

SILVESTRE PINGOL AND RIZALINA REYES, PLAINTIFFS AND APPELLEES, VS. AMADO C. TIGNO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 14749, May 31, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Appellant spouses Amado C. Tigno and Flora M. Tigno appeal from an order of the Court of First Instance of Manila (in Civil Case No. 30773) confirming the sale in a foreclosure suit of a second mortgage, of their parcel of land covered by T.C.T. No. 9586, subject to a first mortgage in favor of the Rehabilitation Finance Corporation, as first mortgage of the same property, assigning as errors allegedly committed by the lower court, the following: 1. The lower court erred in failing to consider that the appellee failed to deny under oath the allegations of usury interposed by the appellants and in equally failing to consider that because of such omission, the appellees were deemed to have admitted said allegation. 2. The lower court erred in requiring evidence to be presented on the question of usury when, as aforesaid, the allegations of usury had already been deemed admitted by the appellees. 3. Assuming *arquendo* that the lower court was correct in requiring evidence on the question of usury despite appellees' admission, the lower court erred nevertheless in allowing counsel for the appellants to waive his clients' defense without their consent and authority. 4. The lower court erred in sentencing the appellants to pay to the appellees the inequitable and unconscionable amount of 25% of the amount due as attorney's fees and in sentencing the appellants to pay the costs of suit. 5. The lower court erred in confirming the sale conducted by the City Sheriff of Manila by its order of February 27, 1958 despite the clear showing that the price paid by the appellees was grossly inadequate.

It is not disputed that under the terms of the promissory note and the deed of second mortgage executed by the Tignos in favor of the appellee-spouses Silvestre Pingol and Rizalina Reyes-Pingol, the Tignos obligated themselves to repay the loan of P6,000.00 obtained from the former on July 28, 1955 three months from said date with interest at the rate of 1% per month until fully paid, plus a sum equivalent to 25% of the amount due for attorney's fees, as well as all expenses and judicial costs, in case collection through an attorney or court action is made necessary. On complaint of the Pingols because of the failure of the Tignos to settle the obligation after it had become due, and after the trial in the course of which counsel for defendant mortgagors waived his right to present evidence to substantiate their only defense of usury, the trial court, on May 28, 1957, rendered judgment requiring defendants Tignos to pay the plaintiffs or deposit in court within 90 days from notice of the decision, the total sum of P9,159.00, representing the principal obligation of P6,000.00; P1,140.00 as interest thereon at 1% per month from July 28, 1955; P1,785 as 25% attorney's fees; P200.00 as litigation expenses; and P34.00 for costs. The usury-charge was dismissed for lack of evidence.

No appeal was taken from this decision, notice of which was served on defendants' counsel on June 6, 1957. Defendants having failed to satisfy the judgment within the 90-day period, on motion of the plaintiffs and upon order of the court, the mortgaged property was sold in public auction by the Sheriff of Manila on December 13,

1957 in the presence of counsel for plaintiffs and defendant Amado C. Tigno, and awarded to plaintiffs as the highest bidders for P9,365.00, subject to the first and superior lien of the Rehabilitation Finance Corporation. The corresponding certificate of sale was issued by the Sheriff on the same date, December 13, 1957.

On January 4, 1958, plaintiffs filed a motion for the confirmation of the sale. This was opposed by defendants Tigno, represented by a new counsel claiming that the house and lot subject of the second mortgage and sold at public auction for only P9,159.00 (should be P9,365.00) was appraised by the Government lending institutions at around P30,000.00; that it was actually held by the Rehabilitation Finance Corporation, as first mortgagee, for P19,500.00, indicating that the property could be sold at a much higher price. Contending that the price for which it was sold was so inadequate as to shock judicial sensibilities, defendants prayed for the cancellation of the said sale.

The motion for confirmation was thereafter heard, on which occasion plaintiffs offered evidence to prove that the land and the building, should it be painted and the toilet fixtures installed, was appraised by the Government Service Insurance System (GSIS) at only P32,500.00. They also presented proof of their offer to the Rehabilitation Finance Corporation to assume defendants obligation which already amounted to P22,019.41, as of February 18, 1958. Upon the other hand, defendants presented Mr. C. S. Gonzales, a real estate broker, who testified that the property was worth from P60,000.00 to P65,000.00. The court, taking into account the fact that aside from their bid of P9,365.00, plaintiffs would also and did in fact assume defendants' obligation to the Rehabilitation Finance Corporation in the sum of P22,019.41, or a total of P31,178.41, and finding the same not inadequate as to shock judicial sensibilities, confirmed the sale. Their motion for reconstruction having been denied, defendants interposed the present appeal.

As will be noted, the first four assignments of error refer to or assail the judgment on the merits. However, since no appeal therefrom has been interposed and the same has already become final, it is now too late to raise the questions posed in these assignments: Hence, the only issue to be determined in this appeal is whether the lower court erred in confirming the sale at public auction of the property involved in this case.

In assailing the order of confirmation, appellants claim that the sum of P9,365.00 for which the mortgaged property was awarded to the appellees Pingol, is so inadequate compared to its supposed real value that it is shocking to judicial sensibilities. It must be remembered, however, that the second mortgage in favor of appellees was made subject to the first and superior lien of the Rehabilitation Finance Corporation. It is for this reason that aside from their bid, appellees offered to assume, and in fact started paying, appellants' obligation to the said lending institution. When appellees proposed to buy the property for P9,365.00, "recognizing the senior and first lien of the RFC", they actually bound themselves to pay an additional P22,019.41, plus whatever interest or charges that may still accrue in the meantime. True it may be, that Mr. C. S. Gonzales placed its market value between P60,000.00 and P65,000.00. Yet such appraisal cannot be treated with conclusiveness and finality, because as testified to by said witness, he has not sold any real property in the vicinity where the property involved herein is situated. But even granting *arguendo* that the property actually commands such price, the bid received during the public sale plus the lien in favor of the first mortgagee that must be assumed, is certainly not so grossly inadequate or disproportionate to its actual market value as to shock the minds of impartial men, especially if we take note of the fact that appellants' indebtedness to the Rehabilitation Finance Corporation assumed by the appellees, is earning a daily interest of P3,587.3. By reason of the foregoing, and there being no allegation that fraud, accident, mutual mistake, breach of trust or misconduct on the part of the purchaser attended the sale, we find no reason to interfere with the action taken by the lower court.[1]

Wherefore, the appealed order confirming the sale of the property at public auction is hereby affirmed, with costs against the defendants-appellants. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur. Reyes, J.B.L., and Endencia, JJ., on leave, took no part.

[1] Phil. National Bank vs. Gonzales, 45 Phil., 698.

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