

RODOLFO T. GANZON AND GREGORIO L. LIRA, IN HIS CAPACITY AS EX-OFICIO PROVINCIAL SHERIFF OF ILOILO, PETITIONERS, VS. THE HONORABLE SANCHE Y. INSERTO, PRESIDING JUDGE, BRANCH I OF...

G.R. No. 56450. July 25, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

May the respondent court order that a mortgage on real property be substituted by a surety bond and direct the Register of Deeds to cancel the mortgage lien annotated on the Torrens Title since the surety bond already secures the obligation earlier secured by the cancelled mortgage?

The petitioner comes to us stating that the lower court acted with grave abuse of discretion and in excess of its jurisdiction in so ruling.

On August 28, 1979, petitioner Rodolfo Ganzon initiated proceedings to extra-judicially foreclose a real estate mortgage executed by the private respondents in his favor. The Deed of Real Estate Mortgage executed on March 19, 1979 (Annex "A", Petition) between Randolph Tajanlangit and Esteban Tajanlangit as mortgagors on one hand and Rodolfo Ganzon as mortgagee on the other hand was to secure the payment by the Tajanlangits of a promissory note amounting to P40,000.00 in favor of Ganzon, to wit:

.....

"That whereas, the MORTGAGORS are justly indebted to the MORTGAGEE in the amount of FORTY THOUSAND (P40,000.00) PESOS, Philippine Currency, as evidenced by their promissory note for said sum, in the words and figures as follows:

P40,000.00

Iloilo City

March 19, 1979

"For value received, we promise to pay RODOLFO T. GANZON, or order, at his residence in Molo, Iloilo City, the sum of FORTY THOUSAND (P40,000.00) PESOS, Philippine Currency, in two (2) installments as follows: P20,000.00 on or before 25 May 1979; and P20,000.00 on or before 25 August 1979. This note shall not draw interest. (Annex "A", Rollo, p. 15)

The mortgage covered a parcel of residential land, Lot No. 1901-E-61-B-1-F of the subdivision plan Psd-274802, located in the District of Molo, Iloilo City covered by Transfer Certificate of Title No. T-50324.

Thereafter, petitioner Gregorio Lira, in his capacity as ex-officio provincial sheriff of Iloilo served personal notice of the foreclosure proceedings on the private respondents. Lira also caused the publication in a newspaper of general circulation in the City and Province of Iloilo of a Notice of Extra Judicial Sale of Mortgaged Property, setting the sale at public auction of the mortgaged property at 10:00 a.m. on September 28, 1979, at his office at the Provincial Capitol, Iloilo City.

On September 27, 1979, a day before the scheduled public auction, the private respondents filed a civil action for specific performance, damages, and prohibition with preliminary injunction against the petitioners with the respondent court. The action, docketed as CFI Case No. 13053, sought to declare the extrajudicial foreclosure proceedings and all proceedings taken in connection therewith null and void. The private respondents asked for the issuance of a writ of preliminary injunction to enjoin the petitioners from proceeding with the foreclosure and public auction sale. Acting on the urgent ex-parte motion of private respondents, the trial court issued an order enjoining the provincial sheriff from proceeding with the scheduled auction sale on September 28, 1979.

On October 31, 1979, the private respondents filed an amended complaint. For purposes of the instant petition, the pertinent allegations in the amended complaint are the following: (1) On August 25, 1978, defendant, now petitioner Rodolfo Ganzon executed a deed of absolute sale of a parcel of land in favor of plaintiff, now respondent Esteban Tajanlangit. The parcel of land, subject of the sale is described as Lot No. 1900 of the Cadastral Survey of Iloilo located at Molo, Iloilo City covered by Transfer Certificate of Title No. T-39579 with an area of 24,442 square meters, more or less; (2) The deed of real estate mortgage which is the subject of the extra-judicial proceedings initiated by defendant Rodolfo Ganzon executed by plaintiffs Esteban Tajanlangit and Randolph Tajanlangit in his favor was for the purpose of securing the payment of P40,000.00 which formed part of the purchase price of Lot No. 1900; (3) Incorporated in the aforesaid deed of absolute sale was a proviso to the effect that vendor-defendant Rodolfo Ganzon guaranteed to have the occupants of the lot to vacate the premises within 120 days after the execution thereof, to wit:

.....

"The vendor warrants to the vendee peaceful possession of the above-mentioned parcel of land and that the said vendor shall see to it that all occupants thereof at the execution of this deed shall vacate the premises within a period of one hundred twenty (120) days computed from the date of the execution of this document."

(4) The aforestated guaranty was violated by defendant Ganzon since the occupants of the said lot up to the present are still within the premises of the lot; and (5) The extra-judicial foreclosure is illegal since defendant Ganzon committed a breach in his warranty and the deed of real estate mortgage does not contain any stipulation authorizing mortgagee Ganzon to extrajudicially foreclose the mortgaged property.

On March 28, 1980 the petitioners filed their answer to the amended complaint. They admitted the veracity of the deed of absolute sale covering said Lot No. 1900 but denied that the real estate mortgage covering Lot No. 1901 subject of the extra-judicial foreclosure proceedings was executed by Esteban Tajanlangit and Randolph Tajanlangit in favor of Rodolfo Ganzon to secure the payment of the balance of the purchase price of Lot No. 1900. They maintained that the real estate mortgage was an entirely different transaction between the Tajanlangits and Ganzon from the sale of Lot No. 1900 embodied in the absolute deed of sale of realty. They further maintained that the extra-judicial foreclosure proceedings would be in accordance with the terms and conditions of the said mortgage.

