

DARIA GONZALES VDA. DE TOLEDO, PETITIONER, VS. ANTONIO TOLEDO, LELITA TOLEDO, MAURO SUMULONG, OLIVA SUMULONG, PILAR TEVES, AS PRESIDENT AND MANAGER, RURAL BANK OF CARMEN (CEBU),...

G.R. No. 149465. December 08, 2003

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

The property under litigation is a residential land with improvements thereon, consisting of 167 square meters, situated in Poblacion, Danao City, and covered by Tax Declaration No. 34951.[1]

On December 26, 1973, petitioner Daria Gonzales Vda. de Toledo executed a Special Power of Attorney authorizing her stepson, Antonio Toledo, to obtain loan from a bank and mortgage the subject property as security therefor.[2] On January 4, 1974, Spouses Antonio and Lelita Toledo obtained a loan from Rural Bank of Carmen (Cebu) Inc. in the amount of P2,467.80 secured by a real estate mortgage constituted on subject property.[3]

The Toledo spouses failed to pay their loan to the Bank despite several demands.[4] Hence, on July 6, 1981, the Bank extrajudicially foreclosed the mortgage. Accordingly, the property was sold at public auction, with the Bank as the sole and highest bidder. Correspondingly, the Bank was issued a Certificate of Sale[5] upon satisfaction of the obligations of spouses Toledo in the amount of P5,014.00, including interests, penalty, attorney's fees and miscellaneous expenses.[6] The sale was registered with the Register of Deeds of Danao City on September 23, 1981.

Spouses Toledo failed to redeem the subject property, thus the Bank caused the consolidation of ownership and the execution of the final deed of sale in its favor on November 16, 1983.[7] On August 23, 1985, the Bank sold the said parcel of land to Spouses Mauro and Oliva Sumulong.[8] However, petitioner remained on the property together with spouses Toledo.

On February 18, 1986, petitioner filed a complaint against the Spouses Toledo and the Rural Bank of Carmen (Cebu), Inc., and the Spouses Sumulong, for Declaration of Nullity of Extrajudicial Foreclosure of Mortgage and Sales, Reconveyance with Damages before the Regional Trial Court of Cebu, Branch XXV, docketed as Civil Case No. DNA-48.[9] She alleged that the Toledo spouses preconceived a malicious, sinister and scheming idea to induce her to execute a Special Power of Attorney to mortgage her property to the Bank and, thereafter, connived with the Sumulong in foreclosing the mortgage. It appears that previously, or on November 18, 1985, petitioner deposited P5,200.00 with the Bank in order to redeem the subject property.[10]

On June 11, 1993, the trial court rendered a decision[11] declaring the extra-judicial foreclosure proceedings of the subject property a total nullity. Consequently, the Certificate of Sale, Consolidation of Ownership and Final Deed of Sale and the Deed of Absolute Sale executed by the Bank in favor of the Sumulong spouses were declared null and void, thus: [12]

WHEREFORE, premises considered, judgment is hereby rendered declaring the Extra-Judicial Foreclosure proceedings of plaintiff's property a total nullity, consequently, the Certificate of Sale (Exh. "7-Bank"), Consolidation of Ownership and Final Deed of Sale (Exh. "8"-Bank), and the Deed of Sale executed by defendant Rural Bank of Carmen in favor of defendants spouses Mauro Sumulong and Oliva Sumulong (Exh. "9"-Bank) are hereby declared null and void, and for which reason, the defendants spouses Mauro and Oliva Sumulong are hereby directed to reconvey the property subject of the foreclosure sale and the Deed of Absolute Sale (Exh. "9"-Bank) in favor of the plaintiff by directing the defendant Rural Bank of Carmen to return to said defendants-spouses the amount of P5,000.00 as consideration thereof and, in turn, accepting the deposit of P5,200.00 made by plaintiff with said defendant Bank (Exh. "A") and returning the balance of P200.00 to the plaintiff; ordering the City Assessor of Danao City to cancel Tax Declaration No. 02391 (Exh. "2"-Sumulong) in the name of Spouses Oliva Sumulong and Mauro Sumulong and issue another tax declaration, in lieu thereof, in the name of plaintiff Daria G. Toledo; ordering finally, the defendants to pay, jointly and severally, to the plaintiff the sums of P20,000.00 as moral damages, P20,000.00 as exemplary damages and P10,000.00 as attorney's fees, and to pay the costs of the suit.

