

ERNESTO SALAZAR AND SOLEDAD G. DE SALAZAR, PLAINTIFFS AND APPELLANTS, VS. FLOR DE LIS MENESES, AVELINO SEBASTIAN, TERESA DE LOS REYES, ERNESTO DIZON, GONZALO DIZON, LEONARDO DIZ...

G.R. No. 15378. July 31, 1963

Ponente: DIZON, J.

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DIZON, J.:

On May 29, 1950, Antonio Dizon, married to Teresa de los Reyes, and registered owner of a parcel of land and its improvements situated at M. Natividad St., Manila covered by Transfer Certificate of Title No. 76223 of the Registry of Deeds of said city, mortgaged the same in favor of Flor de Lis Meneses to secure the payment of a loan of P6,000.00. When this amount was increased to P7,000.00, he executed a supplementary mortgage on the same property on June 6, 1950. Both mortgages, duly registered on June 1 and June 9, 1950, respectively, contained an irrevocable special power of attorney authorizing the mortgage, in the event of foreclosure, to sell the property and execute deeds in connection therewith.

As the mortgagor failed to pay the principal obligation upon maturity, the mortgagee foreclosed the mortgage extrajudicially and the property was sold by the Sheriff of Manila at public auction on October 29, 1954 to Flor de Lis Meneses herself, the highest bidder. The corresponding certificate of sale executed by the Sheriff of Manila in her favor specifically fixed the one-year period of redemption from October 29, 1954 to October 30, 1955, but it was registered in the office of the Register of Deeds of Manila only on May 26, 1956. The sheriff return was likewise registered only on May 30, 1956.

As on August 23, 1955 Antonio Dizon died intestate, on October 31 of the same year the spouses Ernesto Salazar and Soledad G. de Salazar, claiming to be his creditors, commenced Special Proceedings No. 28021 in the Court of First Instance of Manila for the settlement of his estate and filed their claim therein. The same was approved by the probate court on August 3, 1956.

On May 24, 1956, no redemption of the mortgaged property having been made, the mortgagee-purchaser, as attorney-in-fact of the deceased mortgagor, executed an absolute deed of sale of the property in her favor and of her husband, Avelino Sebastian, which deed was restored on May 26 of the same year. As a result, Transfer Certificate of Title No. 76223 was cancelled and Transfer Certificate of Title No. 43748 was issued in the name of the purchasers.

On October 1, 1956, the Salazar spouses commenced Civil Case No. 30767 in the Court of First Instance of Manila against Flor do Lis Meneses and her husband Avelino Sebastian, the heirs of the deceased Antonio Dizon and the Philippine Trust Co., as administrator of his estate, to annul the deed of sale executed by Flor de Lis Meneses in her favor and to compel her to permit them to redeem; the mortgaged property.

After due trial, the Court rendered judgment dismissing their complaint. Hence this appeal.

The issue decisive of this appeal is the one raised by appellants in their third assignment of error, which is to this effect; that the lower court erred in not holding that the period of redemption in this case, as far as appellants are concerned, started only on May 26, 1956, the date when the certificate of sale issued by the sheriff was registered. Should we rule to this effect, it is clear that when appellants attempted to exercise their right to redeem, as judgment creditors of the deceased mortgagor by judgment subsequent to the extrajudicial foreclosure sale, and when they instituted the present action on October 1, 1956, the period of redemption had not yet expired.

We find appellants contention to be meritorious. In the case of *Agbulos vs. Alberto*, G. R. No. L-17483, promulgated on July 31, 1962, we held:

"The property involved in the present case is registered land. It is the law in this jurisdiction that when property brought under the operation of the land Registration Act is sold, the operative act is the registration of the deed of conveyance. The deed of sale does not 'take effect as a conveyance, or bind the land' until it is registered (Section 50, Act No. 496; *Tuason vs. Raymundo*, 28 Phil. 635; *Sikatuna vs. Guevara*, 45 Phil. 371; *Worcester vs. Ocampo*, 34 Phil. 646). Undoubtedly, to be in consonance with this well settled rule, Section 24, Rule 39 of the Rules of Court, provides that a duplicate of the certificate of sale given by the sheriff who made the auction sale to the purchaser must be filed (registered) in the office of the register of deeds of the province where the property is situated.

"In *Garcia vs. Ocampo*, 105 Phil., 1102, we held that the twelve months period of redemption provided for in Sec. 26, Rule 39 of the Rules of Court 'begins to run not from the date of the sale, but from the time of registration of the sale in the office of the register of deeds.' The entry or annotation made on the back of the certificate of title of the property in question on July 18, 1959 (*supra*) was in accordance with this ruling when it provided that the execution sale was 'subject to redemption within one (1) year from registration hereof.'

"A case similar to the present is that of *Gonzales et al. vs. Philippine National Bank et al.*, 43 Phil. 824, where we held that the provision of Section 32, Act 2938 (Chapter of the Philippine National Bank) providing for a right of redemption in favor of the bank's mortgagor 'within one year after the sale of the real estate as a result of the foreclosure' should be construed to mean one year after the confirmation of the foreclosure sale, because the sale becomes valid only after confirmation. Along the same line we may say in this case that the period of one year after the sale must likewise start only from the date of registration of the certificate of sale, because it is only then that the certificate takes 'effect as a conveyance' in accordance with Act 496."

The above ruling is squarely applicable to the present case which involves also registered land, inspite of the fact that the sale in question is not an execution sale but a foreclosure sale.

In view of the above conclusion, we find it unnecessary to resolve the other assignment of errors submitted in appellants' brief.

Wherefore, the decision appealed from is reversed and, as a result, the final Deed of Sale executed by Flor de lis Meneses in her favor and in that of her husband, mentioned heretofore, is annulled, and said party is ordered to permit appellants to redeem the property, which right the latter should exercise within thirty (30) days from the time the present decision has become final and executory. With costs.

Bengzon. C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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