

RURAL BANK OF OROQUIETA (MIS. OCC.), INC., PETITIONER, VS. COURT OF APPEALS, EIGHTH DIVISION; JUDGE MELECIO A. GENATO, COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, OROQUIETA B...

G.R. No. 53466. November 10, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the mortgagor's equity of redemption in case of judicial foreclosure of a mortgage in favor of a rural bank.

In Civil Case No. 2988 of the Court of First Instance of Misamis Occidental, Oroquieta City Branch I, entitled "Rural Bank of Oroquieta (Mis. Occ.), Inc. vs. Procopio Serrano and Maria Cueme", a case of foreclosure of mortgage, Judge Melecio A. Genato on July 3, 1974 rendered a decision, ordering the defendants to pay plaintiff bank within a period of "not less than ninety (90) days nor more than one hundred (100) days from" the receipt of the decision the loan of P1,500 with twelve percent interest per annum from January 16, 1972 plus ten percent of the principal as attorney's fees (p. 29, Rollo).

In case of nonpayment within that period, the trial court, in order to satisfy that obligation, ordered the sheriff to sell at public auction the mortgaged lot, a parcel of coconut land with an area of 2.8 hectares, covered by TCT No. T-1753, located at Sitio Petugo, Barrio Bato, Plaridel, Misamis Occidental and assessed at P3,433.86 (p. 29, Rollo).

That judgment became final and executory. The Serrano spouses did not pay their mortgage debt. A writ of execution was issued. On January 13, 1975, the sheriff levied upon the mortgaged lot and advertised its sale at public auction to satisfy the mortgage obligation which, together with the sheriff's fees and costs, amounted to P2,223.60 on January 28, 1975.

At the auction sale held on March 3, 1975, the mortgaged lot was sold to the bank as the only bidder. The sheriff issued a certificate of sale dated March 4, 1975 (p. 34, Rollo).

There being no redemption within the one-year period (sec. 78, General Banking Law), the sheriff issued a final certificate of sale dated April 19, 1976 which was registered on the following day.

On September 20, 1976, the bank sold the lot to Eufemia Mejos. TCT No. 6035 was issued to her (pp. 47-48, Rollo).

On September 8, 1977, Judge Genato issued an order directing the issuance of a writ of possession to the bank. The mortgagors or judgment debtors filed a motion for the reconsideration of that order on the grounds that, because there was no judicial confirmation of the auction sale, they still have an equity of redemption and could still pay the mortgage debt (alleged to be usurious) and that the auction sale was fraudulent and irregular. They

averred that the bank rejected their offer to redeem the mortgaged lot and that the issuance of the writ of possession was premature.

Judge Genato granted the motion for reconsideration in his order of October 12, 1977 which contains these inconsistent or contradictory directives: "Let the execution of judgment in this case be ordered and subsequently the writ of possession be accordingly issued. The Rural Bank of Oroquieta is hereby ordered to accept payment of the loan with interests." (p. 36, Record.)

On December 23, 1977, the bank filed a manifestation and motion wherein it revealed that the land had already been sold to Eufemia Mejos and, therefore, its acceptance of the redemption price amounting to P2,820.60 would not produce any legal effect (pp. 47-48, Rollo).

The bank further disclosed that there is pending in the trial court a case for the annulment of the foreclosure sale of the said lot and the release of the mortgage, docketed as Civil Case No. 3265, which was instituted by the Serrano spouses, as mortgagors, against the bank and the Mejos spouses. The bank prayed that it should not be compelled to accept the proffered redemption price.

The trial court denied the motion. The bank filed a notice of appeal, deposited the appeal bond of P120 and submitted a record on appeal. It specified in its notice of appeal that it was appealing to the Court of Appeals from the trial court's order of October 12, 1977, allowing the redemption.

The Serrano spouses filed a motion to dismiss the appeal on the ground that they had already deposited with the clerk of court the redemption price of P2,830.

The trial court in its order of February 27, 1978 dismissed the appeal on the ground that the order sought to be appealed is interlocutory or not appealable. The bank assailed that order in the Court of Appeals by means of certiorari which was really a mandamus action to compel the trial court to give due course to its appeal.

The Court of Appeals dismissed the petition. It sustained the trial court's position that the order sought to be appealed is interlocutory because the trial court had not yet confirmed the foreclosure sale (*Rural Bank of Oroquieta [Mis. Occ.], Inc. vs. Judge Genato*, CA-G. R. No. SP-07756, October 26, 1979).

The bank appealed to this Court. The issue is whether the trial court and the Court of Appeals erred in not giving due course to the bank's appeal.

We hold that the trial court and the Court of Appeals acted correctly in refusing to give due course to the bank's appeal not only because the order sought to be appealed is interlocutory but also because in the present posture of the case it is imperative that the trial court should consolidate the foreclosure case, Civil Case No. 2988, with the other case, Civil Case No. 3265 filed by the Serrano spouses for the annulment of the foreclosure sale and the subsequent sale of the mortgaged lot to the Mejos spouses. Note that the latter case is also pending in the sala of respondent Judge.

The trial court erred in unreservedly allowing the Serrano spouses to redeem the mortgaged lot without taking into account the supervening fact that the lot is now registered in the name of Eufemia Mejos who is not a party in the foreclosure proceeding and who is entitled to be heard. That complication cannot be summarily ignored.

At this stage, a decision cannot be rendered outright on the conflicting rights of the Serrano spouses, the bank and the Mejos spouses with respect to the mortgaged lot. The trial court should first try and resolve the issues arising out of the lack of judicial confirmation of the foreclosure sale and the subsequent sale of the mortgaged lot to a third person after the expiration of the one-year period for exercising the right of redemption. We can only state some guidelines in resolving those issues.

