PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. MANUEL ERNESTO GONZALEZ, DEFENDANT AND APPELLEE. SATURNINO LOPEZ, BUYER AND APPELLANT.

G.R. No. 21026. February 13, 1924

Ponente: JOHNS, J.

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JOHNS, J.:

November 23, 1921, the Philippine National Bank commenced a suit against Manuel Ernesto Gonzalez to foreclose a real mortgage made to secure a promissory note for P15,000. March 17, 1922, the plaintiff bank filed an amended complaint against the same defendant, in which the original was reproduced, to foreclose a second mortgage for P15,000 upon the same land described in the original complaint. The defendant was duly served in both proceedings with both the original and amended complaints, and made defaults in both cases. On April 21, 1922, the bank filed a motion for default. August 8, 1922, the court declared the defendant in default, and set the case for hearing on August 23, 1922, at which time the bank appeared and presented proofs of all the facts alleged in its original and amended complaints. August 28, 1922,, the court rendered judgment in favor of the bank and against the defendant, requiring him within three months from that date to pay the plaintiff the amount of the two mortgages in question, together with the interest and costs, and that in default thereof, execution should be issued for the sale of the property to satisfy the judgment. December 7, 1922, and for want of any payment, the plaintiff moved the court for an execution, and on January 11, 1923, an execution was issued for the sale of the real property described in the mortgages to satisfy the amount of the judgment. On August 28, 1922, the total of the judgment in the first cause of action, including the interest, was P17,313.59, and in the second mortgage, on the same date, it was P17,755.

The property advertised for sale was evidenced by Torrens Certificate of Title and described in Exhibits A, B and C, of which Exhibit A contains 3,657,703 square meters, Exhibit B 1,335,505 square meters and Exhibit C 263,765 square meters. Pursuant to the execution the property was duly advertised for sale, and that described in Exhibits B and C was sold to Saturnino Lopez, the appellant here, for P15,000, that being the highest bid, and he being the highest bidder.

February 16, 1923, the sheriff filed a motion to confirm the sale to Lopez, which was set down for hearing on March 9, 1923, and due notice was given to all the parties in interest. At a hearing on that date, the court made an order duly confirming the sale.

April 5, 1923, the defendant Gonzalez, through his then attorney, filed the following motion:

"Comes now the defendant and to the Honorable Court respectfully shows that he applies for a reconsideration of the order entered in this case under date of March 9, 1923, confirming the sale at public auction made by the deputy provincial sheriff Mr. Jose V. Lopez in favor of Mr. Saturnino Lopez of the two parcels of land included in certificate of title No. 5136 of the property of the defendant and judgment debtor Mr. Manuel Ernesto Gonzalez. This motion is based on the following ground:

"That said order is not in accordance with law"

It was set down for hearing on April 7, 1923, and notice was duly given. April 16, 1923, the court rendered a decision in which he found as a fact that all of the necessary requisites for the notice of sale had been duly complied with but that it appeared that the value of the land, which was sold to the appellant, was P45,940, for which he did only P15,000, and on account of this difference in value for taxation purposes and the value for which the land was sold, the court set aside the confirmation, and ordered a resale "thereby giving the aforesaid defendant a greater opportunity in order that he may obtain a better price, if possible, from the sale of the aforesaid lands." From that order, Lopez appeals, assigning as error that "the trial court erred in setting aside, without good cause having been shown, the prior order confirming the judicial sale, and ordering the resale of the land in question."

JOHNS, J.:

That is the only question involved on this appeal. It will be noted that in the first instance, the trial court confirmed the sale on the motion of the sheriff, and that in the last order, he specifically found as a fact that there had been a compliance of all of the essential requisites for a sale on execution, and that the order, confirming the sale, was set aside upon the sole ground of inadequacy of consideration. It will also be noted that, in the motion to set aside the sale, the only ground specified is "that order is not in accordance with law." In other words, in the motion itself no grounds are specifically set forth or alleged as to why the sale should be set aside, and that in the body of the motion, it is not claimed that the land was sold for an inadequate consideration.

Although the trial court set aside the sale "for the pur- pose of avoiding exorbitant damages to said defendant," the only evidence presented at the hearing on the motion as to the value of any land was the certificate of the municipal and deputy treasurer of Santo Tomas, Pangasinan, of date March 26, 1923, to the effect that four pieces of land of the defendant Gonzalez contain 162 hectares, 4 ares, and 26 centares, and had a combined assessed valuation of P45,940.

Not a witness was called to testify as to the value of the land. In other words, the only evidence before the court as to value was the certificate of the deputy municipal treasurer, and that was to the effect that the four pieces of land therein described had an assessed valuation of P45,940. Neither was there any showing made nor any evidence presented, that, in the event the property in question was resold, that it would sell for more than P15,000.

