

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

G. R. No. 24850. March 01, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

August 28, 1922, the lower court rendered judgment against Manuel Ernesto Gonzalez in favor of the Philippine National Bank on the first cause of action for P17,313.59, and on the second for P17,555.20, and for the foreclosure of a real mortgage upon lands specifically described in Exhibits A, B and C. An execution was issued and the lands described in Exhibits B and C were sold to Saturnino Lopez for P15,000, and on March 9, 1923, the sale was confirmed by the lower court, and later on the motion of Gonzalez, the sale was set aside. From that order, Lopez appealed to this court where the judgment of the lower court was reversed, and it was ordered by this court that the sale should stand "affirmed as of the date of the original confirmation by the trial court * * * without prejudice to the right of Gonzalez, if any, to redeem." This judgment was promulgated February 14, 1924.[1]

March 1, 1924, Gonzalez filed a motion in the Court of First Instance of Pangasinan in which the decree of the lower court was rendered, and where the real property is situate, declaring his intention to redeem under the provisions of section 41 of Act No. 2612, and for that purpose deposited with the clerk of the court, for the use and benefit of Lopez, the sum of P18,000, which was the estimated amount of the mortgage credit in favor of the bank, in addition to the interest, judicial costs and the costs of the keeping and care of the property, in which Gonzalez made a judicial offer of the P18,000 to Lopez, or of such other sum as the court may determine in conformity with the provisions of Act No. 2612 is sufficient to cover the items mentioned in section 41 of the Act.

Upon March 3, the notice in question was served upon the sheriff, who sold the property, and the attorneys for Lopez and the attorney for the Philippine National Bank, in and by which they were notified that on March 8, 1924, at 8.30 a. m., or as soon as it could be heard, Gonzalez would ask the court to grant the motion and permit him to redeem the property. After service of the notice and motion, the attorneys for Lopez appeared and vigorously contested the right of Gonzalez to redeem.

After a hearing, the lower court granted the motion, and held that Gonzalez had a right to redeem, and in its conclusion, says:

"The court is, therefore, of the opinion that the P18,000 deposited in the clerk's office is sufficient for the payment of all the items required by the law for the redemption of the lands in dispute in the present case, so much so that, even assuming the contrary, there is evidence in the record to show that Manuel Ernesto Gonzalez has also offered in open court to pay any difference which may result against him upon making the due computation of the expenses, and of all the items covered by section 41 of Act No. 2612."

From this judgment, Lopez appeals and assigns the following errors:

"I. The lower court erred in holding that the plaintiff in this case has the right to redeem, and the defendant is under the obligation to permit the redemption of the property involved, under and by virtue of the provisions of section 41 of Act No. 2612; and in holding that the said section and Act are applicable to the case at bar.

"II. Assuming for the sake of argument the applicability of section 41 of Act No. 2612 to the facts of the case at bar, the lower court also erred in holding that the one year's period of redemption provided in said section and Act is to be counted from the date of the confirmation of the sale by the court and not from the date the sale was actually made or the property struck off by the sheriff in favor of the buyer; and in not holding that the reports made by the plaintiff to redeem the property involved by his motion of March 3, 1924, in the previous case, were made after the expiration of the one year period provided by the aforesaid section and Act.

"III. Conceding the applicability of section 41 of Act No. 2612 and the exercise in due time of the right to redeem, the lower court still erred in holding that the amount of P=18,0Q0 deposited by plaintiff with the clerk of the lower court was sufficient to cover the amount required by law for the redemption of the property involved, to wit: The price paid by the defendant at the sale at public auction, the interest thereof at the rate provided in the contract which gave rise to the foreclosure proceeding (12%), the costs and the judicial and other expenses which have been incurred by the defendant for the custody and conservation of said property; and in not holding that the said amount of P18,000 was far below the amount actually required and hence the efforts to redeem made by the plaintiff did not constitute a legal offer to redeem and were nugatory.

