AMELIA MARINO, PETITIONER, VS. SPOUSES FRANCISCO AND GLORIA SALCEDO, RESPONDENTS.

G.R. No. 138141. November 15, 2000

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review assailing the decision and resolution[1] of the Court of Appeals[2] which ordered the recovery of possession by the respondent spouses Francisco and Gloria Salcedo of a land mortgaged to petitioner Amelia Marino.

The relevant facts are as stated in the decision of the Court of Appeals, viz:

> "On October 3, 1990, [spouses Salcedo] obtained from [Amelia and her late husband, Cecilio Marino] a loan in the amount of P98,000.00, secured by a mortgage on the former's real property described as follows:
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> `A certain residential lot, located at No. 36-B Ibarra St., E.B.B., Olongapo City, containing an area of 100 square meters, more or less, bounded on the North by Jaime Labrador; on the South by Lot 546, Ts-308; on the West by Lot 546, Ts-308; and on the East by Road; declared under T.D. No. 002-3118R. A two-storey residential house, located and erected thereon, containing a floor area of 26/26 sq. meters, more or less[,] (m)ade of cement, CHB and wood and under G.I. Roofings declared under T.D. No. 002-3118R; and with an assessed value of P3,600.00 and P4,290.00 respectively. (Annex A, Real Estate Mortgage; p. 25, Rollo).'
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> The parties' agreement was embodied in a "Real Estate Mortgage" contract. However, despite [spouses Salcedo's] failure to pay the loan obligation within the one (1) year period provided for in the Real Estate Mortgage contract, petitioners and private respondents again executed an Agreement on December 13, 1993, extending the period of the payment of the loan obligation for another one (1) year. Executed before the Office of the Barangay Captain of Barangay East Bajac Bajac, the Agreement contained the stipulation that `failure of the mortgagor to comply with his/her obligation, he/she will surrender voluntarily the real estate mortgaged to the mortgagee.' (Annex D, Agreement; p. 31 Rollo).
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> [Spouses Salcedo] again failed to pay their indebtedness. Thus, on February 1, 1994, [spouses Marino] filed before the Municipal Trial Court in Cities of Olongapo City a `Motion for the Issuance of a Writ of Execution' (p. 53, Rollo), alleging that [spouses Salcedo] failed to comply with their obligation under the Agreement, and that said Agreement has not been repudiated nor a petition for nullification thereof filed before the proper court.
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> [Spouses Salcedo] filed their Opposition to the motion contending that the Agreement was entered into in violation of the Local Government Code since said Agreement was not coursed through the Lupon or the Pangkat, and that the document was not attested to by the Lupon chairman or the Pangkat chairman. [They] also argued that the agreement is null and void since the stipulation providing that in case [they], as mortgagors, failed to comply with their obligation, they will voluntarily surrender the mortgaged property to [the mortgagees], violates the prohibition of Article 2088 of the Civil Code on pactum commissorium stipulations.

> The trial court denied [spouses Marino's] motion for execution on the ground that the same may be enforced only after June 13, 1994.
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> On July 13, 1994, [spouses Marino] again filed a motion for execution which was again denied by the trial court on the ground that there was no sufficient compliance with the Local Government Code requiring prior conciliation as a pre-condition for the filing of an action in court.
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> [Spouses Marino] sought a reconsideration thereof arguing that the Agreement entered into by them is an amendment of the Real Estate Mortgage contract, and should be construed as a "Real Estate Mortgage with right of possession or Antichresis" and that the stipulation providing for the voluntary surrender by [spouses Salcedo] of the mortgaged property is an additional security for the loan. [They] also contend that there is no violation of the prohibition on pactum commissorium stipulations because there is no agreement that [they] can dispose of the mortgaged property, and that the only issue in the Agreement is their right of possession over the mortgaged property. [They] likewise attached a "Certification" dated July 26, 1994, and issued by the Barangay Captain certifying that the dispute between private respondents and petitioners had already been brought to the attention of the Office of the Barangay Captain.
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> After conducting hearings on [spouses Marino's] motion for reconsideration, the trial court issued an Order dated August 9, 1996 granting the same. Thus, the trial court ordered the issuance of a writ of execution in favor of [spouses Marino]. The trial court, in ruling in favor of [spouses Marino], ruled that:
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> `The Court, in assessment of the written agreement, together with the Barangay Certifications submitted by the mortgagee, has found out that although the said agreement lacks the attestation contemplated by law, the purpose of the mediation conducted by the barangay captain has been convincingly achieved.
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> x x x
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> The allegation of the mortgagor that the amicable settlement is null and void and contrary to law, considering that the surrender of possession is tantamount to a pactum commissorium, in violation of Article 2288 (sic) of the Civil Code, is untenable.
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> x x x
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> In this case, it is crystal clear that what was expressly stipulated in the agreement was that the mortgagor will voluntarily surrender the mortgaged property to the mortgagee, in case of non-payment of their obligation. There was no stipulation that the property will be appropriated by the mortgagee in case of non-compliance with the said agreement. What is prohibited by Article 2288 (sic) dealing with pactum commissorium, is the automatic appropriation by the creditor or pledgee in payment of the loan at the expiration of the period agreed upon. (pp. 1-2, Order dated August 9, 1996, Rollo).

