

SPOUSES JUAN AND FILOMENA PULIDO AND SPOUSES ALBERTO AND NORMA GLORIA, PETITIONERS, VS. COURT OF APPEALS AND BIENVENIDO AGAPITO, RESPONDENTS.

G.R. No. 109244. December 29, 1995

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-109244/>

BELLOSILLO, J.:

Bienvenido Agapito owned a 230-square meter parcel of unregistered residential land in Indang, Cavite, which he mortgaged with the Rural Bank of Cavite City (RBCC) to secure a loan.[1] On 23 May 1973, upon his failure on maturity to pay the loan, the mortgage was foreclosed and sold at public auction to RBCC as the highest bidder. He failed to redeem his property within the one-year reglementary period despite repeated extensions granted him. On 26 July 1980 RBCC through its President-Manager Leonarda G. Alegre sold the property together with its improvements to spouses Juan and Filomena Pulido[2] who on 1 September 1980 sold the same in turn to spouses Alberto and Norma Gloria.[3]

Contending that he was not notified of the foreclosure sale Bienvenido Agapito filed a complaint in the Regional Trial Court of Cavite against RBCC, the spouses Juan and Filomena Pulido and the spouses Alberto and Norma Gloria[4] seeking the annulment of the extrajudicial foreclosure and sale with damages, and praying that he be allowed to redeem the property by paying with interest his mortgage debt. He also claimed that the public auction sale conducted by the Provincial Sheriff was null and void for non-compliance with the posting of notice requirement under P.D. No. 122. To support his claim Agapito presented Valeriano Fajardo, then Postmaster of Indang, Cavite, who testified that he was not aware of any notice of foreclosure sale posted in the municipal building.

On 5 August 1982 the court on motion of plaintiff allowed the filing of a second amended complaint to include the value of certain personal properties estimated at P75,000.00 which were allegedly taken by the Pulido spouses and then by the Gloria spouses when they respectively took possession of the foreclosed property.

The trial court sustained the validity of the auction sale and the subsequent transfer to the Pulidos and then to the Glorias[5] holding that the requirements for the validity of the questioned foreclosure proceedings had been complied with by the Provincial Sheriff and RBCC.

His motion for reconsideration having been denied,[6] Agapito appealed to the Court of Appeals which reversed the court a quo and holding that no evidence existed to show that the notice of foreclosure sale was posted as required by law. The appellate court observed that the "Notice of Extrajudicial Sale of Mortgaged Properties" presented by RBCC did not prove that said notice, and at least two other copies thereof, had been actually posted, and that the "Minutes of Sheriff Public Auction Sale"[7] could not be considered as evidence since it was not formally offered in court. Thus finding no clear and preponderant evidence to show compliance with the requisite posting of notice, the Court of Appeals declared the foreclosure sale as null and void, labeling the non-compliance as a jurisdictional defect which invalidated the sale. Consequently, it declared the deeds of sale of 26 July 1980

and 1 September 1980[8] void and without force and effect, ordered the Pulido spouses and the Gloria spouses to pay their respective vendors the amount corresponding to the purchase price with legal interest from the date of finality of the decision. The appellate court also granted Agapito a non-extendible period of sixty (60) days from the finality of the decision within which to exercise the right of repurchase by paying RBCC the amount of the mortgage indebtedness with 12% interest.[9]

Hence this recourse by the spouses Juan and Filomena Pulido and the spouses Alberto and Norma Gloria. RBCC did not appeal.

We deny the petition and affirm the Court of Appeals.

Petitioners contend that respondent Court of Appeals erred when it concluded that the requirement of posting had not been complied with merely on the basis that the evidence presented by them, as defendants in the trial court, to show compliance was not sufficient. They insist that Agapito, as the plaintiff alleging non-compliance, had the burden of proof and that it was on the sufficiency of the evidence presented by him that the merits ought to have been decided.

While it may be true that the party alleging non-compliance with the requisite publication has the burden of proof, still negative allegations need not be proved even if essential to one's cause of action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party.[10]

Section 5, R.A. No. 720, as amended by Sec. 2 of P.D. No. 122, specifically requires that proof of the required posting shall consist of the affidavit of the sheriff or officer conducting the foreclosure sale which shall be attached with the records of the case.[11] Hence, it is a simple matter for RBCC, petitioners' predecessor-in-interest, to rebut the allegation of non-compliance by producing the required proof of posting, i.e., the affidavit of the sheriff who conducted the sale. But no such affidavit was presented. Neither was there any equally competent and convincing proof offered to show compliance. As respondent Court of Appeals correctly concluded, the "Notice of Extrajudicial Sale of Mortgaged Properties" does not prove that said notice was actually posted as required by law, while the "Minutes of Sheriff Public Auction Sale" cannot be appreciated in favor of petitioners because it was not presented, much less formally offered as evidence.

