

**TEOFILO C. VILLARICO, PETITIONER, VS. COURT OF APPEALS,
DIOSDADO AZARRAGA AND LOLITA ACEBO AZARRAGA,
RESPONDENTS.**

G.R. No. 132115. January 04, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the decision[1] dated January 5, 1998, of the Court of Appeals affirming the joint decision dated April 27, 1992, of the Regional Trial Court of Makati, Branch 65, in Civil Case No. 17696 and LRC Case No. M-1035. In Civil Case No. 17696, the trial court declared the disputed real estate mortgage as null and void, while in LRC Case No. M-1035, it denied issuance of a writ of possession in favor of petitioner Teofilo Villarico.

The antecedent facts of this case are as follows:

Private respondents spouses Diosdado and Lolita Acebo Azarraga owned a house and lot located at No. 714 Cheerful St., Happyville Subdivision, Talon, Las Piñas, Metro Manila. The lot was covered by TCT No. 44412-A in the name of Diosdado Azarraga. In August 1985, Lolita obtained a loan in the amount of P172,500 from petitioner Teofilo Villarico and as security, she mortgaged the house and lot in Happyville Subdivision.

Lolita failed to pay the loan. Consequently, Teofilo extrajudicially foreclosed the mortgage. Being the highest bidder in the public auction, Teofilo was issued a Sheriff's Certificate of Sale, which he registered in the Register of Deeds of Rizal. The title over the subject property was subsequently transferred to Teofilo's name.

When the period for redemption lapsed without the property being redeemed, Teofilo filed an ex-parte petition for the issuance of a writ of possession. This caused Diosdado to institute Civil Case No. 17696 for nullification of real estate mortgage with injunction, restraining order and damages, alleging that the real estate mortgage extrajudicially foreclosed by Teofilo was simulated because he did not sign the same. He was in Malaysia on the date of its alleged execution. He also alleged irregularities in the extrajudicial foreclosure proceedings.

In answer to Diosdado's complaint, petitioner insisted that Lolita and a man claiming to be Diosdado Azarraga signed the real estate mortgage on September 16, 1985. In view of Diosdado's claim that he did not sign the mortgage, petitioner hastened to file a third-party complaint against Lolita. In turn, Lolita filed her answer, admitting that she received money in the amount of P80,000 as a loan from petitioner. According to her, she gave the title of the property to petitioner by way of pledge to secure the payment of her obligation, but she did not sign anything except a blank piece of paper.

On April 27, 1992, the trial court rendered its judgment on Civil Case No. 17696 and LRC Case No. M-1035, thus:

All the foregoing considered, judgment is rendered as follows:

- 1) LRC Case No. M-1035 (Teofilo Villarico's Ex-Parte Petition for the Issuance of Writ of Possession) is denied, the mortgage on which the petition is based having been found to be a nullity;
- 2) In Civil Case No. 17696, the Real Estate Mortgage subject of said case is declared null and void. The Register of Deeds of Rizal is directed to cancel TCT No. T-2190 in the name of Teofilo C. Villarico and re-issue TCT No. 430922/44412-A/T-2152-A in the name of Diosdado Azarraga married to Lolita Acebo;
- 3) With respect to the third-party complaint, third-party defendant Lolita Acebo is ordered to pay third-party plaintiff Teofilo Villarico the sum of P210,000.00 plus legal interest per annum from July 16, 1986 until fully paid;
- 4) Defendant Villarico and third-party defendant Acebo are ordered to pay Diosdado Azarraga the sum of P10,000.00 for and as attorney's fees.

Costs against defendant Villarico and third-party defendant Acebo.

SO ORDERED. [2]

Aggrieved, petitioner Teofilo Villarico interposed an appeal. Private respondent Diosdado Azarraga likewise appealed, faulting the trial court for not invalidating the extrajudicial foreclosure sale of the subject property and for not awarding him damages. The other private respondent, Lolita Acebo Azarraga, also assailed the trial court's decision for finding that the amount of loan is P172,000, instead of P80,000 and for ordering her to pay petitioner the amount of P210,000 plus legal interest from July 16, 1986.

On January 5, 1998, the Court of Appeals promulgated its decision, disposing as follows:

WHEREFORE, being in accord with law and evidence, the decision appealed from is hereby AFFIRMED in toto.

No pronouncement as to costs.

SO ORDERED. [3]

Hence this petition, wherein Teofilo Villarico avers that the trial court and the Court of Appeals erred in.

- ...NOT RECOGNIZING/DECLARING THAT PETITIONER TEOFILO C. VILLARICO IS A MORTGAGEE-PURCHASER IN GOOD FAITH FOR VALUE OF THE SUBJECT PROPERTY.
- ...NOT NOTING/RECOGNIZING THE NEGLIGENCE OR ACQUIESCENCE OF RESPONDENT DIOSDADO AZARRAGA THAT MADE IT POSSIBLE FOR THE FRAUD TO TRANSPIRE.
- ...DECLARING THE SUBJECT REAL ESTATE MORTGAGE AS NULL AND VOID.
- ...DENYING THE PETITION FOR WRIT OF POSSESSION.
- ...MAKING OR DECLARING PETITIONER LIABLE TO PAY THE ATTORNEY'S FEES OF RESPONDENT DIOSDADO AZARRAGA.[4]

In brief, the issues for our resolution are the following:

- Is the real estate mortgage valid such that petitioner is a mortgagee-purchaser in good faith and for value?
- Did the trial court err in denying the writ of possession?
- Is petitioner liable for attorney's fees?

