

PEDRO ACLON, PETITIONER, VS. COURT OF APPEALS, PHILIPPINE NATIONAL BANK AND SPS. ZOSIMO AND NATALIA OPIMO, RESPONDENTS.

G.R. No. 106880. August 20, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us are two petitions for review on certiorari under Rule 45 of the Rules of Court, both filed by petitioner Pedro Aclon (Aclon for brevity). The first seeks to reverse and set aside the Decision of the Court of Appeals dated April 30, 1992 in C.A. G.R. CV No. 24106.[1] The second assails the Decision dated August 31, 1994 in C.A. G.R. CV No. 24133.[2]

The facts of the case are as follows:

On December 15, 1964, Aclon secured a loan from the Philippine National Bank (PNB for brevity)) at Catbalogan, Samar, in the amount of Five Thousand Pesos (P5,000.00), payable within one (1) year.[3]

As security for the loan, Aclon mortgaged to PNB two parcels of land, to wit: a 234 square-meter residential lot, with all the improvements existing thereon, covered by Tax Declaration No. 24321, situated at the poblacion of Sulat, Eastern Samar; and, a 165,735 square-meter agricultural land with all the improvements existing thereon, covered by Original Certificate of Title (OCT) No. 860, located at Sitio Balagon, Barrio Can-ilay, Can-avid, Eastern Samar.[4]

The loan became due and payable on December 15, 1965. However, the same was extended after Aclon made a partial payment. Despite the extension and repeated demands from PNB, Aclon failed to pay the loan in full at the time of its maturity. Consequently, on May 31, 1973, PNB instituted extra-judicial foreclosure proceedings in accordance with the provisions of Act 3135, as amended.[5]

After notice[6] and publication[7], the Deputy Provincial Sheriff of Oras, Eastern Samar conducted a sale at public auction of the mortgaged properties on July 17, 1973 at the municipal building of Oras. The subject properties were awarded to PNB, being the sole and highest bidder. Subsequently, on August 28, 1973, a Sheriff's Certificate of Sale[8] was issued in PNB's favor and the same was registered with the Register of Deeds of Samar on October 4, 1973.

The period of redemption lapsed on October 4, 1974 without Aclon redeeming the foreclosed properties. PNB then consolidated its ownership over the said parcels of land on October 16, 1974.[9]

On June 25, 1975, PNB sold to spouses Zosimo and Natalia Opimo the subject residential land located at Sulat, Eastern Samar.[10] However, Aclon remained in possession of the property. When the Opimo spouses attempted to take possession of the subject lot, Aclon refused to vacate the same and instead filed a complaint against PNB and the Opimo spouses for Annulment of Two Contracts of Sale with Damages and Consignation docketed as Civil Case No. 1907 in the Regional Trial Court (Branch I) of Borongan, Eastern Samar.

The Opimo spouses, on the other hand, filed a complaint for Recovery of Real Property with Preliminary Mandatory Injunction and Damages docketed as Civil Case No. 1859 in the same trial court.

Both cases were heard jointly. However, despite consolidation of the two cases, the trial court rendered separate decisions for each case, as follows:

The dispositive portion of the RTC decision in Civil Case No. 1859 reads -

“WHEREFORE, judgment is hereby rendered declaring the foreclosure proceedings of defendants’ properties by the Philippine National Bank and the subsequent contracts of sale involving said mortgaged properties valid and declaring plaintiff Zosimo Opimo and his wife the lawful owners of the properties in question and entitled to the possession thereof with costs against the defendant Pedro Aclon. The Philippine National Bank is absolved from the complaints.”[11]

The dispositive portion of the RTC decision in Civil Case No. 1907 reads -

“WHEREFORE, judgment is hereby rendered dismissing this action for annulment of sale and it ordered(sic) that the plaintiff Pedro Aclon and all persons acting under his command vacate the house and lot in Sulat in question now covered by Tax Declaration No. 31144 of Zosimo A. Opimo and give possession to defendant Zosimo A. Opimo and his wife, to pay to the Opimos the amount of Thirteen Thousand Pesos (P13,00) representing the reasonable compensation for use of said house and lot from June 25, 1975 to December 21, 1988, plus One Hundred Pesos (P100) a month thereafter until possession is completely delivered to the Opimos, to pay attorney’s fees in the amount of One Thousand Five Hundred Pesos (P1,500), and to pay the costs of the suit. The Philippine National Bank is absolved from the complaint.”[12]

Aclon brought two separate appeals with the Court of Appeals. The appeal in Civil Case No. 1907 is docketed as CA-G.R. CV No. 24106 while the appeal in Civil Case No. 1859 is docketed as CA-G.R. CV No. 24133.

