Section 2, Rule 12 of the Rules of Court.
>
> But Rule 12 of the Rules of Court, like all other Rules therein promulgated, is simply a rule of procedure, the whole purpose and object of which is to make the powers of the Court fully and completely available for justice. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which courts are always striving to secure to litigants. It is designed as the means best adopted to obtain that thing. In other words, it is a means to an end.

In Tahanan Development Corp. v. Court of Appeals this Court allowed intervention almost at the end of the proceedings. Accordingly, there should be no quibbling, much less hesitation or circumvention, on the part of subordinate and inferior courts to abide and conform to the rule enunciated by the Supreme Court.

It must be noted, however, that in both these cases, the intervenors were indispensable parties.[21] This is not so in the case at bar.

Section 1, Rule 68 of the Rules of Court requires all persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage be made defendants in the action for foreclosure. The requirement for joinder of the person claiming an interest subordinate to the mortgage sought to be foreclosed, however, is not mandatory in character but merely directory, in the sense that failure to comply therewith will not invalidate the foreclosure proceedings.[22]

A subordinate lien holder is a proper, even a necessary, but not an indispensable, party to a foreclosure proceeding. Appropriate relief could be granted by the court to the mortgagee in the foreclosure proceeding, without affecting the rights of the subordinate lien holders. The effect of the failure on the part of the mortgagee to make the subordinate lien holder a defendant is that the decree entered in the foreclosure proceeding would not deprive the subordinate lien holder of his right of redemption. A decree of foreclosure in a suit to which the holders of a second lien are not parties leaves the equity of redemption in favor of such lien holders unforeclosed and unaffected.[23]

The Spouses Gutang make a lot of needless hair-splitting by arguing that cases applying the above principles are not on all fours with the one at bar. They persistently cling to the notion that as purchasers in the execution sale, they stepped into the shoes of the Spouses Gutang and have become, in legal contemplation, the mortgagors of the property. Consequently, their intervention should be allowed.

This contention is utterly devoid of merit. Subordinate lien holders like the Spouses Gutang and Looyuko et al. acquire only a lien upon the equity of redemption vested in the mortgagor, and their rights are strictly subordinate to the superior lien of the mortgagee.[24] This principle is reiterated in Top Rate International Services, Inc. vs.

Intermediate Appellate Court,[25] where the Court cited a host of precedents in support of its decision:

> As we have ruled in Northern Motors, Inc. v. Coquia, (66 SCRA 415, 420):
> "To levy upon the mortgagor's incorporeal right or equity of redemption, it was not necessary for the sheriff to have taken physical possession of the mortgaged taxicabs. x x x Levying upon the property itself is distinguishable from levying on the judgment debtor's interest in it (McCullough & Co. v. Taylor, 25 Phil. 110, 115)."

Likewise, in the case of Blouse Potenciano v. Mariano, (96 SCRA 463, 469), we ruled:

> "Quirino's interest in the mortgaged lots is merely an equity of redemption, an intangible or incorporeal right (Sun Life Assurance Co. of Canada v. Gonzales Diez, 52 Phil. 271; Santiago v. Dionisio, 92 Phil. 495; Northern Motors Inc. v. Coquia, 66 SCRA 415).
>
> "That interest could be levied upon by means of writ of execution issued by the Manila Court as had been done in the case of property encumbered by a chattel mortgage (Levy Hermanos, Inc. v. Ramirez and Casimiro, 60 Phil. 978, 982; McCullough & Co. v. Taylor, 25 Phil. 110).["]

It is, therefore, error on the part of the petitioner to say that since private respondents' lien is only a total of P343,227.40. they cannot be entitled to the equity of redemption because the exercise of such right would require the payment of an amount which cannot be less than P40,000,000.00.

