

MANUEL R. DULAY, PETITIONER, VS. HON. JUDGE GLICERIO V. CARRIAGA, JUDGE OF THE COURT OF FIRST INSTANCE OF COTABATO, AND EUSEBIO C. TANGHAL, RESPONDENTS.

G.R. No. 52831. July 29, 1983

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari, with preliminary injunction, to annul and set aside the order of the respondent judge which annulled the redemption of several parcels of land levied upon and sold at an execution sale.

In Civil Case No. 2152 of the Court of First Instance of Cotabato, an action for the recovery of a sum of money, the trial court rendered a decision ordering the defendant, Manuel R. Dulay, the petitioner herein, to pay the plaintiff, Eusebio C. Tanghal, the herein private respondent, the sum of P143,980.00. Seventeen (17) parcels of land belonging to the defendant were, consequently, levied upon then sold at a public auction sale to the plaintiff, as the highest bidder thereof, at prices proffered and fixed for each parcel, for the sum of P82,598.00.[1] Within the reglementary period for redemption, the defendant redeemed eight (8) of the levied properties by paying the prices at which they were actually sold in the auction sale, for the sum of P17,017.00, and was issued a Certificate of Redemption.[2] Upon motion of the plaintiff, however, the trial court citing the case of *Development Bank of the Philippines vs. Dionisio Mirang*,[3] declared the redemption as null and void on the ground that piece-meal redemption is not allowed by law and that for redemption to be valid, the judgment debtor should pay the entire judgment debt and not the purchase price.[4] Hence, this petition for certiorari with preliminary injunction, to annul and set aside the order of the respondent judge. As prayed for, the Court issued a temporary restraining order, restraining the respondents from enforcing the questioned order.[5]

There is merit in the petition. In the redemption of properties sold at an execution sale, the amount payable is no longer the judgment debt, but the purchase price. In the case of *Castillo vs. Nagtalon*,[6] the Court said:

"The procedure for the redemption of properties sold at execution sale is prescribed in Sec. 26, Rule 39 of the Rules of Court. Thereunder, the judgment debtor or redemptioner may redeem the property from the purchaser within 12 months after the sale, by paying the purchaser the amount of his purchase, with 1% per month interest thereon up to the time of redemption, together with the taxes paid by the purchaser after the purchase, if any. In other words, in the redemption of properties sold at an execution sale, the amount payable is no longer the judgment debt but the purchase price. Considering that appellee tendered payment only of the sum of P317.44, whereas the 3 parcels of land she was seeking to redeem were sold for the sums of P1,240.00, P240.00 and P30.00, respectively, the aforementioned amount of P317.44 is insufficient to effectively release the properties. However, as the tender of payment was timely made and in good faith, in the interest of justice We incline to give the appellee opportunity to complete the redemption purchase of the 3 parcels as provided in Sec. 26, Rule 39 of the Rules of Court, within 15 days from the time this decision becomes final and executory.

"Should appellee fail to complete the re-demption price, the sheriff may either release to appellee the 2 smaller

lots and return the entire deposit without releasing any of the 3 lots, as the appellee may elect."

The case of DBP vs. Mirang, relied upon by the respondent judge, wherein the Court ruled that the mortgagor whose property has been sold at public auction, either judicially or extrajudicially, shall have the right to redeem the property by paying all the amounts owed to the mortgagee on the date of the sale, with interest thereon at the rate specified in the contract and not the amount for which the property was acquired at the foreclosure sale is not controlling because of different factual settings. The Mirang case involves the redemption of mortgaged property sold at a foreclosure sale and the mortgagor was ordered to pay his entire indebtedness to the mortgagee, plus the agreed interests thereon, before redemption can be effected, because the charter of the mortgagee (DBP) required the payment of such amount. The Court said:

"The third issue has likewise been resolved by this Court in a similar case. The issue posed there involved the price at which the mortgagor should redeem his property after the same had been sold at public auction - whether the amount for which the property was sold, as contended by the mortgagor, or the balance of the loan obtained from the banking institution, as contended by the mortgagee RFC. Cited in that case was Section 31 of Com. Act No. 459, which was the special law applicable exclusively to properties mortgaged with the RFC, as follows:

"The mortgagor or debtor to the Agricultural and Industrial Bank whose real property has been sold at public auction, judicially or extra-judicially, for the full or partial pay-ment of an obligation to said Bank, shall, within one year from the date of the auction sale, have the right to redeem the real property by paying to the Bank all the amount he owed the latter on the date of the sale, with interest on the total indebtedness at the rate agreed upon in the obligation from said date, unless the bidder has taken material possession of the property or unless this has been delivered to him, in which case the proceeds of the property shall compensate the interest.
x x x

"The same provision applies in the instant case. The unavoidable conclusion is that the appellant, in redeeming the foreclosed property, should pay the entire amount he owed to the Bank on the date of the sale, with interest thereon at the rate agreed upon."

The instant case, on the other hand, involves the redemption of property levied upon and sold at public auction to satisfy a judgment and, unlike the Mirang case, there is no charter that requires the payment of sums of money other than those provided for in Section 30 of Rule 39, Revised Rules of Court.

Redemption of properties mortgaged with the Philippine National Bank and the Development Bank of the Philippines and foreclosed either judicially or extrajudicially are governed by special laws which provide for the payment of all the amounts owed by the debtor. This special protection given to government lending institutions is not accorded to judgment creditors in ordinary civil actions.

WHEREFORE, the writ prayed for is GRANTED and the order issued on January 11, 1978 should be, as it is hereby, ANNULLED and SET ASIDE. The temporary restrain-ing order heretofore issued is hereby made permanent. With costs against the private respondent Eusebio C. Tanghal.

SO ORDERED.

Makasiar, (Chairman), Aquino, Guerrero, Abad Santos, and Escolin, JJ., concur.
De Castro, J., on leave.

[1] Rollo, p. 10.

[2] Id., p. 16.

[3] G.R. No. L-29130, Aug. 8, 1975, 66 SCRA 141.

[4] Rollo, p. 20.

[5] Id., p. 28.

[6] 114 Phil. 7.

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