"IV. The lower court also erred in permitting, and in including in its decision findings concerning, the supplemental complaint filed by the plaintiff on February 28, 1925; instead of disregarding and rejecting entirely the said supplemental complaint filed not in accordance with law.

"V. The lower court, finally, erred in granting the ex parte motion for the appointment of a receiver filed by the plaintiff on April 30, 1925, and in making the appointment of the receiver in accordance with the said motion, notwithstanding the fact that the said motion was not even supported by an oath or an affidavit and did not contain sufficient allegations to warrant the appointment of a receiver under the law."

JOHNS, J.:

In this case the facts and dates are very important. It will be noted that the proceeding now in question is based upon the foreclosure of a real mortgage executed by Gonzalez to and in favor of the Philippine National Bank upon agricultural lands lying and being situate in the Province of Pangasinan. That is to say, it had its origin in what is known as an agricultural loan made by the Philippine National Bank, which was secured by a mortgage on real property.

Section 32 of Act No. 2938, known as the Charter of the Philippine National Bank, as amended, provides:

"The mortgagor shall have the right, within one year after the sale of real estate as a result of the foreclosure of a mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank by reason of the execution and sale and for the custody of said property."

In the instant case, it was the appellant Lopez, and not the Philippine National Bank, who was the purchaser of the property at the sheriff's sale of the lands, and for such reason, the appellant contends that Gonzalez had no legal right to redeem. It will be noted that the section provides that "the mortgagor shall have the right, within one year after the sale of real estate" upon a foreclosure to redeem the property, etc. The meaning of the word "mortgagor" is not in any way qualified, limited or confined as to who may be the purchaser of the property. If it had been the purpose and intent of the Legislature to limit the right of the mortgagor to redemption in a case in which the bank

only was the purchaser, the law would have said so. Appellant's contention would give to the word "mortgagor" a limited and strained construction that is not justified by the language of the Act. It should be construed to mean that where a person gives a mortgage to the Philippine National Bank on agricultural land, and the mortgage is foreclosed by the bank and the property sold under execution, that the mortgagor has a legal right to redeem from the purchaser, whoever he may be, at any time within one year after the sale of the land.

Under the second assignment of error, the appellant contends that the one year's period of redemption should commence to run from the day that the property was sold and struck off by the sheriff to Lopez, and not from the date of the confirmation of the sale. It will be noted that the sheriff sold the property to Lopez on February 14, 1923, and that the sale was confirmed on March 9, 1923. That the former decision of this court on appeal was promulgated on February 14, 1924. In that opinion, this court used the following language:

"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."

That decision was rendered on an appeal from the decision of the lower court which set aside and revoked its former order confirming the sale. Hence, it must follow that until the decision of this court was promulgated, Gonzalez was not in a position to redeem from the sale made by the sheriff to Lopez, for the simple reason that the lower court set aside and vacated the sale, and ordered a resale of the property. There was no sale from which Gonzalez could redeem until this court promulgated its decision of February 14, 1924.

It also appears that the mandate of this court was issued to the lower court on March 1, 1924. Until it was received, that court did not have any jurisdiction over the proceeding. It also appears that on the very day the mandate was issued, Gonzalez appeared in the lower court, filed his motion, gave notice of his intention to redeem, and deposited the P18,000 with the clerk for that purpose. If, as the appellant contends, the one year for redemption commenced to run from the date of the sale by the sheriff on February 14, 1923, that time expired on February 14, 1924, which was the very day on which this court promulgated its decision. In other words, pending the appeal of Lopez from the decision of the lower court, setting aside the sale and ordering a resale of the property, the one year period of redemption expired, and for that reason Gonzalez had lost his right to redeem.

No one would contend that pending the appeal, Gonzalez could redeem from the sale of his property where the lower court had set aside the sale and ordered a resale of the property, and from that decision, Lopez had appealed to this court. So long as the decision of the lower court, setting aside the sale and ordering a resale of the property, remained in force and effect, there was no sale from which Gonzalez could redeem. It would be a legal absurdity to require him to apply to the lower court to redeem his property from a sale which that court had set aside, declared null and void, and, for such reasons, had ordered a resale of the property. In the very nature of things, Gonzalez could not redeem from the sale to Lopez until after the decision of the lower court was reversed by this court.