On the first issue, petitioner Teofilo Villarico claims that he is a mortgagee-purchaser in good faith and for value

because before he entered into the contract of mortgage, he verified first the genuineness of private respondents' title. When petitioner learned that the title was in the name of Diosdado Azarraga, petitioner agreed to contract with Lolita Azarraga only upon the latter's assurance that Diosdado will sign the deed. On the date of signing the deed, Lolita introduced to him a man who claimed to be Diosdado, and the man signed the deed. When Lolita failed to redeem the property after several demands, he caused the foreclosure of the mortgage in accordance with Act No. 3135, otherwise known as an Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages. According to petitioner, all these show that he was a mortgagee-purchaser in good faith and for value who is not required to look beyond the face of the title covering the property. Additionally, according to petitioner, it was Diosdado's negligence which made possible Lolita's commission of fraud. For Diosdado allowed Lolita to keep the title over the mortgaged property even though they had long been separated from each other.

Private respondent Lolita Azarraga, in her comment, claims that the mortgage deed and the extrajudicial foreclosure are both null. Being so, all the documents that emanate from the same, like the Certificate of Sale on which the trial court based the amount of P210,000 adjudged to be the amount of her loan to petitioner, had no force and effect. According to Lolita, it is not true that she is indebted to petitioner in the said amount. For she only received P80,000 from petitioner.

Private respondent Diosdado Azarraga, in his comment, states that the issue raised by petitioner is factual, hence beyond the competence of this Court in a petition for review. He adds that the petition was filed only to delay the cancellation of the mortgage deed.

Private respondent Diosdado Azarraga's contention, in our view, is meritorious. Whether petitioner is a mortgagee-purchaser in good faith and for value is a factual issue. In a petition for review, only questions of law may be raised. Even though there are exceptions, petitioner did not show that this case is one of them.[5] The same principle applies to the claim of Lolita Azarraga concerning the amount of her loan obligation. Being factual, we are not inclined to disturb the findings of the trial court, affirmed by the Court of Appeals.

On the second issue, did the trial court err in denying the petition for the issuance of a writ of possession? Petitioner argues that when he filed an ex-parte petition for the issuance of a writ of possession on February 3, 1987, the trial court deferred its resolution for more than five years and consolidated it with the resolution of Civil Case No. 17696, on the nullification of the mortgage deed. Petitioner alleges that this is contrary to Sections 7 and 8 of Act No. 3135, which provide that the issuance of a writ is a matter of course upon the filing of the proper motion and approval by the trial court of the corresponding bond. No discretion is left to the court, he avers, such that any question on the regularity and validity of the sale is determined only in a subsequent proceeding outlined in Section 8.[6]

In turn, private respondents contend that the trial court did not err in its order denying the issuance of a writ of possession to petitioner, because with the nullity of the real estate mortgage and the extrajudicial foreclosure thereof, there is no factual and legal basis for the issuance of said writ.

Both the trial court and the Court of Appeals found the mortgage deed invalid. In the instant petition, no compelling reason to review that finding has been advanced by petitioner before us. Nor has petitioner pointed out serious errors, if any, that could merit such review. To resolve the issue of whether the trial court erred in not granting the writ of possession in favor of petitioner is now moot, if not superfluous. The deed of mortgage being invalid, there is no longer any basis for the issuance of said writ. No practical or useful purpose would be served by passing on the merits of a non-issue. Courts will not determine a moot question in a case in which no practical relief can be granted.[7]

On the third issue, petitioner contends that the award of attorney's fees in favor of private respondent Diosdado Azarraga is baseless. According to petitioner, he is an innocent mortgagee-purchaser in good faith and for value. Further, he had no participation in the fraud committed during the execution of the mortgage deed. Petitioner, citing *Loaveña vs. Sabater*, CA-G.R. No. 23288-R, February 22, 1963,[8] said that a mortgagee in good faith is protected even if the mortgagor obtained his title through fraud.

Private respondent Diosdado Azarraga comments that the courts a quo were justified in awarding him attorney's fees because of the unreasonable acts of petitioner. In causing the execution of a falsified real estate mortgage and extrajudicially foreclosing the same, petitioner had compelled said private respondent to incur expenses to protect his interest. Vide *Philippine National Bank vs. Court of Appeals*, G.R. No. 108630, 256 SCRA 44, 50-51 (1996).

With the finding by both the trial court and the Court of Appeals that petitioner was in bad faith when he caused the execution of the mortgage deed and the extrajudicial foreclosure of the same, there is sufficient basis to award attorney's fees to private respondent Diosdado Azarraga. Had it not been for those prejudicial acts of petitioner, Diosdado Azarraga would not have sought the services of a counsel to defend his interest over the mortgaged property. On this score, we agree that no error was committed by respondent court.

WHEREFORE, the instant petition is DENIED. The decision dated January 5, 1998, of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena, J., on official leave.

[1] Rollo, pp. 15-22.

[2] Id. at 17-18.

[3] Id. at 21-22.

[4] Id. at 6.

[5] *Carquelo Omandam and Rosito Itom vs. Court of Appeals*, GR No. 128750, January 18, 2001, p. 4.

[6] Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Section 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days

after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Number Four hundred and ninety-six, but the order of possession shall continue in effect during the pendency of the appeal.

[7] City Sheriff, Iligan City vs. Fortunado, G.R. No. 80390, 288 SCRA 190, 195 (1998).

[8] Rollo, p. 7.

[9] Ching Sen Ben vs. Court of Appeals, G.R. No. 124355, 314 SCRA 762, 773 (1999).

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