[Spouses Salcedo] filed a motion to recall the writ of execution, claiming that they are ready to pay their indebtedness, which was then deposited with the trial court. [Spouses Marino] filed their opposition to the motion.

On August 23, 1996, a writ of execution was issued addressed to the City Sheriff who was commanded to cause [spouses Salcedo] to vacate the disputed premises and surrender the same to [spouses Marino]. A `Notice to Vacate' (Annex `F'; p. 33, Rollo) was then issued by the Clerk of Court and City Sheriff ordering [spouses Salcedo] to forthwith vacate and surrender possession of the mortgaged property to [spouses Marino].

On September 16, 1996, a `Certificate of Possession' (Annex `G'; p. 34, Rollo) was issued by the Clerk of Court and City Sheriff delivering the mortgaged property to [spouses Marino].

On June 6, 1997, [spouses Salcedo] filed the complaint for recovery of possession which, as hereinabove stated, was dismissed by the trial court for lack of prior barangay conciliation.

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On appeal to the Regional Trial Court, the trial court's dismissal was affirmed."[3]

Spouses Salcedo appealed the decision of the Regional Trial Court[4] to the Court of Appeals. On October 28, 1998, the Court of Appeals reversed the decision of the trial court. It further held that the spouses Salcedo were entitled to recover possession of their mortgaged property since the agreement to extend the term of their mortgage contained a pactum commissorium.[5] The spouses Marino filed a Motion for Reconsideration or Motion for Clarification[6] of the decision but the same was denied on March 9, 1999. Hence, this appeal where petitioner submits the following issues for resolution, viz:

> "(a) Was the petitioner denied her Constitutional and statutory right to due process by the fact that the Court of Appeals granted the principal relief prayed for in the complaint in Civil Case No. 3568 without granting to the petitioner the right to file her answer to the complaint, without proceeding to trial in the manner provided in Rule 30 of the 1997 Rules of Civil Procedure, with opportunity to present her evidence[?]
>
> (b) Is the requirement provided in Section 412 of the Local Government Code on the pre-condition to filing of complaint in court a mandatory provision as to allow a complaint to be acted upon without passing through the required barangay conciliation[?]
>
> (c) Did the Court of Appeals commit grave error and grave abuse of discretion in denying to the petitioner her right to due process and in disregarding Section 412 of the Local Government Code?
>
> (d) Was there a bar by prior judgment against the complaint in Civil Case No. 3568?"[7]

We agree with the ruling of the Court of Appeals that the complaint of the respondent spouses Salcedo should not have been dismissed for lack of prior barangay conciliation as required by section 412 of the Local Government Code, viz:

> For one, the Court can not sustain private respondents [Spouses Marino] that there was no compliance with the requirement of prior barangay conciliation. From the factual antecedents of this case, it cannot be denied that there was already substantial compliance with the requirements of Presidential Decree No. 1508 (subsequently incorporated in the Local Government Code) which does not require strict technical compliance with its procedural requirements. (Diu v. Court of Appeals, 251 SCRA 472 [1995] at page 480). The moment private respondents sought possession of the mortgaged property by filing a motion of execution before the trial court, it was already manifest that they were not amenable to a settlement of the case. In fact, the Certification dated July 26, 1994 issued by the Barangay Captain that the matter had already been brought to the Office of the Barangay Captain would suffice. Private respondents have already exhibited their unwillingness to settle the matter, and referral of the controversy before the barangay, for the second time, will not only result in a circuitous procedure but will necessarily entail undue and further delay. This is inevitable if the Court should sustain the dismissal of the complaint and require the parties to meet before the barangay, only to bring the case all over again to the court for decision on the merits."[8]

Be that as it may, we hold that the Court of Appeals went a bit too far when it ruled that the respondent spouses Salcedo are entitled to recover their mortgaged land as the agreement to extend the term of their mortgage contained a pactum commissorium.