As stated, on March 1, which was the very day upon which the record on appeal was remanded by this court to the lower court, Gonzalez appeared in that court and filed his notice and motion of intention to redeem, which is the first day upon which it could have been filed, and as further evidence of his good faith, deposited the P18,000 with the clerk for redemption purposes. What more could he have done?

Appellant relies on that portion of the opinion of this court in which it is stated: "And the sale will stand affirmed as of the date of the original confirmation by the trial court." That was on March 9, 1923. Citing numerous decisions from the different courts of the United States to the effect that the one year period for redemption commences to run from the date that the property was sold and struck off by the sheriff, and that when confirmed

by the court, the date of the sale then relates back to the day on which it was sold by the sheriff. That is to say, in the instant case, the period for redemption expired on March 14, 1924, which is one year after the date of the sale by the sheriff.

Suffice it to say that many of those decisions are based upon other and different statutes, some of which at least provide that from the date of the sale by the sheriff, the purchaser is entitled to the use, enjoyment, and possession of the property.

Under the law here in this kind of a case, a purchaser at a sheriff's sale of real property, made like the one in question, does not take or acquire the right to possession or any interest whatever in the property until after the sale is confirmed.

In legal effect, that is the rule laid down by this court in *Raymundo vs. Sunico* (25 Phil., 365), where it is held:

"1. MORTGAGES; FORECLOSURE SALE; TITLE VESTS ON CONFIRMATION.—The acceptance of a bid at the foreclosure sale confers no title on the purchaser. Until the sale has been validly confirmed by the court, he is nothing more than a preferred bidder. Title vests only when the sale has been validly confirmed by the court."

And on pages 368 and 369, the opinion says:

"As the title to mortgaged real property does not vest in the purchaser until after the confirmation of the sale, he has, prior to that time, no right to the possession of such property, and no legal cause of complaint against the defendants, who remain in possession, exercising the rights of ownership. On the other hand, the mortgagors have no means, until after the confirmation, of compelling the purchaser to comply with the terms of the sale. Should the mortgagors attempt to compel a purchaser to pay in his money an answer on the part of the purchaser to the effect that the sale had not been confirmed would be sufficient. The confirmation operates to divest the title out of the former owner and the vest it in the purchaser. It is at this time when the rights of title passes, and not before. Sales of mortgaged real estate should be more strictly scrutinized than ordinary sales under execution. In the former the title, as we have said, passes to the purchaser upon confirmation by the court, and the defendant or debtor has no right to redeem within the statutory period granted in cases of ordinary execution sales. In some of the States of the American Union there are statutes permitting the mortgagor to redeem after the foreclosure sale has been confirmed. There is no such privilege extended to him by statute in the Philippine Islands. The right of the mortgagor and those claiming under him to redeem from the mortgage is extinguished by the foreclosure when the same has been properly made. But, up to the time of confirmation the title remains in the mortgagor."

Section 257 of the Code of Civil Procedure, among other things, provides that:

"This sale, when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser."

This carries with it and clearly implies that until such time as a sale is "confirmed by decree." the purchaser at a sale, like the one in question, does not acquire any right whatever in and to the property sold until after the sale is confirmed. That is to say, that it was nothing more than an executory contract to become valid and binding on condition that the sale is affirmed by the court, and that, otherwise, it would be null and void. At such a sale, the purchaser, in legal effects, says that I am able, ready, and willing to pay so much for the property, and here is the money, on condition that the sale is affirmed; otherwise, my bid must not be accepted, and I want the money refunded.

The sales of real property by the Philippine National Bank under foreclosure proceedings are more or less *sui generis*. Strange as it may see, the question of redemption in such cases is separate and distinct from, and unlike,

that of any other foreclosure proceeding.

