

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS, APOLONIA DE JESUS GREGORIO, LUCIANA DE JESUS GREGORIO, GONZALO VINCOY, MARRIED TO TRINIDAD GREGORIO VINCOY, RESP...*G.R. No. 134068. June 25, 2001*

Ponente: DE LEON, JR., J.

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This is a motion for reconsideration of the resolution of this Court dated July 12, 1999 dismissing the petition for review on certiorari filed by petitioner Union Bank of the Philippines which assailed the decision of the Court of Appeals (a) upholding the validity of the real estate mortgage executed by respondents Gonzalo and Trinidad Vincoy in favor of petitioner as security for a loan in the principal amount of Two Million Pesos (P2,000,000.00), and (b) fixing the redemption price of the property mortgaged at Three Million Two Hundred Ninety Thousand Pesos (P3,290,000.00) representing the purchase price of the said property at the foreclosure sale plus one percent (1%) monthly interest from April 19, 1991, the date of the foreclosure sale, until its redemption pursuant to Section 30, Rule 39 of the Rules of Court.

The following are the factual antecedents.

On March 2, 1990, respondents-spouses Gonzalo and Trinidad Vincoy mortgaged their residence in favor of petitioner to secure the payment of a loan to Delco Industries (Phils.), Incorporated[1] in the amount of Two Million Pesos (P2,000,000.00). For failure of the respondents to pay the loan at its date of maturity, petitioner extrajudicially foreclosed the mortgage and scheduled the foreclosure sale on April 10, 1991. The petitioner submitted the highest bid of Three Million Two Hundred Ninety Thousand Pesos (P3,290,000.00) at the foreclosure sale. Accordingly, a certificate of sale was issued to petitioner and duly annotated at the back of the Transfer Certificate of Title covering the property on May 8, 1991.[2]

Prior to the expiration of the redemption period on May 8, 1992, the respondents filed a complaint for annulment of mortgage with the lower court. In their complaint, respondents alleged that the subject property mortgaged to petitioner had in fact been constituted as a family home as early as October 27, 1989. Among the beneficiaries of the said family home are the sisters of respondent Trinidad Vincoy, namely Apolonia and Luciana De Jesus Gregorio whose consent to the mortgage was not obtained.[3] Respondents thus assailed the validity of the mortgage on the ground that Article 158 of the Family Code[4] prohibits the execution, forced sale, attachment or any other encumbrance of a family home without the written consent of majority of the beneficiaries thereof of legal age.[5] On the other hand, petitioner maintained that the mortgaged property of respondents could not be legally constituted as a family home because its actual value exceeded Three Hundred Thousand Pesos (P300,000.00), the maximum value for a family home in urban areas as stipulated in Article 157 of the Family Code.[6]

The lower court rendered judgment declaring the constitution of the family home void and the mortgage executed

in favor of the petitioner valid. It held, among others, that Article 158 of the Family Code was not applicable to respondents' family home as the value of the latter at the time of its alleged constitution exceeded Three Hundred Thousand Pesos (P300,000.00).[7] It also ordered respondent Gonzalo Vincoy and/or Delco Industries (Phils.), Inc. to pay petitioner his and/or its outstanding obligation as of February 15, 1993 in the amount of Four Million Eight Hundred Sixteen Thousand One Hundred Ninety-Four Pesos and Forty-Four Centavos (P4,816,194.44) including such sums that may accrue by way of interests and penalties.[8]

Aggrieved, respondents appealed to the Court of Appeals contending that the lower court erred in finding that their family home was not duly constituted, and that the mortgage in favor of petitioner is valid. Respondents also claimed that the correct amount sufficient for the redemption of their property as of February 15, 1993 is Two Million Seven Hundred Seventy-Three Thousand Seven Hundred Twelve Pesos and Eighty-Seven Centavos (P2,773,712.87)[9] and not Four Million Eight Hundred Sixteen Thousand One Hundred Ninety-Four Pesos and Forty-Four Centavos (P4,816,194.44) as found by the lower court.

In a decision promulgated on June 4, 1997, the Court of Appeals sustained the finding of the lower court that the alleged family home of the respondents did not fall within the purview of Article 157 of the Family Code as its value at the time of its constitution was more than the maximum value of Three Hundred Thousand Pesos (P300,000.00). Hence, the Court of Appeals upheld the validity of the mortgage executed over the said property in favor of the petitioner.[10] However, it found that the amount sufficient for the redemption of the foreclosed property is Three Million Two Hundred Ninety Thousand Pesos (P3,290,000.00) equivalent to the purchase price at the foreclosure sale plus one percent (1%) monthly interest from April 19, 1991 up to the date of redemption[11] pursuant to Section 30, Rule 39 of the Rules of Court.[12]

Dissatisfied with the ruling of the Court of Appeals, the petitioner filed a petition for review on certiorari with this Court submitting the following issues for resolution:

1. The Court of Appeals resolves an issue of redemption which was not even directly raised by the parties and contrary to the evidence on record.
2. Assuming without admitting that respondents are entitled to redemption, the price set by the Court of Appeals is not based on law.[13]