It is axiomatic that a decision of a lower court cannot be reversed for its failure to consider evidence which was not even presented by the parties.[12] Neither was the sheriff who conducted the sale presented as a witness, no reason having been given for such non-presentation. Hence, since the required proof of posting was not presented and no other competent and convincing proof was offered in its stead, petitioners' reliance on the presumption of regularity in the performance of official duties falls in the face of a serious imputation on non-compliance. The presumption of compliance with official duty is rebutted by failure to present proof of posting.[13]

While the trial court concluded that the requirements for the validity of the foreclosure proceedings had been complied with, still we cannot apply the rule that factual findings of the trial court are conclusive on us since a reading alone of the decision of the trial court shows that its finding is not factual but merely a conclusion of law with nothing to lean on.

It is further argued by petitioners that even assuming that the requirements for a valid extrajudicial foreclosure of mortgage have not been met the title that passed on to petitioners was cured of any and all defects since they merely relied on the registered deeds of sale of their respective transferors (RBCC in the case of spouses Pulido and the latter as regards the spouses Gloria) which appeared in order and was not in any way suspicious. Plainly, petitioners claim they are entitled to protection under the law as buyers in good faith and for value.

This defense is unavailing. It must be remembered that the property involved is an unregistered land. When

RBCC acquired it at foreclosure it registered its title under Act No. 3344[14] which specifically provides that "[a]ny registration made x x x shall be understood to be without prejudice to a third party with a better right." [15] In other words, registration under said Act, unlike under Act No. 496,[16] does not afford full protection as it must yield to a prior and valid title, even if unregistered. Therefore, even if petitioners relied on the registered title of their predecessor-in-interest (RBCC) they cannot capitalize on their being innocent purchasers for value and in good faith over and above Agapito's valid and prior right to have his property foreclosed in accordance with law. The rule that the purchaser is not required to explore further than what the record in the Registry indicates on its face in quest of any hidden defect or inchoate right which may subsequently defeat his right thereto refers only to properties registered under the Torrens system, not to those under Act No. 3344.[17] Therefore, we agree with respondent court when it declared as null and void the deeds of sale of 26 July 1980 and 1 September 1980 evidencing the transfer of the controverted property to the Pulido spouses and then to the Gloria spouses. However, we cannot logically agree with the portion of the appealed decision directing petitioners to pay their vendors the amount corresponding to the purchase price with legal interest from the date of finality of the decision;[18] rather, it should be the other way around. The Pulidos should return to the Glorias P25,900.00 representing the amount which the latter paid by virtue of the deed of sale dated 1 September 1980. The Pulido spouses, in turn, can demand from RBCC the P25,900.00 which they paid to the latter when they purchased the foreclosed property on 26 July 1980.

Considering that private respondent Bienvenido Agapito had been given by RBCC several opportunities to buy back his property before foreclosure but which he merely ignored, we delete the portion of the decision appealed from awarding him an inextendible period of sixty (60) days within which to repurchase the controverted property.

WHEREFORE, the decision of the Court of Appeals of 24 February 1993 declaring the extrajudicial foreclosure of mortgage and auction sale held on 23 May 1973 void ab initio for failure to comply with Sec. 5, R.A. No. 720, as amended by Sec. 2, P.D. No. 122, is **AFFIRMED** without prejudice to another foreclosure sale conducted faithfully in compliance with the law.

Accordingly, the spouses Alberto and Norma Gloria, the current possessors of the disputed property, are directed to return possession thereof to the mortgage creditor, the Rural Bank of Cavite City, and the latter to return to the spouses Juan and Filomena Pulido the amount of P25,900.00 representing the purchase price they paid by virtue of the deed of sale of 26 July 1980 which is declared null and void, with legal interest from the date of finality of this decision. The spouses Juan and Filomena Pulido, in turn, are also directed to return to petitioner spouses Alberto and Norma Gloria the amount of P25,900.00 which the latter paid to them by virtue of the Deed of Sale of 1 September 1980 which is likewise declared void ab initio, with legal interest from the finality of this decision. To this extent the judgment appealed from is modified.

SO ORDERED.