On April 30, 1992, the Court of Appeals promulgated its Decision in CA-G.R. CV No. 24106 (Civil Case No. 1907), affirming with modification the trial court’s decision by deleting the award of attorney’s fees, to wit:

“No reason having been stated in the body of the decision for the award of attorney’s fees, such award is hereby disallowed in this appeal (Abrogar vs. Intermediate Appellate Court, 157 SCRA 57).

“WHEREFORE, with the foregoing modification, the Decision appealed from is hereby AFFIRMED with costs against appellant.

“SO ORDERED.”[13]

On August 31, 1994, the Court of Appeals promulgated its Decision in CA-G.R. CV No. 24133 (Civil Case No. 1859), the dispositive portion of which reads:

“WHEREFORE, the decision appealed from is modified as follows:

“(1) the extrajudicial foreclosure proceedings in question, as well as the sale at public auction to defendant PNB are declared null and void for not having complied with the mandatory provisions of Act 3135 as well as the stipulation between the parties;

“(2) the subsequent sale of the property by defendant PNB to appellees is however declared valid;

“(3) defendant-appellant and all persons claiming rights under him are ordered to vacate the property in question and to surrender possession thereof to plaintiffs-appellees.”

“SO ORDERED.”[14]

Petitioner Aclon seasonably appealed each case to this Court. Inasmuch as the factual antecedents, parties

involved and issues raised in these cases are substantially the same, we consolidated the two petitions.[15]

In G.R. No. 106880 (CA-G.R. CV No. 24106), petitioner raises the following Assignment of Errors:

“1. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE AS WELL AS THE FORECLOSURE SALE ARE NULL AND VOID AND OF NO FORCE AND EFFECT FOR LACK OF COMPLIANCE WITH THE MANDATORY REQUIREMENTS OF THE LAW, ACT 3135, ON POSTING, PUBLICATION OF THE NOTICE OF SALE AND THE PLACE OF AUCTION SALE.

“2. THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE FORECLOSURE SALE BEING A NULLITY, THE SALES BY THE RESPONDENT PNB OF THE PROPERTY IN QUESTION TO ITSELF AND TO THE RESPONDENT OPIMO SPOUSES ARE LIKEWISE A NULLITY AND OF NO FORCE AND EFFECT.

“3. THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE ACCEPTANCE BY RESPONDENT PNB OF PAYMENTS WAS REALLY INTENDED FOR PETITIONERS’ OBLIGATIONS AND NOT TO OTHER EXPENSES INCURRED IN THE FORECLOSURE PROCEEDINGS BECAUSE OF THE NULLITY OF THE SAID FORECLOSURE.

“4. THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THE PRIVATE RESPONDENT OPIMO SPOUSES AS PURCHASERS IN BAD FAITH OF THE PROPERTY IN QUESTION.

“5. THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THERE WAS NO FACTUAL OR LEGAL BASIS FOR THE RULING OF THE TRIAL COURT ORDERING PETITIONERS TO PAY RESPONDENTS THE AMOUNT OF P13,000.00 REPRESENTING REASONABLE VALUE FOR THE USE AND OCCUPATION OF THE PROPERTY AS WELL AS THE AMOUNT OF P100.00 A MONTH UNTIL POSSESSION IS DELIVERED TO THE OPIMO SPOUSES.”[16]

In G.R. No. 120190 (CA-G.R. CV No. 24133), petitioner raises the following:

“ASSIGNMENT OF ERRORS

“1. The respondent Court of Appeals gravely erred in not holding the subsequent sale of the property by defendant PNB to respondent-appellees as null and void despite the fact that the extra-judicial foreclosure proceedings in question, as well as the sale at public auction to defendant PNB are declared null and void for not having complied with the mandatory provisions of Act 3135 as well as the stipulation between the parties;

“2. The respondent Court of Appeals gravely erred in ordering petitioner-appellant and all persons claiming rights under him to vacate the property in question and to surrender possession thereof to respondent-appellees.”[17]

We find both appeals devoid of merit.

