

VICTORIANO L. REYES, ET AL., PETITIONERS, VS. JUDGE GUSTAVO VICTORIANO, ET AL., RESPONDENTS.*G.R. No. 15435. April 27, 1960*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari praying that the order of respondent judge dated August 9, 1958, directing the issuance of a writ of execution in Civil Case No. 23757 of the Court of First Instance of Manila and all subsequent proceedings incident thereto, including the issuance of a new title covering the property involved by the office of the register of deeds, be declared null and void.

Petitioners allege that on May 30, 1958, this Court rendered decision in G. R. No. L-12081, entitled *Lorenzo Lerma vs. Victoriano L. Reyes, et al.*, (103 Phil., 1027; 56 Off. Gaz. [15] 3059) affirming that of the trial court ordering that "at the expiration of ninety (90) days from the date of this decision has become final and upon defendants' failure to satisfy this decision, the sheriff shall proceed to sell the property mortgaged at public auction, as the law provides, and the proceeds of the sale shall be applied in satisfaction of this decision, after the expense of. the sheriff has been deducted from said proceeds." Copy of this decision was received by petitioners on June 9, 1958. On July 22, 1958, the record of the case was remanded to the court of origin.

On August 9, 1958, respondent judge issued an order directing the issuance of a writ of execution to enforce the judgment, and on September 29, 1958 the Sheriff of Manila sold at public auction the mortgaged property to satisfy the judgment in accordance with law. On November 11, 1958, respondent judge issued an order confirming the sale. And on January 6, 1959, the mortgaged creditors who bought the properties at the auction sale filed a petition for writ of possession.

Upon receipt of this petition for writ of possession, petitioners filed an opposition thereto praying for the annulment of the auction sale as well as all other proceedings had in the case incident thereto contending that the same are contrary to Rule 70, Section 3 of the Rules of Court which gives to the mortgaged debtors the right to redeem the land within a period of one year from the date of the sale. This opposition was later supplemented by a reply on February 7, 1959 wherein petitioners contended that the period of 90 days provided in the decision has not yet expired when plaintiffs filed their petition for writ of execution and the trial court issued its order granting the same as well as when the auction sale took place on September 29, 1958, all contrary to the provisions of Section 2, Rule 70 of the Rules of Court. This opposition, as well as the motion for annulment of all the proceedings, was denied by the trial court on March 6, 1959. And when their motion for reconsideration was denied, they interposed the present petition for certiorari.

Respondents, in their answer, set up the following defenses: (1) that a complete history of the case will show that they are already the legal owners of the property in question and that the requisite periods prescribed by law had been complied with; (2) that all the orders issued by the trial court are legal and proper and were made pursuant to Rule 70, Sections 2 and 3, of the Rules of Court, and defendants, now petitioners, not having appealed from said

orders, the same have become final and incontestible; (3) that petitioners are guilty of estoppel in not objecting to the petition for execution, to the auction sale carried out by the sheriff, to the petition to confirm said auction sale filed by respondents, and to the petition for withdrawal of the certificate of title so that a new one may be issued in the name of respondents; (4) that petitioners are guilty of laches and cannot be heard to complain against the orders which they have allowed to pass unchallenged for a long time during which the transfer of ownership to respondents has been accomplished and consolidated; and (5) the petition for annulment of the auction sale and of all proceedings incident thereto dated January 22, 1959 is without merit for it is based on the claim that they have a period of one year from the sheriff's auction sale within which to redeem the foreclosed property, and that the new ground on which they now predicate the present petition for certiorari that the 90-day period mentioned in the decision has not yet expired when the motion for execution was filed, is irrelevant and immaterial, for they are now precluded from raising the same under the Rules of Court.

The issue posed by petitioners is whether or not the period of 90 days granted in the decision within which they may pay their obligation before foreclosure sale, may be omitted or ignored, or whether petitioners may be deprived of their right thereto. They contend that they cannot be deprived of that right for that would be contrary to the letter of Section 2, Rule 70 of the Rules of Court.

Here, they contend, they were deprived of that right, for, as the record shows, the case was remanded to the trial court on July 22, 1958 while respondent judge issued the order of execution on August 9, 1958, which shows that the intervening period is less than 90 days; as in fact only 18 days had elapsed from July 22, 1958. The same is true with regard to the public auction sale made by the sheriff on September 29, 1958, because from July 22, 1958 to September 29, 1958 only 69 days had elapsed. Likewise, the 90-day period had not yet expired from July 22, 1958 to October 8, 1958, when the Sheriff of Manila issued the certificate of sale of the mortgaged property, as 78 days only have elapsed between the intervening period.

Respondents, however, contend that all the orders issued by the trial court are legal and proper and were made pursuant to Rule 70, Sections 2 and 3 of the Rules of Court, and in support of, their contention, they advanced the following facts: According to the decision which is sought to be enforced, "at the expiration of ninety (90) days from the date of this decision has become final and upon defendants' failure to satisfy this decision, the sheriff shall proceed to sell the property mortgaged at public auction." Here the decision became final on June 24, 1958, for, as the record shows, both parties received copy of the decision on June 9, 1958. The decision says that the sheriff shall proceed to sell the property upon the expiration of 90 days from the finality of the decision if no payment is forthcoming, and as no payment was forthcoming, upon petition of respondents, the sheriff proceeded to sell the property on September 29, 1958, or after the lapse of 97 days from June 24, 1958. The sale, therefore, was made not only in accordance with the decision, but also with the Rules of Court.

We agree with the claim, of respondents. Since it appears from the decision that the sheriff may proceed to sell the property mortgaged after the decision has become final and petitioners have not paid their obligation within the period of 90 days, there is nothing improper for the sheriff to carry out the sale on September 29, 1958 considering that on that date the 90-day period has already elapsed from the finality of the decision. It is true that when respondents filed their motion for writ of execution or to sell the mortgaged property on July 29, 1958 the reglementary period of 90 days has not yet expired, which indeed is premature for it has a tendency to deprive petitioners of the benefit of that period, but the ones to be blamed therefor are petitioners themselves who did not oppose the granting of that petition on legal grounds although their attorney merely appeared to ask for postponement of its consideration. And so the petition was granted. Then came the auction sale announced by the sheriff, and again no opposition came from petitioners, or their counsel. And when the sheriff filed a petition for the confirmation of the sale and the approval of the certificate he issued to the purchaser, neither petitioners, nor

their counsel, opposed the petition despite the fact that they were served with a copy of the same. They only woke up to assert their right when respondents filed a motion praying that they be placed in possession of the property. It was only then that petitioners impugned for the first time the validity of the proceedings claiming that the same have been undertaken contrary to the provisions of Rule 70, Section 2 of the Rules of Court. They are, therefore, guilty of laches, if not of estoppel, in the protection of their right, and as such they alone can be blamed for the consequences.

We are of the opinion that the premature petition for writ of execution filed by respondents is of no consequence it appearing that the auction sale took place actually much after the expiration of the 90-day period prescribed in the rule. This is more so when there is nothing in the record to show, that petitioners have made any attempt to settle their obligation during the intervening period, or have made any tender of payment thereof, or made a deposit of the money as required by law to prevent the execution sale. All this cannot but engender the suspicion that the steps taken by petitioners are merely dilatory in nature and were taken in an attempt to prolong their stay in the properties in question to the prejudice of respondents. The present petition, therefore, is without merit.

Wherefore, the petition is denied, with costs against petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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