When herein private respondents prayed for the attachment of the properties to secure their respective claims against Consolidated Mines, Inc., the properties had already been mortgaged to the consortium of twelve banks to secure an obligation of US$62,062,720.66. Thus, like subsequent mortgagees, the respondents' liens on such properties became inferior to that of the banks, which claims in the event of foreclosure proceedings, must first be satisfied. The appellate court, therefore, was correct in holding that in reality, what was attached by the respondents was merely Consolidated Mines' right or equity of redemption. Thus, in the case of Alpha Insurance and Surety Co., Inc. v. Reyes (106 SCRA 274, 278), we ruled:

> "Deciding the legal question before Us, even if the DBP were just an ordinary first mortgagee without any preferential liens under Republic Act No. 85 or Commonwealth Act 459, the statutes mentioned in the Associated Insurance case relied upon by the trial court, it would be unquestionable that nothing may be done to favor plaintiff-appellant, a mere second mortgage, until after the obligations of the debtors-appellees with the first mortgagee have been fulfilled, satisfied and settled. In law, strictly speaking, what was mortgaged by the Reyeses to Alpha was no more than their equity of redemption.

We, therefore, hold that the appellate court did not commit any error in ruling that there was no over-levy on the disputed properties. What was actually attached by respondents was Consolidated Mines' right or equity of redemption, an incorporeal or intangible right, the value of which can neither be quantified nor equated with the actual value of the properties upon which it may be exercised. [Underscoring supplied.]

Accordingly, an execution creditor who levies his execution upon property that the judgment debtor has mortgaged to another can sell at most only the equity of redemption belonging to the mortgagor.[26] As it is the equity of redemption that the subordinate lien holders had acquired by the levy on execution and that was sold in the public auction, this equity, not the property itself, was what the purchasers, who incidentally are the subordinate lien holders themselves, bought at the execution sale.

The failure of the mortgagee to join the subordinate lien holders as defendants in the foreclosure suit, therefore, did not have the effect of nullifying the foreclosure proceeding, but kept alive the equity of redemption acquired by the purchasers in their respective execution sales.[27] If there be any more quibbling on the rights of Looyuko et al. and the Gutangs over the property and their right to intervene in the proceedings, Limpin vs. Intermediate

Appellate Court sums up all the principles enunciated above and should lay the matter to rest:

> Section 2, Rule 68 provides that -
>
> "x x If upon the trial x x the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment to be paid into court within a period of not less than ninety (90) days from the date of the service of such order, and that in default of such payment the property be sold to realize the mortgage debt and costs."
>
> This is the mortgagor's equity (not right) of redemption which, as above stated, may be exercised by him even beyond the 90-day period "from the date of service of the order," and even after the foreclosure sale itself, provided it be before the order of confirmation of the sale. After such order of confirmation, no redemption can be effected any longer.
>
> It is this same equity of redemption that is conferred by law on the mortgagor's successors-in-interest, or third persons acquiring right over the mortgaged property subsequent, and therefore subordinate to the mortgagee's lien [e.g., by second mortgage or subsequent attachment or judgment]. If these subsequent or junior lien-holders be not joined in the foreclosure action, the judgment in the mortgagor's favor is ineffective as to them, of course. In that case, they retain what is known as the "unforeclosed equity of redemption," and a separate foreclosure proceeding should be brought to require them to redeem from the first mortgagee, or the party acquiring title to the mortgaged property at the foreclosure sale, within 90 days, [the period fixed in Section 2, Rule 68 for the mortgagor himself to redeem], under penalty of losing that prerogative to redeem. x x x. [Underscoring supplied.]

Such equity of redemption does not constitute a bar to the registration of the property in the name of the mortgagee. Registration may be granted in the name of the mortgagee but subject to the subordinate lien holders' equity of redemption, which should be exercised within ninety (90) days from the date the decision becomes final.[28] This registration is merely a necessary consequence of the execution of the final deed of sale in the foreclosure proceedings. Consequently, there is no merit in Looyuko et al.'s contention that the Manila RTC, which was not acting as a land jurisdiction court, had no authority to order the cancellation of TCT No. 242. For the same reason, neither does the submission of the Gutangs that the foreclosure proceedings was a collateral attack on their TCT deserve any credence.

Accordingly, the petition for review (G.R. No. 102716) of the mortgagee FGU, who was the first to register its encumbrance, must be granted. Conversely, the petition for certiorari, prohibition and mandamus (G.R. No. 102696) filed by Looyuko et al. must be dismissed.

