

ESTANISLAO BODIONGAN, PETITIONER, VS. COURT OF APPEALS AND LEA SIMEON, RESPONDENTS.

G.R. No. 114418. September 21, 1995

Ponente: PUNO, J.

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PUNO, J.:

This petition for review on certiorari seeks to annul and set aside the Decision dated October 25, 1993 and the Resolution dated March 3, 1994 of the Court of Appeals in CA-G.R. CV No. 36314.

The antecedent facts are as follows:

On October 4, 1982, respondent Lea Simeon obtained from petitioner Estanislao Bodiongan and his wife a loan of P219,117.39 secured by a mortgage on three (3) parcels of land with a four-storey hotel building and personal properties located at Gango, Ozamiz City. The three (3) lots were covered by Transfer Certificates of Title Nos. T-6530, T-6531 and T-6532 in the name of private respondent.

Private respondent failed to pay the loan. Petitioner thus instituted against her Civil Case No. OZ-1177 with the Regional Trial Court, Branch 15, Ozamiz City for collection of sum of money or foreclosure of mortgage. Judgment was rendered by the trial court on October 11, 1984 ordering private respondent to pay petitioner, P220,459.71, at the legal rate of interest and P5,000.00 as attorney's fees, and in case of non-payment, to foreclose the mortgage on the properties. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendant LEA SIMEON ordering the defendant LEA SIMEON to pay the plaintiff the following:

1. P220,459.71 with legal rate of interest starting March 30, 1983, until fully paid;
2. P5,000.00 as reimbursement of plaintiff's attorney's fees;
3. In case of non-payment of the above amounts, the equitable mortgage (Exhibit "C") be ordered foreclosed and sold at public auction to settle the obligation; and
4. To pay the costs."^[1]

This decision was affirmed on March 21, 1986 by the Court of Appeals in AC-G.R. CV No. 05367 and later became final and executory.

Private respondent again failed to pay the judgment debt, hence, the mortgaged properties were foreclosed and sold on execution on January 12, 1987. At the auction sale, petitioner submitted to the sheriff a written bid of P309,000.00 and at the same time reserved in said bid a deficiency claim of P439,710.57.^[2] The properties were awarded to petitioner as sole bidder and a certificate of sale was issued in his name and registered with the Register of Deeds of Ozamiz City.

Petitioner then took possession of the properties after filing, per order of the trial court, a guaranty bond of

P350,000.00 to answer for any damage thereon during the redemption period.

On January 8, 1988, private respondent offered to redeem her properties and tendered to the Provincial Sheriff a check in the amount of P337,580.00. This amount was based on a tentative computation by the sheriff.[3] The check was received by petitioner on the same day after which the sheriff issued a certificate of redemption to private respondent also on the same day.[4]

On January 11, 1988, petitioner, claiming additional interest at 38% per annum, moved to correct the computation of the redemption price and to suspend the issuance of a writ of possession pending computation. The motion was denied by the trial court. On July 8, 1988, the trial court issued the said writ and private respondent took possession of her properties.

On October 4, 1988, petitioner instituted against private respondent Civil Case No. OZ-1480-R with the Regional Trial Court, Branch 15, Ozamiz City for annulment of redemption and confirmation of the foreclosure sale on the ground of insufficiency of the redemption price. On October 7, 1988, petitioner consigned the redemption money with the court.[5]

On November 25, 1991, the trial court dismissed the complaint but reduced the 12% interest rate on the purchase price to 6%, and thus, on the counterclaim, ordered petitioner to refund private respondent the excess 6% plus P10,000.00 and P5,000.00 for moral damages and attorney's fees, as follows:

"WHEREFORE, premises considered, plaintiff's complaint is hereby dismissed, with costs against him.

