

SPOUSES RICARDO ROSALES AND ERLINDA SIBUG, PETITIONERS, VS. SPOUSES ALFONSO AND LOURDES SUBA, THE CITY SHERIFF OF MANILA, RESPONDENTS.

G.R. No. 137792. August 12, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Challenged in the instant petition for review on certiorari are the Resolutions[1] dated November 25, 1998 and February 26, 1999 of the Court of Appeals dismissing the petition for certiorari in CA G.R. SP No. 49634, "Spouses Ricardo Rosales and Erlinda Sibug vs. Alfonso and Lourdes Suba."

On June 13, 1997, the Regional Trial Court, Branch 13, Manila rendered a Decision[2] in Civil Cases Nos. 94-72303 and 94-72379, the dispositive portion of which reads:

"WHEREFORE, judgment is rendered:

(1) Declaring the Deed of Sale of Exhibit D, G and I, affecting the property in question, as an equitable mortgage;

(2) Declaring the parties Erlinda Sibug and Ricardo Rosales, within 90 days from finality of this Decision, to deposit with the Clerk of Court, for payment to the parties Felicisimo Macaspac and Elena Jiao, the sum of P65,000.00, with interest at nine (9) percent per annum from September 30, 1982 until payment is made, plus the sum of P219.76 as reimbursement for real estate taxes;

(3) Directing the parties Felicisimo Macaspac and Elena Jiao, upon the deposit on their behalf of the amounts specified in the foregoing paragraph, to execute a deed of reconveyance of the property in question to Erlinda Sibug, married to Ricardo Rosales, and the Register of Deeds of Manila shall cancel Transfer Certificate of Title No. 150540 in the name of the Macaspacs (Exh. E) and issue new title in the name of Sibug;

(4) For non-compliance by Sibug and Rosales of the directive in paragraph (2) of this dispositive portion, let the property be sold in accordance with the Rules of Court for the release of the mortgage debt and the issuance of title to the purchaser.

"SO ORDERED." [3]

The decision became final and executory. Spouses Ricardo and Erlinda Rosales, judgment debtors and herein petitioners, failed to comply with paragraph 2 quoted above, i.e., to deposit with the Clerk of Court, within 90 days from finality of the Decision, P65,000.00, etc., to be paid to Felicisimo Macaspac and Elena Jiao. This prompted Macaspac, as judgment creditor, to file with the trial court a motion for execution.

Petitioners opposed the motion for being premature, asserting that the decision has not yet attained finality. On March 5, 1998, they filed a manifestation and motion informing the court of their difficulty in paying Macaspac as there is no correct computation of the judgment debt.

On February 23, 1998, Macaspac filed a supplemental motion for execution stating that the amount due him is P243,864.08.

Petitioners failed to pay the amount. On March 25, 1998, the trial court issued a writ of execution ordering the sale of the property subject of litigation for the satisfaction of the judgment.

On May 15, 1998, an auction sale of the property was held wherein petitioners participated. However, the property was sold for P285,000.00 to spouses Alfonso and Lourdes Suba, herein respondents, being the highest bidders. On July 15, 1998, the trial court issued an order confirming the sale of the property and directing the sheriff to issue a final deed of sale in their favor.

On July 28, 1998, Macaspac filed a motion praying for the release to him of the amount of P176,176.06 from the proceeds of the auction sale, prompting petitioners to file a motion praying that an independent certified public accountant be appointed to settle the exact amount due to movant Macaspac.

Meanwhile, on August 3, 1998, the Register of Deeds of Manila issued a new Transfer Certificate of Title over the subject property in the names of respondents.

On August 18, 1998, respondents filed with the trial court a motion for a writ of possession, contending that the confirmation of the sale "effectively cut off petitioners' equity of redemption." Petitioners on the other hand, filed a motion for reconsideration of the order dated July 15, 1998 confirming the sale of the property to respondents.

On October 19, 1998, the trial court, acting upon both motions, issued an order (1) granting respondents' prayer for a writ of possession and (2) denying petitioners' motion for reconsideration. The trial court ruled that petitioners have no right to redeem the property since the case is for judicial foreclosure of mortgage under Rule 68 of the 1997 Rules of Civil Procedure, as amended. Hence, respondents, as purchasers of the property, are entitled to its possession as a matter of right.

Forthwith, petitioners filed with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 49634, alleging that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing a writ of possession to respondents and in denying their motion for reconsideration of the order dated July 15, 1998 confirming the sale of the property to said respondents.

On November 25, 1998, the CA dismissed outright the petition for lack of merit, holding that there is no right of redemption in case of judicial foreclosure of mortgage. Petitioners' motion for reconsideration was also denied.

Hence this petition.

In the main, petitioners fault the Appellate Court in applying the rules on judicial foreclosure of mortgage. They contend that their loan with Macaspac is unsecured, hence, its payment entails an execution of judgment for money under Section 9 in relation to Section 25, Rule 39 of the 1997 Rules of Civil Procedure, as amended,[4] allowing the judgment debtor one (1) year from the date of registration of the certificate of sale within which to redeem the foreclosed property.

Respondents, upon the other hand, insist that petitioners are actually questioning the decision of the trial court dated June 13, 1997 which has long become final and executory; and that the latter have no right to redeem a mortgaged property which has been judicially foreclosed.