In view of the foregoing ruling, the resolution of G.R. Nos. 108257 and 120954 is no longer necessary. G.R. No. 108257 stems from a complaint by Tanunliong for, among others, the cancellation of TCT No. 242 in the name of the Spouses Gutang. G.R. No. 120954 involves the propriety of Tanunliong's intervention in the land registration cases instituted by Antonia Gutang for the cancellation of TCT No. 242 and certain annotations in said TCT. The above ruling has rendered moot the proceedings from which these cases (G.R. Nos. 108257 and 120954) arose.

WHEREFORE:

(1) The petition in G.R. No. 102696 is DISMISSED.

(2) The petition in G.R. No. 102716 is GRANTED.

(3) The petition in G.R. No. 108257 is DENIED.

(4) The petition in G.R. No. 120954 is DENIED.

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The Register of Deeds is ordered to cancel TCT No. 10107 in the names of Jose Looyuko and John Uy and to issue a new one in the name of FGU Insurance Corporation, subject to the equity of redemption of Jose Looyuko and John Uy, and Antonia Gutang, respectively. The equity of redemption of Jose Looyuko and John Uy should be exercised within ninety (90) days from the date this decision becomes final.

SO ORDERED.

Davide, Jr., C.J., Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[*] This case was transferred to the ponente pursuant to the resolution in AM No. 00-9-03-SC.- Re: Creaation of Special Committee on Case Backlog dated February 27, 2001.

[1] Jose Gutang died on April 17,1987.

[2] The titles of the cases are not their formal designations but are merely stated for easy reference.

[3] Rollo, G.R. No. 102696, pp. 41-42.

[4] Rollo, G.R. No. 102696, p. 44. Underscoring in the original.

[5] Rollo, G.R. No. 102696, p. 52.

[6] Rollo, G.R. No. 102696, p. 53. Underscoring in the original.

[7] Rollo, G.R. No. 102696, pp. 52-53. Underscoring in the original.

[8] Rollo, G. R. No. 120954, pp. 55-56.

[9] Id., at 56.

[10] Ibid.

[11] Rollo, G.R. No. 102696, pp. 73, 89-90, 131, 137-138; Rollo, G.R. No. 102716, pp.305-306.

[12] Rollo, G.R. No. 108257, p. 41.

[13] RULES OF COURT, RULE 19, SECTION 2.

[14] II REGALADO, REMEDIAL LAW COMPENDIUM 292-293 6[TH] ED. (1997).

[15] Seveses vs. Court of Appeals, 316 SCRA 605 (1999), citing Chavez vs. Presidential Commission on Good Government, 307 SCRA 394 (1999); Rabino vs. Cruz, 222 SCRA 493 (1993); People of Paombong, Bulacan vs. Court of Appeals, 218 SCRA 423 (1993); Felismino vs. Gloria, 47 Phil. 967 (1924). See also Oliva vs. Court of Appeals, 166SCRA 632 (1988) and cases cited in Note 15 therein.

[16] Big Country Ranch Corp. vs. Court of Appeals, 227 SCRA 161 (1993); Barangay Matictic vs. Elbinias, 148 SCRA 83 (1987).

[17] Ibid.

[18] Ibid; Oliva vs. Court of Appeals, supra.

[19] 93 SCRA 238 (1979).

[20] 303 SCRA 600 (1999).

[21] See Oliva vs. Court of Appeals, supra.

[22] Somes vs. Government of the Philippines, 62 Phil. 432.

[23] Sun Life Assurance Co. of Canada vs. Gonzales Diez, 52 Phil. 271 (1928); Government of the Philippines vs. Cajigas, 55 Phil. 667 (1931); Gregorio de la Paz, and Guadalupe Santiesteban vs. Macondray & Co., Inc., 66 Phil. 402 (1938), applying the rule to a purchaser of the mortgaged real estate.

[24] Sun Life Assurance Co. of Canada vs. Gonzales Diez, 52 Phil. 271 (1928). See also Ramirez vs. Court of Appeals, 219 SCRA 598 (1993).

[25] 142 SCRA 467 (1986).

[26] Tan de Jua vs. Po Paoco, 54 Phil. 354 (1930).

[27] Gregorio de la Paz, and Guadalupe Santiesteban vs. Macondray & Co., Inc., supra.

[28] Santiago vs. Dionisio, 92 Phil. 495 (1953).

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