The law in question was enacted for a special reason, and should not be construed to defeat its purpose and intent. Giving it a liberal construction, it is apparent that in this class of cases, the words "within one year after the sale of real estate, etc." should be construed to mean within one year after the confirmation of the sale. It is the confirmation only which consummates the sale. Prior to that, the purchaser's bid is nothing more than an executory contract, which may or may not be executed depending upon the confirmation of the sale. That is the spirit and intent of the law in question.

Be that as it may, Gonzalez could not redeem pending the appeal to this court, because the decision of the lower court was in his favor, and it happens that the decision reversing the lower court was promulgated on February 14, 1924, just one year after the original confirmation of the sale of the lower court which it later set aside. Hence, if the appellant's contention is sustained, without any fault or neglect of his own, Gonzalez would be cut off any redemption right whatever. Under appellant's contention, through the action of the lower court, and without his own fault, Gonzalez would be deprived of his statutory right of redemption. That is not the policy of the law, and it was never the intention of this court, and would be a gross injustice.

The record shows that in the matter of redemption, Gonzalez was both prompt and diligent, and that his effort to redeem was made in good faith. In the very nature of things, he could not take action any sooner than he did take it.

Upon such a state of facts, we are clearly of the opinion that Gonzalez had a right to redeem at the time he made his application to the lower court, and deposited the P18,000 for that purpose.

In this kind of a case, the law permits the mortgagor to redeem:

"By paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank by reason of the execution and sale and for the custody of said property."

Lopez's bid was P15,000, and he was entitled to interest thereon at the rate specified in the mortgage from the time that he paid his money to the clerk of the court to the time when Gonzalez made his offer to redeem.

Appellee points out that one of the original loans of P15,000 each, drew interest at the rate of 12 per cent per annum, and the other at the rate of 8 per cent, which would make an average rate of 10 per cent on P15,000, or a total of P1,500 due and owing on March 3, 1924. That would seem to be just and equitable. The amounts of both loans, with their respective rates of interest, were merged in the judgment in favor of the bank, and the execution was issued and the property was sold on the merged judgment.

The law further provides that the redemptioner must pay all the costs and other judicial expenses incurred by the bank by reason of the execution and sale and for the custody of the property.

The lower court allowed Lopez P500 as attorney's fees in the pending litigation, P65 as costs on the appeal, and P346 for the caretaker of the property, or a total of P911 for those items, and the further sum of P1,488 as taxes which was paid by Lopez. It appears that a receiver was appointed, and that Lopez paid him P421.40, and that the amount of this item was apparently overlooked by the lower court, making a total of all such items for and on account of expenses of P1,332.40. Apparently, the lower court did not allow P1,500 interest, but it did allow P1,488 for taxes which were paid by Lopez. The grand total of all of such items amounts to P19,320.40. It also appears that the taxes were not paid by Lopez at the time the tender was made. Thus at that time, Gonzalez was entitled to redeem from Lopez upon the payment of P17,832.40, and the actual amount of the tender which he made was P18,000. It further appears from his tender and the statement of his counsel in open court, that

Gonzalez was able, ready and willing to pay the true amount, whatever it might be, that Lopez was entitled to have and receive at the time of his notice to redeem was given, and in addition, to pay the item of P1,488 for taxes paid by Lopez, after Gonzalez filed his motion to redeem.

We are clearly of the opinion that the amount of the tender was sufficient to entitle Gonzalez to redeem. This court finds as a fact that on the day Gonzalez made his tender, Lopez should have and receive the sum of P17,832.40, as the amount due him on that date for the redemption of the property. That upon the payment of that amount, the property shall stand redeemed as of the date of the tender. That Gonzalez should pay Lopez the further sum of P1,488, the amount of taxes on the property, together with interest on that amount from the date Lopez paid them, at the rate of 6 per cent per annum, and that he should make this payment within thirty days after the promulgation of this opinion. In all other respects, the judgment of the lower court is affirmed, with costs against the appellant and in favor of Gonzalez. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

Villa-Real, J., concurs in the result.

Johnson, J., dissents.

[1] National Bank vs. Gonzalez (45 Phil., 693).

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