Petitioner’s assigned errors essentially involve questions of fact. His main contention is anchored on the premise that the sale at public auction of the subject properties to PNB is null and void because the extrajudicial foreclosure proceedings were conducted in violation of the provisions of Act 3135 and of the contractual agreement between the parties. Petitioner concludes that since the auction sale is null and void, PNB did not acquire ownership of the said properties and as a result, its subsequent sale of the subject residential lot to the Opimo spouses is, likewise, null and void.

A determination of the validity of petitioner’s claim and the issues arising therefrom necessitates a review of the

factual findings of the trial court and the respondent appellate court. We have held in a long line of cases that in a petition for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be raised as the Supreme Court is not a trier of facts.[18] It is settled that as a rule, the findings of fact of the Court of Appeals especially those affirming the trial court are final and conclusive and cannot be reviewed on appeal to the Supreme Court.[19] The exceptions to this rule are: (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (g) where the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on absence of evidence but are contradicted by the evidence on record.[20]

We find no compelling reason to depart from the factual findings of the Court of Appeals that there was compliance by PNB with the provisions of Act 3135 with respect to the posting and publication of the notice of sale at public auction; that the Opimo spouses are buyers in good faith; that the payment made by Aclon to PNB on September 28, 1973 was intended for the expenses in the foreclosure of the subject properties; and, that the payment on January 21, 1975, was a deposit for the purpose of enabling Aclon to repurchase the foreclosed property.

In both appealed cases, the appellate court affirmed the finding of the trial court that the payment made by Aclon on January 21, 1975 was given as a deposit for the purpose of enabling him to redeem his foreclosed properties despite the lapse of the redemption period on October 4, 1974.[21]

In the absence of evidence proving that a judgment debtor was merely trying to protect himself or save his property, and that no reliance could or should have been placed upon his action in so doing, an attempt to redeem from an execution sale has been construed as a waiver of defects or irregularities therein, precluding him from relying upon them for the purpose of challenging its validity.[22] When Aclon sought to redeem his property from PNB he never made any reservation with respect to his right to question the validity of the auction sale and to seek alternative relief before the courts. In other words, there was no indication whatsoever that he does not recognize the validity of the sale. If petitioner indeed felt that the assailed foreclosure proceedings were attended with any irregularity he should have filed the appropriate action with the court. Instead, he offered to repurchase the subject properties without any condition or reservation. Nevertheless, Aclon failed to comply with his undertaking and instead defaulted in his subsequent payments.[23]

It is true that Aclon denies that the P1,300.00 he paid was a deposit for the repurchase of his foreclosed properties. However, Angel Carpeso, the clerk who was then in-charge of PNB's records of loan accounts at the time Aclon secured his loan with PNB, testified to the contrary.[24] The trial court gave credence to Carpeso's testimony. We find no cogent reason to disturb the findings of the trial court in light of the settled rule that the evaluation of the testimonies of witnesses by the trial court is entitled to the highest respect because such court has the direct opportunity to observe the witnesses' demeanor and manner of testifying and thus, is in a better position to assess their credibility.[25]

It was only on February 2, 1979, or more than five (5) years after the said properties were foreclosed and almost four (4) years after the same were sold to the Opimo spouses that petitioner Aclon filed Civil Case No. 1907 when his efforts in redeeming the subject properties proved unavailing through his own fault and negligence. Indeed,

any party otherwise in a position to object to a mortgage-foreclosure sale is precluded from doing so by conduct sufficient to bring into operation the doctrines of waiver and estoppel.[26]

Thus, we find no error in the appellate court's ruling that redemption is an implied admission of the regularity of the sale and estops the petitioner from later impugning its validity on that ground.[27] Redemption is inconsistent with the claim of invalidity of the sale.[28] With petitioner's implied admission of the validity of the extrajudicial foreclosure proceedings, he is likewise estopped from questioning the venue of the public auction.

Consequently, the sale by PNB to Opimo spouses is valid.

WHEREFORE, the petitions are DENIED. The decision of the Court of Appeals in C.A. G.R. CV No. 24106 is AFFIRMED in toto. The decision of the Court of Appeals in C.A. G.R. CV No. 24133 is AFFIRMED with MODIFICATION to the effect that the extrajudicial foreclosure proceedings in question and the sale at public auction to PNB are declared valid.

SO ORDERED.