Padilla, (Chairman), Kapunan, and Hermosissima, Jr., JJ., concur.
Davide, Jr., J., separate opinion.

[1] Exh. "B" entitled "Real Estate Mortgage," Folder of Exhibits, pp. 44-46.

[2] Exh. "A," Records, p. 185.

[3] Exh. "C," Id., p. 187.

- [4] Docketed as Civil Case No. 3083.
- [5] Decision penned by Judge Rolando D. Diaz, RTC-Br. 17, Cavite City, Records, pp. 190-198.
- [6] Order dated 4 March 1986, Id., p. 205.
- [7] Records, pp. 38-39.
- [8] See Notes 2 and 3.
- [9] Decision penned by Justice Ricardo P. Galvez, concurred in by Justices Manuel M. Herrera and Isaali S. Isnani, CA Records, pp. 61-66.
- [10] Regalado, Florenz D., Remedial Law Compendium, Vol. II., Fifth Rev. Ed., p. 511.
- [11] Pertinent text of Sec. 5 reads: The foreclosure of mortgages covering loans granted by rural banks shall be exempt from the publication in newspaper now required by law where the total amount of loan, including interest due and unpaid, does not exceed three thousand (P3,000.00). It shall be sufficient publication in such cases if the notices of foreclosure are posted in at least three of the most conspicuous public places in the municipality and barrio where the land mortgaged is situated during the period of sixty days immediately preceding the public auction. Proof of publication as required herein shall be accomplished by affidavit of the sheriff or officer conducting the foreclosure sale and shall be attached with the records of the case. x x x (Underlining ours)
- [12] Ciudad Real & Development Corporation v. Court of Appeals, G. R. No. 107888, 4 January 1994, 229 SCRA 71, 88; See Vda. de Alvarez v. Court of Appeals, G. R. No. 110970, 16 March 1994, 231 SCRA 309, 317-318; Tabuena v. Court of Appeals, G. R. No. 85423, 6 May 1991, 196 SCRA 650, 654-655; Republic v. Court of Appeals, No. L-41115, 11 September 1982, 116 SCRA 505, 534.
- [13] Tambunting v. Court of Appeals, No. L-48278, 8 November 1988, 167 SCRA 16, 24.
- [14] An Act to amend section one hundred and ninety-four of the Administrative Code, as amended by Act Numbered Two thousand eight hundred and thirty-seven, concerning the recording of instruments relating to land not registered under Act Numbered four hundred and ninety-six, entitled "The Land Registration Act," and fixing the fees to be collected by the register of deeds for instruments recorded under said Act.
- [15] See Sec. 1, Act No. 3344; Rivera v. Moran, 48 Phil. 836 (1926).
- [16] The Property Registration Decree.
- [17] Peña, Registration of Land Titles and Deeds, p. 455.
- [18] See Note 8, p. 5.

SEPARATE OPINION

DAVIDE, JR. J.:

Since we are affirming the judgment of the Court of Appeals declaring void ab initio the extrajudicial foreclosure sale of 23 May 1973 for non-compliance with Section 5, R.A. No. 720, as amended by Section 2 of P.D. No. 122, it would necessarily follow that the mortgagee bank never became the lawful owner, as the highest bidder, of the lot in question. It was, therefore, error for the Court of Appeals to grant Bienvenido Agapito a non-extendible period of 60 days from the finality of the decision within which to exercise the right to repurchase. A "repurchase"

presupposes a valid sale, which is inconsistent with the respondent Court's ruling declaring void ab initio the foreclosure sale.

Accordingly, this Court should not, as it does in the majority opinion direct "the spouses Alberto and Norma Gloria, the current possessors of the disputed property, ... to return possession thereof to the mortgage creditor, the Rural Bank of Cavite City." I submit that the possession must be directly returned by the said spouses to the mortgagor, private respondent Agapito.

Also, following the rule laid down in *Eastern Shipping Lines, Inc. vs. Court of Appeals* (234 SCRA 78 [1994]), the interest which the mortgagee bank, as vendor, shall pay to the spouses Juan and Filomena Pulido on the purchase price of P25,900.00, as well as the interest which the latter shall pay to their vendees, the spouses Alberto and Norma Gloria, on the purchase price of P25,900.00 should be the legal rate of six percent (6%) per annum from the rendition of the judgment of the Court of Appeals until the finality of the judgment of this Court in this case and twelve percent (12%) per annum from such finality until the payments of P25,900.00 by the mortgagee bank to the Pulidos and of P25,900.00 by the Pulidos to the Glorias.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.