The only issue that was elevated to the Court of Appeals was whether the trial court correctly denied petitioner Marino's motion for execution on the ground of non-compliance with section 412 of the Local Government Code requiring barangay conciliation. At that point, petitioner Marino has yet to file his Answer where she could dispute the allegation that her "Agreement" with respondent spouses Salcedo constitutes a pactum commissorium. As she alleged in her memorandum filed before this Court, the "Agreement" which provided for the voluntary surrender of the mortgaged property to petitioner in case of non-payment of the obligation was entered upon on the face of foreclosure proceedings conducted by petitioner by virtue of the previous real estate mortgage. It only

seeks to avoid another foreclosure since a foreclosure proceeding was already conducted.[9] Its purpose was to give private respondents another extension in redeeming their property.[10] In her comment before the Court of Appeals, petitioner attached the Notice of Extra Judicial Sale dated November 14, 1991,[11] Affidavit of Publication of the Publisher of Olongapo News,[12] Certificate of Sale dated December 16, 1991[13] and a letter[14] dated September 27, 1993 from the Office of the Clerk of Court and City Sheriff of Olongapo to spouses Salcedo giving them fifteen (15) days to surrender the premises in view of the expiration of the period of redemption. The status of this prior foreclosure proceedings after the Court of Appeals declared that the "Agreement" contains a pactum commissorium is not revealed in the records of the case.

In contrast, respondent spouses Salcedo contend that the "Agreement" extended the lease contract. Thus, they construe the provision in their agreement which provides for the voluntary surrender of the land as a pactum commissorium since it directs the surrender of the property to petitioner in the absence of foreclosure proceedings.

We hold that the intention of the parties in executing the aforesaid "Agreement" is a question of fact which can only be ascertained if they will be both given a chance to present their respective evidence. Contrary to the ruling of the Court of Appeals, this issue cannot be resolved on the basis of the record before it. While the desire of the Court of Appeals to put a speedy end to the case at bar is commendable, nonetheless, the right of the petitioner to a full and fair hearing should not be compromised. As we held in Abalo vs. Civil Service Commission, et al.:[15]

> "The right to be heard is one of the brightest hallmarks of the free society. We should be proud that in this jurisdiction, every person who may be involved in a controversy is entitled to present his side, no less than his adversary, at a hearing duly called for that purpose. This right is available to citizen and alien alike, from the humblest to the most exalted, and covers with its protection the offer of arguments and evidence, from the profound to the absurd, in defense of one's life, liberty and property. That is a right we must all cherish."

IN VIEW WHEREOF, the Decision of the Court of Appeals and its resolution in CA-G.R. SP No. 48088 are affirmed insofar as they nullified and set aside the decision of the Regional Trial Court of Olongapo City, Branch 74, as well as the decision of the Municipal Trial Court in Cities, Branch 3, Olongapo City, in Civil Case No. 3568; but are set aside insofar as they declared respondents entitled to possession of the mortgaged property. Civil Case No. 3568 is remanded to the Municipal Trial Court in Cities, Branch 3, Olongapo City, for further proceedings.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] In CA-G.R. SP No. 48088 promulgated on October 28, 1998 and March 9, 1999, respectively.

[2] First Division.

[3] Rollo, pp. 38-42.

[4] Olongapo City, Branch 74.

[5] Rollo, pp. 44-45.

[6] Ibid., p. 47.

[7] Rollo, p. 20.

[8] Decision, p. 6; Rollo, p. 43.

[9] Rollo, pp. 101-102.

[10] C.A. Rollo, p. 45.

[11] Rollo of CA G.R. SP No. 48088, p. 77.

[12] Id., p. 78.

[13] Id., p. 79.

[14] Id., p. 80.

[15] 96 SCRA 81 (1991).

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