The counterclaims are hereby dismissed.[13]

Defendants appealed to the Court of Appeals which rendered a decision on July 24, 2001, the dispositive portion of which reads:

WHEREFORE, premises above considered and pursuant to applicable law and jurisprudence on the matter and evidence on hand, judgment is hereby rendered granting the appeal. The assailed decision of court a quo is hereby REVERSED and SET ASIDE and a new one entered dismissing the complaint filed before the trial court by plaintiff-appellee against defendants-appellants in Civil Case No. DNA-448. No costs.[14]

Hence, the instant petition for review on the following assignment of errors:

- THE COURT OF APPEALS APPLIED WRONGLY THE PROVISIONS OF SECTION 3, ACT 3135 AS AMENDED TO THE SITUATION PREVAILING IN THE CASE
- THE COURT OF APPEALS WRONGLY APPLIED SECTION 5, R.A. NO. 720 AS AMENDED TO THE SITUATION PREVAILING IN THE CASE
- THE COURT OF APPEALS ERRED IN DISREGARDING THE FAILURE OF RESPONDENT RURAL BANK OF CARMEN, CEBU TO COMPLY WITH SEC. 3305.1 OF THE CENTRAL BANK MANUAL OF REGULATIONS BOOK III
- THE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT THE DEED OF ABSOLUTE SALE EXECUTED BY THE PRESIDENT/MANAGER OF RESPONDENT RURAL BANK OF CARMEN, CEBU IN FAVOR OF RESPONDENTS SPOUSES MAURO AND OLIVA SUMULONG WAS NULL AND VOID BECAUSE IT DID NOT SHOW THAT ITS BOARD OF DIRECTORS GAVE HER AUTHORITY TO DO SO.[15]

We find merit in the petition.

At the outset, we noted that for failure to submit proof of service,[16] petitioner's motion for extension of thirty (30) days from August 15, 2001 within which to file the petition was denied. Thus, when petitioner filed the instant petition on September 13, 2001, it was filed out of time. This procedural lapse on the part of petitioner would have warranted the outright dismissal of the petition. However, in *Sebastian and Cardenas v. Morales, et al.*,[17] we held:

Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the Rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however that procedural rules are to be ignored or

disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsically in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.

x x x Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. x x x

In the instant case, we recognize the need to relax the rules of procedure to relieve the petitioner of an injustice not commensurate with her failure to comply with the rules. For this reason, the case shall be decided on the merits.

Section 3, Act 3135, as amended provides:

Notice shall be given by posting notices of sale for not less than twenty days in at least three public places in the municipality where the property is situated, and if such property is worth more than four hundred pesos, such notice shall be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city. (*Italics Supplied*)

Corollary thereto, Section 5 of Republic Act No. 720 as amended by Republic Act No. 5939[18] reads:

The foreclosure of mortgages covering loans granted by rural banks shall be exempt from the publication in newspapers where the total amount of the loan, including interests due and unpaid, does not exceed three thousand pesos. It shall be sufficient publication in such cases if the notices of foreclosure are posted in at least three of the most conspicuous public places in the municipality and barrio where the land mortgaged is situated during the period of sixty days immediately preceding the public auction. Proof of publication as required herein shall be accomplished by affidavit of the sheriff or officer conducting the foreclosure sale and shall be attached with the records of the case: x x x. (*Emphasis supplied*)

The foregoing provision, in exempting foreclosures by rural banks from the publication requirement when the total amount of the loan including interests due and unpaid does not exceed three thousand pesos (P3,000.00), clearly refers to the total amount of the loan along with interests and not merely the balance thereof.

At the time of foreclosure in the case at bar, the total amount of petitioners' loan including interests due and unpaid with the Bank was P4,652.80.[19] Clearly, therefore, publication of notices of auction sale in newspapers of general circulation in the city or municipality where the property is situated was necessary.

Undisputedly, the Bank did not publish the notices of auction sale in a newspaper of general circulation. It merely posted the notices of auction sale in three conspicuous places including where the property was located. Considering that the auction sale of the subject property to the Bank is void, no valid title passed in its favor. Consequently, the sale of the same property to spouses Sumulong is also a nullity. *Nemo dat quod non habet*. One cannot give what one does not have.[20]

In *Lucena and Paraless v. Court of Appeals, Rural Bank of Naujan, et al.*,[21] this Court ruled that failure to comply with statutory requirements as to publication of notice of auction sale constitutes a jurisdictional defect which invalidates the sale. Even slight deviations therefrom are not allowed.

The Sumulong spouses, nevertheless, argue that assuming the Bank's title over the contested property is a nullity, they were nevertheless innocent purchasers for value who have better rights than the petitioner. One is considered an innocent purchaser who acquired the property for a valuable consideration not knowing that the title of the

vendor or grantor was null and void.[22]

The evidence on record shows that the Sumulong spouses are not purchasers in good faith. Well-settled is the rule that the person who asserts the status of a purchaser in good faith and for value has the burden of proving such assertion.[23] The Sumulongs failed to discharge this burden.

It appears that the Sumulongs did not make any reasonable inquiry regarding the status of the land in question, despite being aware that the property was still in the possession of the petitioner and respondent spouses Toledo. Indeed, petitioner and spouses Toledo occupied the same house on the subject property. The Sumulongs did not exert any effort to communicate directly with petitioner.