That as to the land in question, it appears of record that on August 28, 1922, the amount of the bank's judgment was P17,313.59. It also appears that the bank was personally represented at the sale, and that it refused to bid more than P15,000. For such reason, the property was sold to Lopez, as the highest bidder. In other words, it appears of record that the bank itself consented and agreed to the sale of the property in question for more than P3,000 less than the amount of its claim.

The only ground specified in the motion of April 5, 1923, is "that said order is not in accordance with law." No other grounds are pointed out or assigned, and the order of the court setting aside the sale was based upon that motion.

The rule is fundamental that the confirmation of a sale, or the setting aside of the confirmation, is largely a matter in the discretion of the trial court, and section 257 of the Code of Civil Procedure provides:

"* * * Should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law."

In the instant case, the court in its original order confirmed the sale and later set it aside upon a motion, specifying

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"that said order is not in accordance with law." In setting the sale aside, the court finds that "although the requisites prescribed for the sale at public auction of the land were complied with," it set aside the sale for inadequacy of consideration without any proof as to the value of the land, except the assessed valuation, or without any showing whatever that, in the event of a resale, the property would sell for more money. It also appears that the bank was represented at the sale, and that it consented and agreed to the sale of the property in question to Lopez for P3,000 less than the amount of its claim. It also appears that the suit to foreclose was commenced on November 23, 1921; that the judgment was rendered by default August 28, 1922; and that the property was not sold until February 14, 1923. In other words, Gonzalez had sixteen months after the suit was commenced to find a purchaser that would be ready, able, and willing to pay the amount of the mortgage, and stop the sale, and when the property in question was actually sold, it sold for P3,000 less than the amount of the bank's claim. We frankly concede that the trial court has a large discretion in setting aside and confirming the sale of real property, and that, where a proper motion is filed, and the evidence tends to support the motion, the decision of the trial court should be final. Be that as it may, the motion to set aside the confirmation should point out and specify why it should be set aside, and there should be reasonable evidence in the record tending to support the motion. In the instant case, the motion upon which the court based its action does not specify or point out a single reason why the confirmation should be set aside. Neither is there any evidence to sustain the motion. The rule is well stated in Graffam and Doble vs. Burgess (117 U. S., 180), in which the syllabus says:

"A judicial sale of real estate will not be set aside for inadequacy of price, unless the inadequacy be so great as to shock the conscience, or unless there be additional circumstances against its fairness.

"If the inadequacy of price paid for the purchase of real estate at a sale on an execution be so gross as to shock the conscience, or if in addition to gross inadequacy the purchaser has been guilty of unfairness or has taken any undue advantage, or if the owner of the property or the party interested in it has been for any other reason misled or surprised, then the sale will be regarded as fraudulent and void, and the party injured will be permitted to redeem the property sold."

The same principle is laid down by this court in Warner, Barnes & Co. vs. Santos (14 Phil., 446), in which the syllabus says:

" * * * That a judicial sale of real estate in an action to foreclose will not be set aside for inadequacy of price, unless the inadequacy be so great as to shock the conscience or unless there be additional circumstances against its fairness."

Ruling Case Law, vol. 16, page 100, says:

"It is by no means a matter of discretion with the court to rescind a sale which it has once confirmed, nor is the sale to be rescinded for mere inadequacy of price, or for an increase of price alone, irregularity, and the like. Some special ground must be laid such as fraud and collusion, accident, mutual mistake, breach of trust, or misconduct upon the part of the purchaser, or other party connected with the sale, which has worked injustice to the party complaining and was unknown to him at the time the sale was confirmed."

In the instant case, there is no claim or pretense that there was any fraud or collusion, or that in any way Gonzalez was misled or deceived. The bank was personally represented at the sale, and there is no showing whatever that, if the property was resold, it would sell for a centavo more than the P15,000.

For such reasons, the judgment of the trial court, setting aside the confirmation of the sale, is reversed, and the sale will stand affirmed as of the date of the original confirmation by the trial court, with costs in favor of the appellant. Such judgment to be without prejudice to the right of Gonzalez, if any, to redeem. So ordered.

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Araullo, C. J., Johnson, Malcolm, Avanceña, and Romualdez, JJ., concur.

CONCURRING

STREET, J., with whom concurs, OSTRAND J.:

We have hesitated somewhat to give our assent to this decision, fearing that its effect might be unduly to hamper the legitimate discretion which is vested in the Court of First Instance in the matter of the confirmation of foreclosure sales; and we wish it to be understood that our adherence to the decision is due to the consideration that the lower court had already once confirmed the sale without opposition and that the alleged inadequacy of price has not been made to appear with such certainty as was necessary to justify the trial court in disturbing the order.

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