On the counterclaim, plaintiff Engr. Estanislao Bodiongan is ordered to refund the 6% interest in excess of the 12% granted him in the computation which is not the legal rate allowed in the Civil Code, to pay defendant Lea Simeon the further sum of P10,000.00 as moral damages and the sum of P5,000.00 as attorney's fees."[6]

The Court of Appeals in CA-G.R. CV No. 36314 affirmed the trial court's decision except for the refund of the 6% interest, to wit:

"WHEREFORE, premises considered, the judgment appealed from is hereby AFFIRMED subject to the modification on the amount of interest due, such that, the legal rate of interest due is 1% per month or 12% for 12 months in the case at bar and not 6% as ruled by the trial court. Costs against appellant."[7]

Hence, this petition.

Petitioner claims before us that under the Revised Rules of Court, the redemption price for the mortgaged properties should be P351,080.00. Since private respondent actually tendered P337,580.00 which is short by P13,500.00, this price was inadequate thereby rendering redemption ineffectual.

The price for the redemption of properties at an extrajudicial foreclosure sale[8] is, according to Section 6 of Act 3135, fixed by Section 30 of Rule 39 of the Revised Rules of Court[9] which reads as follows:

"Sec. 30. Time and manner of, and amounts payable on, successive redemptions. Notice to be given and filed. - The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve (12) months after the sale, on paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid on the last redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such

last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with two per centum thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest.

Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registrar of deeds of the province, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registrar of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens."

In order to effect a redemption, the judgment debtor must pay the purchaser the redemption price composed of the following: (1) the price which the purchaser paid for the property; (2) interest of 1% per month on the purchase price; (3) the amount of any assessments or taxes which the purchaser may have paid on the property after the purchase; and (4) interest of 1% per month on such assessments and taxes. The redemption price must be for the full amount, otherwise the offer to redeem will be ineffectual.[10] And if the tender is for less than the entire amount, the purchaser may justly refuse acceptance thereof.[11] In the instant case, the redemption price covers the purchase price of P309,000.00 plus 1% interest thereon per month for twelve months at P37,080.00. Petitioner does not claim any taxes or assessments he may have paid on the property after his purchase. He, however, adds 5,000.00 to the price to cover the attorney's fees awarded him by the trial court in Civil Case No. OZ-1177.

In the redemption of property sold at an extrajudicial foreclosure sale, the amount payable is no longer the judgment debt but the purchase price at the auction sale.[12] In other words, the attorney's fees awarded by the trial court should not have been added to the redemption price because the amount payable is no longer the judgment debt, but that which is stated in Section 30 of Rule 39. The redemption price for the mortgaged properties in this case should therefore be P346,080.00, not P351,080.00.

Private respondent's tender was P337,580.00 which is still short by P8,500.00. The Provincial Sheriff declared that private respondent ordered him to deduct from the redemption price the value of certain personal properties in the hotel. During petitioner's possession of the lots, he sold some of the furniture, water pump and electrical installations in the hotel and appropriated the proceeds to himself without private respondent's knowledge and approval.

Petitioner does not deny the fact that he sold the personal properties and appropriated the proceeds of P13,500.00 to himself. He has expressly admitted this in his written bid to the sheriff. He, however, cannot be considered in estoppel because the deduction for the loss of the personal properties was not authorized under Section 30 of Rule 39. In the first place, the sheriff should not have issued the certificate of redemption without a final determination of the amount of the redemption price.[13] This unauthorized deduction of the value of private respondent's personal properties and the sheriff's overzealousness in issuing the certificate of redemption are aggravated by the fact that private respondent later sought for and was actually compensated for the said loss.

After taking possession of the lots and hotel, private respondent moved in Civil Case No. OZ-1177 to charge the loss of her personal properties to the guaranty bond posted by petitioner. The trial court awarded her P108,246.00--with P23,246.00 for the "loss of her properties" and P85,000.00 for "unrealized income of the hotel." [14] The order of the trial court was affirmed by the Court of Appeals in CA-G.R. CV No. 31384 and this became final and executory after the Supreme Court dismissed petitioner's petition for review in G.R. No. 112344.[15]