All that the Sumulongs did was to rely on the title of the Bank. They, however, had notice that possession of the property was with a person other than the vendor bank. It was thus incumbent upon them to look beyond the title to the subject property and make the necessary inquiries. This they neglected to do.

A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.[24]

In *De Guzman, Jr. v. Court of Appeals*,[25] we held that the failure of appellees to take the ordinary precautions which a prudent man would have taken under the circumstances, specially in buying a piece of land in the actual, visible and public possession of another person, other than the vendor, constitutes gross negligence amounting to bad faith. One who purchases real property which is in the actual possession of another should, at least make some inquiry concerning the right of those in possession. The actual possession by a person other than the vendor should, at least put the purchaser upon inquiry. He can scarcely, in the absence of such inquiry, be regarded as a bona fide purchaser as against such possessors.[26]

Having arrived at the conclusion that the petitioner is still entitled to reconveyance of the subject property, we find it no longer necessary to pass upon the third and fourth issues raised by the petitioner.

All told, the auction sale of the subject property is null and void for failure of Rural Bank of Carmen (Cebu) Inc. to comply with the statutory requirements on publication of the notices of sale. The Bank did not acquire title over the said property and it transferred no valid title to Spouses Mauro and Oliva Sumulong who were not bona fide purchasers thereof. The property not having passed to innocent purchasers for value, reconveyance is still available.[27]

With respect to the damages awarded, the trial court correctly held that there is no convincing proof to support petitioner's allegation that she incurred P3,000.00 as actual damages. In determining actual damages, the court cannot rely on mere assertions, speculations, conjectures or guesswork but must depend on competent evidence and on the best evidence obtainable regarding the actual loss.[28] Likewise, the trial court soundly exercised its discretion when it awarded moral damages in the amount of P20,000.00, based on the circumstances of the case at bar.[29] However, there is no factual basis for the award of exemplary damages. Petitioner failed to establish that the Bank colluded with the Toledo spouses and the Sumulong spouses in depriving her of the parcel of land in question.

WHEREFORE, the petition is GRANTED. The July 24, 2001 Decision of the Court of Appeals is REVERSED and SET ASIDE. The July 11, 1993 Decision of the Regional Trial Court of Danao City, Branch 25 in Civil Case

No. DNA-48, which found the extra-judicial foreclosure proceedings of the subject property a total nullity and declared the Certificate of Sale, Consolidation of Ownership and Final Deed of Sale and the Deed of Absolute Sale executed by the Rural Bank of Carmen (Cebu) Inc. in favor of spouses Mauro and Oliva Sumulong null and void, is REINSTATED with the MODIFICATION that the award of exemplary damages in favor of the petitioner is DELETED for lack of factual basis.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Records, p. 11.

[2] Id., p. 12.

[3] Id., p. 13.

[4] Annexes "L-N," Rollo, pp. 127, 129 and 131.

[5] Records, p. 14.

[6] Id., p. 398.

[7] Id., p. 391.

[8] Id., p. 393.

[9] Id., pp. 1-10.

[10] Id., p. 394.

[11] Penned by Judge Jose P. Soberano, Jr.

[12] Records, p. 427.

[13] Rollo, pp. 98-99.

[14] Id., pp. 111-112.

[15] Id., p. 21.

[16] Specifically the affidavit of the party serving the petition which is required under Section 13, Rule 13, 1997 Rules of Civil Procedure.

[17] G.R. No. 141116, 17 February 2003.

[18] An Act Providing for the Creation, Organization and Operation of Rural Banks, and for other purposes.

[19] P2,467.80 as principal, interest of P300.00 and past due interest of P1,815.00.

[20] Philippine Bank of Communications v. Court of Appeals, et al., G.R. 120109, 366 SCRA 324 (2001).

[21] G.R. No. L-77468, 313 SCRA 47 (1999), see also Borja v. Addison, 44 Phil. 895 (1922) and Campomanes v. Bartolome, et al., 38 Phil. 808 (1918).

[22] River v. Moran, 48 Phil. 836 (1926).

[23] Mathay v. Court of Appeals, G. R. No. 115788, 295 SCRA 556, 575 (1998).

- [24] Leung Yee v. Strong Machinery Co., 37 Phil. 644, 651 (1918).
- [25] G.R. No. L-46435, 156 SCRA 701 (1987).
- [26] Conspecto v. Fruto, 31 Phil. 144 (1915).
- [27] Clemente v. Lukban, 53 Phil. 93 (1929).
- [28] Barzaga v. Court of Appeals, G.R. No. 115129, 268 SCRA 105, 113-114.
- [29] Singson v. Court of Appeals, 282 SCRA 149, 163.

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