Petitioners' contention lacks merit. The decision of the trial court, which is final and executory, declared the transaction between petitioners and Macaspac an equitable mortgage. In *Matanguihan vs. Court of Appeals*,[5] this Court defined an equitable mortgage as "one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as

security for a debt, and contains nothing impossible or contrary to law." An equitable mortgage is not different from a real estate mortgage, and the lien created thereby ought not to be defeated by requiring compliance with the formalities necessary to the validity of a voluntary real estate mortgage.[6] Since the parties' transaction is an equitable mortgage and that the trial court ordered its foreclosure, execution of judgment is governed by Sections 2 and 3, Rule 68 of the 1997 Rules of Civil Procedure, as amended, quoted as follows:

SEC. 2. Judgment on foreclosure for payment or sale. - If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.

SEC. 3. Sale of mortgaged property, effect. - When the defendant, after being directed to do so as provided in the next preceding section, fails to pay the amount of the judgment within the period specified therein, the court, upon motion, shall order the property to be sold in the manner and under the provisions of Rule 39 and other regulations governing sales of real estate under execution. Such sale shall not effect the rights of persons holding prior encumbrances upon the property or a part thereof, and when confirmed by an order of the court, also upon motion, it shall operate to divest the rights in the property of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.

x x x."

In *Huerta Alba Resort, Inc. vs. Court of Appeals*,[7] we held that the right of redemption is not recognized in a judicial foreclosure, thus:

"The right of redemption in relation to a mortgage-understood in the sense of a prerogative to re-acquire mortgaged property after registration of the foreclosure sale-exists only in the case of the extrajudicial foreclosure of the mortgage. No such right is recognized in a judicial foreclosure except only where the mortgagee is the Philippine National bank or a bank or a banking institution.

"Where a mortgage is foreclosed extrajudicially, Act 3135 grants to the mortgagor the right of redemption within one (1) year from the registration of the sheriff's certificate of foreclosure sale.

"Where the foreclosure is judicially effected, however, no equivalent right of redemption exists. The law declares that a judicial foreclosure sale, 'when confirmed by an order of the court, x x x shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.' Such rights exceptionally 'allowed by law' (i.e., even after the confirmation by an order of the court) are those granted by the charter of the Philippine National Bank (Act Nos. 2747 and 2938), and the General Banking Act (R.A.337). These laws confer on the mortgagor, his successors in interest or any judgment creditor of the mortgagor, the right to redeem the property sold on foreclosure-after confirmation by the court of the foreclosure sale-which right may be exercised within a period of one (1) year, counted from the date of registration of the certificate of sale in the Registry of Property.

"But, to repeat, no such right of redemption exists in case of judicial foreclosure of a mortgage if the mortgagee is not the PNB or a bank or banking institution. In such a case, the foreclosure sale, 'when confirmed by an order of the court, x x x shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser.' There then exists only what is known as the equity of redemption. This is simply the right of the defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the secured debt within the 90-day period after the judgment becomes final, in accordance with Rule 68, or even after the foreclosure sale but prior to its confirmation.

x x x

"This is the mortgagor's equity (not right) of redemption which, as above stated, may be exercised by him even beyond the 90-day period 'from the date of service of the order,' and even after the foreclosure sale itself, provided it be before the order of confirmation of the sale. After such order of confirmation, no redemption can be effected any longer." (*Italics supplied*)

Clearly, as a general rule, there is no right of redemption in a judicial foreclosure of mortgage. The only exemption is when the mortgagee is the Philippine National Bank or a bank or a banking institution. Since the mortgagee in this case is not one of those mentioned, no right of redemption exists in favor of petitioners. They merely have an equity of redemption, which, to reiterate, is simply their right, as mortgagor, to extinguish the mortgage and retain ownership of the property by paying the secured debt prior to the confirmation of the foreclosure sale. However, instead of exercising this equity of redemption, petitioners chose to delay the proceedings by filing several manifestations with the trial court. Thus, they only have themselves to blame for the consequent loss of their property.

WHEREFORE, the petition is DENIED. The Resolutions of the Court of Appeals dated November 25, 1998 and February 26, 1999 in CA G.R. SP No. 49634 are AFFIRMED.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona, and Carpio-Morales, JJ., concur.

[1] Rollo at 24, 28; penned by Associate Justice Salvador J. Valdez, Jr. and concurred in by Justices Ma. Alicia Austria-Martinez (now a member of this Court) and Renato C. Dacudao.

[2] By Judge Mario Guarina III (now an Associate Justice of the Court of Appeals).

[3] RTC Decision at 5-6; Rollo at 34-35.

[4] Section 9. Execution of judgment for money, how enforced. -

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(b) Satisfaction by levy. - If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

Sec. 25. Conveyance of real property; certificate thereof given to purchaser and filed with registry of deeds. --

Upon a sale of real property, the officer must give to the purchaser a certificate of sale containing:

- (a) A particular description of the real property sold;
- (b) The price paid for each distinct lot or parcel;
- (c) The whole price paid by him;
- (d) A statement that the right of redemption expires one (1) year from the date of the registration of the certificate of sale.

Such certificate must be registered in the registry of deeds of the place where the property is situated.

[5] 341 Phil. 379 (1997).

[6] Zubiri vs. Quijano, 74 Phil. 47 (1940).

[7] G.R. No. 128567, September 1, 2000, 339 SCRA 534, citing Limpin vs. Intermediate Appellate Court, G.R. No. L-70987, September 29, 1988, 166 SCRA 87.

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