Indeed, if we were to allow the deduction of the value of private respondent's personal properties from the redemption price, this will amount to double compensation and unjust enrichment at the expense of petitioner.[16] On the other hand, it would be highly unjust to deprive private respondent of her right to redeem by a strict application of the Rules of Court. It must be remembered that the policy of the law is to aid rather than defeat the right of redemption.[17] Inasmuch as in the instant case tender of the redemption price was timely made and in good faith, and the deficiency in said price is not substantial, we incline to give private respondent the opportunity to complete the redemption of her properties within fifteen days from the time this decision becomes final. It is well to recall our earlier pronouncements on this matter:

"Considering that appellee tendered payment only of the sum of P317.44, whereas the three parcels of land she was seeking to redeem were sold for the sums of P1,240.00, P21,000.00 and P30,000.00, respectively, the aforementioned amount of P317.44 is insufficient to effectively release the properties. However, the tender of payment was timely made and in good faith; in the interest of justice we incline to give the appellee opportunity to complete the redemption purchase of the three parcels, as provided in Section 26, Rule 39 of the Rules of court, within fifteen (15) days from the time this decision becomes final and executory. In this wise, justice is done to the appellee who had been made to pay more than her share in the judgment, without doing an injustice to the purchaser who shall get the corresponding interest of 1% per month on the amount of his purchase up to the time of redemption.[18]

"The rule on redemption is liberally interpreted in favor of the original owner of the property. The fact alone that he is allowed the right to redeem clearly demonstrates the tenderness of the law toward him in giving him another opportunity, should his fortunes improve, to recover his lost property. This benign motivation would be frustrated by a too-literal reading that would subordinate the warm spirit of the rule to its cold language.[19]

IN VIEW WHEREOF, the petition is DENIED and the Decision in CA-G.R. CV No. 36314 is affirmed with the modification that private respondent be allowed to complete the redemption price by paying to petitioner the difference of P8,500.00 at 1% interest per month[20] from January 8, 1988 until full payment thereof within fifteen (15) days from the time this decision becomes final and executory.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

[1] Records, pp. 74-75.

[2] Records, p. 122, Exhibit C.

[3] Records, p. 85, Exhibit E.

[4] Records, pp. 123, 125-126, Exhibits 4 and 6.

[5] Records, p. 90, Exhibit I.

[6] Rollo, p. 18.

[7] Rollo, p. 25.

[8] After the foreclosure order in Civil Case No. OZ-1177, the court, with the acquiescence of both parties, applied the provisions of Act 3135 on extrajudicial foreclosure of mortgage.

[9] *Philippine National Bank v. Court of Appeals*, 140 SCRA 360, 364-365 [1985].

[10] *State Investment House, Inc. v. Court of Appeals*, 215 SCRA 734 [1992]; *Belisario v. Intermediate Appellate*

Court, 165 SCRA 101 [1989].

[11] Aparri v. Court of Appeals, 13 SCRA 611 [1965]; Ordonez v. Villaroman, 44 O.G. No. 6, 2226 [1948].

[12] Philippine National Bank v. Court of Appeals, 140 SCRA 360 [1985]; Dulay v. Carriaga, 123 SCRA 794 [1983]; Castillo v. Nagtalon, 4 SCRA 48 [1962].

[13] cf., Morales v. CFI of Cavite, Br. V, 146 SCRA 375 [1986].

[14] G.R. No. 112344, Rollo, p. 5.

[15] Id., Id., p. 25.

[16] Baes v. Court of Appeals, 224 SCRA 562, 565 [1993].

[17] Tibajia v. Court of Appeals, 193 SCRA 581 [1991]; de los Reyes v. Intermediate Appellate Court, 176 SCRA 394 [1989].

[18] Castillo v. Nagtalon, 4 SCRA 48, 54 [1962]; see also Rosario v. Tayug Rural Bank, Inc., 22 SCRA 1220 [1968].

[19] De los Reyes v. Intermediate Appellate Court, 176 SCRA 394, 403 [1989].

[20] Rosario v. Tayug Rural Bank, Inc., supra, at 1222 and 1226.

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