

MARIA LUISA MEDINA, CARMEN MEDINA, EDUARDO ATIENZA AND VICENTE VELEZ, PLAINTIFFS AND APPELLANTS, VS. THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.

G.R. No. 34294. March 19, 1932

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

On October 30, 1920 the Manila Commercial Co. and La Yebana Co. mortgaged four parcels of land with Torrens titles, described in the complaint, to the Philippine National Bank, the first and fourth parcels being in the name of the La Yebana Co. and the second and third in the name of the Manila Commercial Co. The mortgage was given to secure the payment of P680,000 or for whatever amount the Manila Commercial Co. might be indebted to the Philippine National Bank. One of the clauses of the mortgage provides that in case of a violation by the Manila Commercial Co. of any of the conditions of the contract, the Philippine National Bank may take possession of the mortgaged property and sell or dispose of it by public or private sale, without first having to file a complaint or to give any notice, and at such sale, if public, it may acquire for itself all or any of the parcels of land.

On May 27, 1927, the Manila Commercial Co. being unable to pay its debt which amounted to P794,256, the Philippine National Bank asked the sheriff to sell the mortgaged property in accordance with Act No. 3135.

On September 24, 1927, the mortgaged property was sold to the Philippine National Bank itself for P30,000. On September 26, 1927 this sale was registered, and the proper deed of sale issued in favor of the bank. Upon the page intended for the annotation of encumbrances, an entry was made to the effect that the title of the bank was subject to redemption within one year.

On December 10, 1926, the plaintiffs Maria Luisa Medina, Carmen Medina, Eduardo Atienza, and Vicente Velez, brought an action against the Manila Commercial Co. for a sum of money, and obtained judgment. On July 14, 1928, the writ of execution of this judgment was issued. On the 21st of the same month, the sheriff notified the bank that in pursuance of the judgment for the plaintiffs, the four parcels of land mortgaged to it were attached. The bank answered that it had already purchased these parcels and that the only thing the sheriff could sell was the right of redemption, adding that, should this right be sold, the public be informed that the successful bidder must pay the entire amount owed to the bank by the Manila Commercial Co. On September 1, 1928, the right of redemption was sold at public auction, and the plaintiffs being the highest bidders, offering P28,000, the sheriff made out the corresponding certificate of the sale in their favor. On the 4th of the same month, the plaintiffs proposed to repurchase the four parcels from the bank, to which the latter objected unless the total debt of the Manila Commercial Co., were paid, which amounted to P794,256.80.

On April 20, 1929, the plaintiffs brought this action praying that the Philippine National Bank be ordered to render an accounting of the income, rents, benefits, and profits derived from the four parcels of land mortgaged and later sold to it, the amount thereof to be deducted from the redemption price; and once the exact amount of the redemption price is determined, that the bank be also ordered to accept the same and to execute in favor of the

plaintiffs the corresponding deed of sale and conveyance of said parcels of land. Subsequently, however, the plaintiffs and the defendant agreed to drop the petition for the accounting, reserving to the plaintiffs the right to petition for it at another time.

The dispositive part of the judgment in this case provides :

"1. That the plaintiffs acquired at an auction sale held by the sheriff, the Manila Commercial Company's right of redemption in the second and third parcels of land described in the complaint and hence, were entitled to repurchase such parcels of land from the Philippine National Bank, but had no right whatsoever to repurchase the first and fourth parcels from said bank, because they belonged exclusively to the La Yebana Company, against which the plaintiffs had not obtained any judgment.

"2. That the plaintiffs are entitled to demand that the Philippine-National Bank render an accounting of the income derived from the second and third parcels of land described in the complaint, but that before they could be allowed to repurchase such property from the bank, they must pay to the bank the amount of the debt of the Manila Commercial Company upon the date of the repurchase, We sides the stipulated interest and the costs incurred by the bank in connection with the sale of said property, according to section 32 of Act No. 2938."

The plaintiffs appealed from this judgment.

It is unnecessary to consider whether or not the plaintiffs as successors in interest of the Manila Commercial Co. possess the right of redemption. The bank charter as amended (Acts Nos. 2612, 2747, and 2838) declares that the debtors have this right. The bank's title to these parcels of land also recites that such title is subject to that right. Furthermore, the bank makes no objection to this redemption.

We have seen, however, that the trial court declared the plaintiffs entitled only to repurchase the parcels covered by transfer certificates of title Nos. 137 and 139, thereby denying this right with reference to the two other parcels in question. We are of opinion that in this respect the judgment appealed from is correct.