Petitioner contends, first of all, that in allowing the respondents to redeem the subject foreclosed property, the Court of Appeals completely ignored the fact that neither respondents' complaint before the lower court nor their brief filed before the Court of Appeals prayed for the redemption of the said property. On the contrary, respondents had consistently insisted on the nullity of the mortgage. Thus, to allow them to redeem the property would contradict the very theory of their case.[14]

Petitioner also contends that the respondents had already lost their right to redeem the foreclosed property when they failed to exercise their right of redemption by paying the redemption price within the period provided for by law.[15] In the event, however, that the Court upholds the right of the respondents to redeem the said property, the petitioner claims that it is not Section 30, Rule 39 of the Rules of Court that applies in determining the amount sufficient for redemption but Section 78 of the General Banking Act as amended by Presidential Decree No. 1828[16] which provides:

"xxx. In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective

mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of the said property less the income received from the property." [Italics supplied].

This Court dismissed the petition in a Resolution promulgated on July 12, 1999 on the ground that the Court of Appeals did not commit any reversible error and that the petition raises mere questions of fact already amply passed upon by the appellate court.[17] Hence, the instant motion for reconsideration.

We are persuaded to reconsider.

First of all, it is important to note that this case was decided by the lower court on the basis only of the pleadings submitted by the parties. No trial was conducted, thus, no evidence other than that submitted with the pleadings could be considered.

A careful scrutiny of the pleadings filed by the respondents before the lower court reveals that at no time did the respondents pray that they be allowed to redeem the subject foreclosed property.[18] On the other hand, respondents never wavered from the belief that the mortgage over the said property is, in the first place, void for having been executed over a duly constituted family home without the consent of the beneficiaries thereof. After upholding the validity of the mortgage, the lower court ordered respondent Gonzalo Vincoy and/or Delco Industries, Inc. to pay petitioner the amount of Four Million Eight Hundred Sixteen Thousand One Hundred Ninety-Four Pesos and Forty-Four Centavos (P4,816,194.44) plus interests and penalties representing Vincoy's and/or Delco's outstanding obligation to petitioner as of February 15, 1993.[19] There is no mention whatsoever of respondents' right to redeem the property.

Respondents raised the issue of redemption for the first time only on appeal in contesting the amount ordered by the lower court to be paid by respondents to the petitioner. Thus, the actuation of the Court of Appeals in allowing the respondents to redeem the subject foreclosed property is not legally permissible. In petitions for review or appeal under Rule 45 of the Rules of Court, the appellate tribunal is limited to the determination of whether the lower court committed reversible error.[20]

It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process.[21] On this ground alone, the Court of Appeals should have completely ignored the issue of respondents' right to redeem the subject foreclosed property. In addition, a reason just as glaringly obvious exists for declaring the respondents' right of redemption already non-existent one year after May 8, 1991, the date of the registration of the sale at public auction.

Pursuant to Section 78 of the General Banking Act, a mortgagor whose real property has been sold at a public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, shall have the right, within one year after the sale of the real estate to redeem the property. The one-year period is actually to be reckoned from the date of the registration of the sale.[22] Clearly therefore, respondents had only until May 8, 1992 to redeem the subject foreclosed property. Their failure to exercise that right of redemption by paying the redemption price within the period prescribed by law effectively divested them of said right. It bears reiterating that during the one year redemption period, respondents never attempted to redeem the subject property but instead persisted in their theory that the mortgage is null and void. To allow them now to redeem the same property would, as petitioner aptly puts it, be letting them have their cake and eat it too.

It cannot also be argued that the action for annulment of the mortgage filed by the respondents tolled the running

of the one year period of redemption. In the case of *Sumerariz v. Development Bank of the Philippines*,^[23] petitioners therein contended that the one-year period to redeem the property foreclosed by respondent was suspended by the institution of an action to annul the foreclosure sale filed three (3) days before the expiration of the period. To this we ruled that:

"We have not found, however, any statute or decision in support of this pretense. Moreover, up to now plaintiffs have not exercised the right of redemption. Indeed, although they have intimated their wish to redeem the property in question, they have not deposited the amount necessary therefor. It may not be amiss to note that, unlike Section 30 of Rule 39 of the Rules of Court, which permits the extension of the period of redemption of mortgaged properties, Section 3 of Commonwealth Act No. 459, in relation to Section 9 of Republic Act No. 85, which governs the redemption of property mortgaged to the Bank does not contain a similar provision. Again this question has been definitely settled by the previous case declaring that plaintiffs' right of redemption has already been extinguished in view of their failure to exercise it within the statutory period."^[24]

Also, in the more recent case of *Vaca v. Court of Appeals*,^[25] we declared that the pendency of an action questioning the validity of a mortgage cannot bar the issuance of the writ of possession after title to the property has been consolidated in the mortgagee.^[26] The implication is clear: the period of redemption is not interrupted by the filing of an action assailing the validity of the mortgage, so that at the expiration thereof, the mortgagee who acquires the property at the foreclosure sale can proceed to have the title consolidated in his name and a writ of possession issued in his favor.