After the execution of a real estate mortgage, the mortgagor has an equity of redemption, exercisable within the period stipulated in the mortgage deed. In case of judicial foreclosure, that equity of redemption subsists after the sale and before it is confirmed by the court (Raymundo vs. Sunico, 25 Phil. 365; Benedicto vs. Yulo, 26 Phil. 160; Grimalt vs. Velasquez and Sy Quio, 36 Phil. 936; Sun Life Assurance Co. vs. Gonzalez Diez, 52 Phil. 271; La Urbana vs. Belando, 54 Phil. 930; Villar vs. Javier de Paderanga, 97 Phil. 604; Piano vs. Cayanong, 117 Phil. 415).

However, in case of a judicial foreclosure of a mortgage in favor of a banking institution, section 78 of the General Banking Law grants the mortgagor a right of redemption which may be exercised within one year from the sale.

Under section 3, Rule 68 of the Rules of Court, it is the confirmation by the court of the auction sale that would divest the Serrano spouses of their rights to the mortgaged lot and that would vest such rights in the bank as purchaser at the auction sale.

The clause "subject to such rights of redemption as may be allowed by law", found in the last part of section 3, has no application to this case because the mortgagor did not exercise his right of redemption under section 78 of the General Banking Law.

What applies to this case is the settled rule that "a foreclosure sale is not complete until it is confirmed, and before said confirmation, the court retains control of the proceedings by exercising a sound discretion in regard to it, either granting or withholding confirmation as the rights and interests of the parties and the ends of justice may require" (Salazar vs. Torres, 108 Phil. 209, 214-5).

"In order that a foreclosure sale may be validly confirmed by the court, it is necessary that a hearing be given the interested parties, at which they may have an opportunity to show cause why the sale should not be confirmed." (Raymundo vs. Sunico, 25 Phil. 365).

"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." (Raymundo vs. Sunico, 25 Phil. 365).

The confirmation retroacts to the date of the sale (Villar vs. Javier de Paderanga, 97 Phil. 604, citing Binalbagan Estate, Inc. vs. Gatuslao, 74 Phil. 128).

A hearing should be held for the confirmation of the sale. The mortgagor should be notified of that hearing. Lack of notice vitiates the confirmation of the sale. The mortgagor may still redeem the mortgaged lot after the rendition of the order confirming the sale which is void for lack of hearing and notice to the mortgagor. (Grimalt vs. Velasquez and Sy Quio, 36 Phil. 936; Raymundo vs. Sunico, 25 Phil. 365).

Notice and hearing of a motion for confirmation of sale are essential to the validity of the order of confirmation, not only to enable the interested parties to resist the motion but also to inform them of the time when their right of redemption is cut off (Tiglao vs. Botones, 90 Phil. 275, 279).

An order of confirmation, void for lack of notice and hearing, may be set aside anytime (Tiglao vs. Botones, *supra*).

It is equally settled that after the foreclosure sale but before its confirmation, the court may grant the judgment debtor or mortgagor an opportunity to pay the proceeds of the sale and thus refrain from confirming it (Anderson and De Mesa vs. Reyes and Gutierrez Saenz, 54 Phil. 944, citing Grimalt vs. Velasquez and Sy Quio, 36 Phil. 936 and La Urbana vs. Belando, 54 Phil. 930).

If after the foreclosure sale and before the confirmation thereof, the mortgagee, as purchaser at the auction sale, sold the mortgaged property to another person, that subsequent sale does not render the foreclosure sale more effective. That subsequent sale does not prevent the trial court from granting the mortgagor a period within which to redeem the mortgaged lot by paying the judgment debt and the expenses of the sale and costs (*Anderson and De Mesa vs. Reyes and Gutierrez Saenz*, 54 Phil. 944).

"Whatever may have been the old rule by all of the modern authorities, it is the policy of the courts to assist rather than to defeat the right of redemption" (*De Castro vs. Olondriz and Escudero*, 50 Phil. 725, 732).

After the confirmation of the sale, made after hearing and with due notice to the mortgagor, the latter cannot redeem anymore the mortgaged lot (unless the mortgagee is a banking institution) (*Piano vs. Cayanong*, 117 Phil. 415).

It is after the confirmation of the sale that the mortgagor loses all interest in the mortgaged property (*Clemente vs. H. E. Heacock Co.*, 106 Phil. 1163; *Clemente vs. Court of Appeals*, 109 Phil. 798; *Clemente vs. H. E. Heacock Co.*, L-23212, May 18, 1967, 20 SCRA 115).

In the instant case, where the foreclosure sale has not yet been confirmed but the statutory one-year period for redemption expired and the mortgaged lot was sold by the mortgagee (as the only bidder at the auction sale) to a third person, the trial court should give the purchaser a chance to be heard before requiring the mortgagee-bank to accept the redemption price tendered by the mortgagors.

WHEREFORE, while we affirm the decision of the Court of Appeals in not giving due course to petitioner's appeal from the trial court's aforementioned order of October 12, 1977, at the same time the said order is reversed and set aside for being premature.

The trial court is directed to consolidate the foreclosure case, Civil Case No. 2988, with Civil Case No. 3265 for the annulment of the foreclosure sale and the sale of the mortgaged lot to Eufemia Mejos and to proceed in accordance with the guidelines laid down in this decision. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and De Castro, JJ., concur.
Abad Santos, J., in the result.

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