Vitug, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Entitled: "Pedro Aclon, substituted by his heirs, namely, Jovencio Aclon, Lilia Aclon Sumallo, Ma. Remie Aclon Cablao, Linda Aclon and Santiago Aclon, plaintiff-appellant, vs. PNB Borongan Agency, represented by its Manager, and Sps. Zosimo A. Opimo and Natalia Opimo, defendants-appellee."

[2] Entitled: "Zosimo A. Opimo and Natalia Opimo, plaintiffs-appellees, vs. PNB Borongan Agency, Borongan, Eastern Samar, and Pedro Aclon, defendants-appellants."

[3] Exhibit "5-PNB", Folder of Exhibits for the Defendants, p. 6.

[4] Exhibit "6-PNB", Folder of Exhibits for the Defendants, p. 7.

[5] Exhibit "1-PNB", Folder of Exhibits for the Defendants, p. 1.

[6] Exhibit "2-PNB", Folder of Exhibits for the Defendants, p. 2.

[7] Exhibit "3-PNB", Folder of Exhibits for the Defendants, p. 3.

[8] Exhibit "4-PNB"/ Exhibit "F", Folder of Exhibits for the Defendants, p. 4.

[9] Exhibit "7-PNB", Folder of Exhibits for the Defendants, p. 8.

[10] Exhibit "10-PNB", Folder of Exhibits for the Defendants, p. 13.

[11] Rollo of G.R. No. 120190, p. 52.

[12] Rollo of G.R. No. 106880, p. 83.

[13] Penned by Justice Oscar M. Herrera and concurred in by Justices Santiago M. Kapunan (Chairman, Third Division) and Jainal D. Rasul (Member); Rollo of G.R. No. 106880, p. 51.

[14] Penned by Justice Buenaventura J. Guerrero and concurred in by Justices Nathanael P. De Pano, Jr. (Chairman) and Cezar D. Francisco (Member); Rollo of G.R. No. 120190, p. 36.

[15] Resolution of the 2nd Division of this Court dated August 2, 1995, Rollo of G.R. No. 120190, p. 128.

[16] Rollo, p. 19.

[17] Rollo, p. 20.

[18] *Bermudez vs. Gonzales*, 347 SCRA 611,617; *American President Lines, Ltd. vs. Court of Appeals*, 336 SCRA 582, 586; *Abalos vs. Court of Appeals* 317 SCRA, 14, 20; *Baguio vs. Republic*, 301 SCRA 450; *Fortuna vs. People*, 348 SCRA 360, 364; *Marquez vs. Court of Appeals*, 329 SCRA 567, 577; *Reyes vs. Court of Appeals*, 321 SCRA 368, 373-374.

[19] *Pestaño vs. Sumayang*, 346 SCRA 870, 879; *Bañas, Jr. vs. Court of Appeals*, 325 SCRA 259, 271; *Borromeo*

vs. Sun, 317 SCRA 176, 182; Lagrosa vs. Court of Appeals, 312 SCRA 298, 310.

[20] Langkaan Realty Development, Inc. vs. United Coconut Planters Bank, 347 SCRA 542, 549; Nokom vs. NLRC, 336 SCRA 97, 110; Commissioner of Internal Revenue vs. Embroidery and Garments Industries (Phil.), Inc., 305 SCRA 70, 74; Sta. Maria vs. Court of Appeals, 285 SCRA 351, 357.

[21] CA Decision in CA-G.R. CV No. 24106, p. 2; CA Decision in CA-G.R. CV No. 24133, p. 2.

[22] 2 ALR 2d, Section 9, p. 43.

[23] Testimony of Angel Carpeso, TSN, Nov. 28, 1983, p. 163.

[24] Ibid. at pp. 162-165.

[25] Concepcion vs. Court of Appeals, 324 SCRA 85, 91; Bugatt vs. Court of Appeals, 343 SCRA 335, 345; Liron Transportation Co., Inc. vs. De los Santos, 345 SCRA 509.

[26] 55 Am. Jur. 2d, Section 872, p. 451.

[27] Fortunado vs. Court of Appeals, 196 SCRA 269, 277; Castillo vs. Nagtalon, 4 SCRA 49, 53; Tiaoqui vs. Chavez, L-10086, May 20, 1957.

[28] Cometa vs. IAC, 151 SCRA 563, 569.

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