To rule otherwise, and allow the institution of an action questioning the validity of a mortgage to suspend the running of the one year period of redemption would constitute a dangerous precedent. A likely offshoot of such a ruling is the institution of frivolous suits for annulment of mortgage intended merely to give the mortgagor more time to redeem the mortgaged property.

As a final word, although the issue pertaining to the correct amount for the redemption of the subject foreclosed property has been rendered moot by the foregoing, a point of clarification should perhaps be made as to the applicable legal provision. Petitioner's contention that Section 78 of the General Banking Act governs the determination of the redemption price of the subject property is meritorious. In *Ponce de Leon v. Rehabilitation Finance Corporation*,^[27] this Court had occasion to rule that Section 78 of the General Banking Act had the effect of amending Section 6 of Act No. 3135^[28] insofar as the redemption price is concerned when the mortgagee is a bank, as in this case, or a banking or credit institution.^[29] The apparent conflict between the provisions of Act No. 3135 and the General Banking Act was, therefore, resolved in favor of the latter, being a special and subsequent legislation. This pronouncement was reiterated in the case of *Sy v. Court of Appeals*^[30] where we held that the amount at which the foreclosed property is redeemable is the amount due under the mortgage deed, or the outstanding obligation of the mortgagor plus interest and expenses in accordance with Section 78 of the General Banking Act.^[31] It was therefore manifest error on the part of the Court of Appeals to apply in the case at bar the provisions of Section 30 Rule 39 of the Rules of Court in fixing the redemption price of the subject foreclosed property.

WHEREFORE, the motion for reconsideration is hereby GRANTED. This Court's Resolution dated July 12, 1999 is MODIFIED insofar as respondents are found to have lost their right to redeem the subject foreclosed property.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] CA Rollo, p. 17.

[2] CA Rollo, p. 27.

[3] CA Rollo, pp. 16-17.

[4] Art. 158. The family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide.

[5] Rollo, p. 8.

[6] Art. 157. The actual value of the family home shall not exceed, at the time of its constitution, the amount of three hundred thousand pesos in urban areas, and two hundred thousand pesos in rural areas, or such amounts as may hereafter be fixed by law.

In any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of the evaluation.

For purposes of this Article, urban areas are deemed to include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed to be rural areas.

[7] CA Rollo, p. 28.

[8] CA Rollo, pp. 29-30.

[9] Computed as follows: P2,576,022.61, the outstanding obligation of Gonzalo Vincoy to petitioner as of February 6, 1991 less P300,000.00, total payment made plus one percent (1%) monthly interest from the date of the auction sale on April 19, 1991 up to February 15, 1993. (CA Rollo, pp. 23-24.)

[10] Rollo, pp. 9-10.

[11] Rollo, p. 10.

[12] 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; xxx. [Underscoring supplied.]

[13] Rollo, p. 24.

[14] Rollo, p. 25.

[15] Rollo, p. 26.

[16] Rollo, p. 28.

[17] Rollo, p. 135.

[18] In their complaint filed before the lower court, the respondents prayed that judgment be rendered:

- Annulling the mortgage executed between plaintiff GONZALO VINCOY in favor of defendant bank on March 2, 1990 described in Annex "A" of the Complaint;

- During the pendency of this case and perpetually thereafter, a writ of preliminary injunction be issued after posting the required bond to prevent the defendant bank from consolidating its Certificate of Title over the property described under TCT No. 128610 of the Register of Deeds of Pasay City covering the family home of plaintiff GONZALO VINCOY and his wife TRINIDAD GREGORIO VINCOY, whose shelter plaintiff beneficiaries share; and

- Requiring the defendant bank to pay the plaintiffs jointly and severally, by way of damages, the amounts of P100,000.00 as attorney's fees and costs of litigation; and another P100,000.00 for moral and exemplary damages.

Plaintiffs likewise pray for other reliefs proper under the premises. (Records, p. 6.)

[19] CA Rollo, p. 30.

[20] *Mendoza v.. Court of Appeals, et al.*, 274 SCRA 527, 539 (1997); *Remman Enterprises, Inc. v.. Court of Appeals, et al.*, 268 SCRA 688, 702 (1997).

[21] *Roman Catholic Archbishop of Manila v.. Court of Appeals, et al.*, 269 SCRA 145, 153 (1997); *Gevero v.. Intermediate Appellate Court, et al.*, 189 SCRA 201, 208 (1990); *Matienzo v.. Servidad*, 107 SCRA 276, 283 (1981).

[22] Regalado, Remedial Law Compendium, Volume I, 6[th] ed., 1997, p. 455.

[23] 21 SCRA 1374 (1967).

[24] *Ibid*, pp. 1379-1380.

[25] 234 SCRA 146, (1994).

[26] *Ibid.*, p. 148.

[27] 146 SCRA 862 (1970).

[28] SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure (now Secs. 29, 30 and 34, Rule 39, Revised Rules of Court), insofar as these are not inconsistent with the provisions of this Act.

[29] See note 27, *supra*, p. 878.

[30] 172 SCRA 125 (1989).

[31] *Ibid*, p. 134.

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