The Philippine National Bank acquired the four parcels of land with the understanding that those covered by transfer certificates of title Nos. 137 and 139 belonged to the Manila Commercial Company, and the rest to the La Yebana. The right of redemption arising from the sale of these parcels to the bank must appertain to the Manila Commercial Co. with reference to the parcels belonging to it, and to La Yebana with reference to its parcels, inasmuch as such right appertains to the respective owners. The action through which the plaintiffs acquired the right of redemption was brought against the Manila Commercial Co. and the La Yebana was no party to it. In that action only the right of the Manila Commercial Co. could have been sold, and not that of La Yebana, as it was not a party thereto. Therefore, the plaintiffs could not have acquired any more than the right of redemption with reference to the parcels covered by transfer certificates of title Nos. 137 and 139, for only with respect to these parcels did the Manila Commercial Company hold that right.

It is contended that when the plaintiffs acquired the right of redemption with reference to all the parcels of land now in question as belonging to the Manila Commercial Company, the Philippine National Bank admitted that the Manila Commercial Company had that right. We find that the bank made no such admission. In support of their Contention, the plaintiffs rely upon a portion of the correspondence interchanged with the bank when the execution proceedings were being carried out in connection with the action they had brought against the Manila Commercial Co. But it may be noted that in such correspondence the bank referred to the right of redemption held by the Manila Commercial Company, and if the latter had no such right over the property not belonging to it but to La Yebana, it is clear that the bank could only have referred to the parcels covered by the certificates of title 137 and 139, which belonged to the Manila Commercial Company.

As we have indicated above, there is no question with regard to the plaintiffs' right, as successors of the Manila

Commercial Company, to repurchase the parcels covered by the transfer certificates of title Nos. 137 and 139. The question is whether, as the bank contends and the trial court has held, the redemption should be made by paying to the bank the entire amount owed to it by the Manila Commercial Company. The appellants contend that this redemption may be made by only reimbursing the bank what it has paid for the sale made to it. In this respect we are also of the opinion that the judgment appealed from is correct.

The Code of Civil Procedure establishes a special proceeding for the foreclosure of mortgage, culminating, in case of non-payment of the debt, in the sale of the mortgaged property. This court has held that sales in cases of this kind do not carry with them the right of redemption on the part of the owners, as in ordinary actions. Nevertheless, when the Philippine National Bank was organized, its charter gave the mortgagor the right to redeem the property within the year following the judicial sale. This provision was included for the benefit of the bank's debtor, establishing in his favor a right he would not otherwise have. But in order to protect the bank's interest as well, the condition was added that the amount fixed by the court in the writ of attachment should first be paid, with the stipulated interest, and all the costs and other judicial expenses incurred by the bank in connection with the attachment and sale, and for the custody of the property.

It is true that this provision in the bank's charter refers to the sale of the mortgaged property at a judicial sale, But in the case of *El Hogar Filipino vs. Paredes* (45 Phil., 178), this court ruled that although there is a judicial procedure established by the law for the foreclosure of a mortgage, the contracting parties may validly agree to have the mortgaged property sold without the necessity of an action in court. Hence, when, the Legislature established this right of redemption in favor of the bank's debtor, it had in mind that the sale of mortgaged property could be made; either by a judicial proceeding or without a judicial action, if the contracting parties so agreed, and it must be presumed that the law grants this right of redemption in both cases under the same conditions, because the same legal motive holds good in both. In this connection it should be borne in mind that this right of redemption was recognized in the original law and all its amendments before and after the Supreme Court promulgated the judgment in the case of *El Hogar Filipino vs. Paredes*, on October 3, 1923.

Later, on March 6, 1924, the Legislature passed Act No. 3135, establishing the procedure for extra judicial sales of mortgaged property and providing that the same are subject to the right of redemption established for sales in ordinary actions, that is, through the reimbursement only of the price paid.

It will be remembered that the mortgage Contract between the bank and the Manila Commercial Company was executed on October 30, 1920, before the approval of Act No. 3135 in March, 1924. If, before Act No. 3135 took effect, the Manila Commercial Company had violated the contract, beyond all doubt the bank would have been able, to sell the mortgaged property, without the necessity of a judicial action,, and the sale thus made would carry the right of repurchase on the part of the debtor through the payment of the entire amount of the debt.

When the bank's right to foreclose the mortgage of the Manila Commercial Company accrued, Act No. 3135 was already in force. Of course, this law, being general, did not affect the charter of the bank, which was a special law. Thus, when the bank, in order to sell the mortgaged property extra judicially, resorted to Act No. 3135, it did so merely to find a proceeding for the sale; but that action cannot be taken to mean a waiver of its right to demand the payment of the whole debt before the property can be redeemed. The record contains nothing to show that the bank made this waiver of said right.

For these reasons, the judgment appealed from is hereby affirmed, with costs against the appellants. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, Villa-Real, and Imperial, JJ., concur.

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