After the issues had been joined but before actual trial, the private respondents filed a "Motion For Release Of

Real Estate And For The Clerk Of Court To Accept Bond Or Cash In Lieu Thereof," to which the petitioners interposed an Opposition.

In an order dated November 20, 1980, the respondent court granted the respondents' motion. The order states:

"This is a Motion for Release of Real Estate Mortgage and for the Clerk of Court to Accept Bond or Cash in Lieu Thereof.

"It appears that defendant sold to Esteban Tajanlangit, Jr. Lot No. 1900 of the Cadastral Survey of Iloilo under Transfer Certificate of Title No. T-39579. The document of sale provides that the vendee who is the defendant herein, promised to exclude from the premises the occupants. To secure the unpaid balance of P40,000.00, plaintiffs executed a real estate mortgage on their Lot No. 1901-E-61-B-1-1 of the subdivision plan Psd-274802. Because defendant failed to clear the occupants of Lot No. 1900, as provided for in the contract of sale, plaintiffs withheld payment of the P40,000.00. To clear the title of Lot No. 1901-E-61-B-1-1 plaintiffs are willing to submit a bond in the sum of P80,000.00 which is double the consideration of the mortgage.

"WHEREFORE, in the interest of justice, considering that plaintiffs are willing and able to pay the P40,000.00, and considering further that defendant has not yet cleared the premises he sold to plaintiffs of tenants, the Register of Deeds of Iloilo City is ordered to cancel the mortgage lien on Transfer Certificate of Title No. T-50324, upon showing by the plaintiffs that they have put up the surety bond in the sum of P80,000.00." (Annex "F", Rollo, p-58)

On January 28, 1981, the respondents after receipt of the aforesaid order, put up a surety bond in the amount of P80,000.00 with the Summa Insurance Corporation as surety (Annex "G") for the approval of the respondent court.

On February 14, 1981, the petitioners filed an Urgent Motion For Reconsideration Of The Order Dated November 20, 1980, And Opposition To The Approval of Surety Bond.

The respondent court in its order dated February 24, 1981, denied the aforesaid motion. The order states:

Finding the motion filed by plaintiff through counsel for approval of surety bond well taken and considering that the opposition filed by defendants does not question the validity of the surety bond itself but is anchored upon grounds that had already been passed upon by this Court in the order dated November 20, 1980, the surety bond in the amount of P80,000.00 issued by Summa Insurance Corporation is hereby approved.

"The defendant Rodolfo T. Ganzon, through Atty. Salvador Cabaluna, Jr., is hereby ordered to surrender to the plaintiffs, through Atty. Hannibal de los Reyes the owner's copy of TCT No. 50324, so that the mortgage annotated therein in favor of defendant Rodolfo T. Ganzon could be duly cancelled." (Annex "I", Rollo, p. 65).

Hence, the instant petition.

On March 18, 1981, we issued a temporary restraining order enjoining the respondents from enforcing the orders dated November 20, 1980 and February 24, 1981 of the Court of First Instances of Iloilo, Branch I at Iloilo City.

On July 8, 1981, we gave due course to the petition and required the parties to submit their respective memoranda.

As stated earlier, the issue raised before us is whether or not the trial court may order the cancellation of a mortgage lien annotated in a Torrens Certificate of Title to secure the payment of a promissory note and substitute such mortgage lien with a surety bond approved by the same court to secure the payment of the promissory note.

In issuing its November 20, 1980 order, the trial court before trial on the merits of the case assumed that the real estate mortgage subject of the extra-judicial foreclosure proceedings was indeed a security for the payment of a P40,000.00 promissory note which answered for the balance of the purchase price of the sale between Ganzon as

vendor and Esteban Tajanlangit was vendee of Lot No. 1900. With this assumption, the trial court concluded that Rodolfo Ganzon violated his warranty that he would clear the parcel of land of its occupants within 120 days after the execution of the deed of absolute sale of realty. On this premise and upon motion of the private respondents, the court ordered the Register of Deeds to cancel the mortgage lien annotated in the Transfer Certificate of Title covering the mortgaged parcel of land and to substitute therein a surety bond approved by the trial court.

It must be noted that petitioner Rodolfo Ganzon vehemently denied the allegation that the P40,000.00, consideration of the promissory note which resulted in the execution of the real estate mortgage to secure its payment was a balance of the purchase price of Lot No. 1900. As earlier stated, Ganzon maintained in his Answer that the real estate mortgage arose from a different transaction. At the pre-trial, what the parties admitted were the existence and due execution of the documents, including the absolute deed of sale of realty and the subject real estate mortgage. In connection with the documents, the issues per the pre-trial order were ". . . whether or not the documents express the true intention of the parties, and whether or not they complied with the provisions of the document. (Rollo, p. 78) Hence, at that stage of the case, the trial court's order dated November 20, 1980 had no factual basis.

Even on the assumption that the factual bases of the trial court's questioned orders were justified by evidence in the records the same would still not be proper.

A mortgage is but an accessory contract. "The consideration of the mortgage is the same consideration of the principal contract without which it cannot exist as an independent contract." (*Banco de Oro v. Bayuga*, 93 SCRA 443, citing *China Banking Corporation v. Lichauco*, 46 Phil. 460). On the effects of a mortgage we ruled in *Philippine National Bank v. Mallorca* (21 SCRA 694):

.....

". . . By Article 2126 of the Civil Code, (Formerly Article 1876 of the Civil Code of Spain of 1889.) a 'mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.' Sale or transfer cannot affect or release the mortgage. A purchaser is necessarily bound to acknowledge and respect the encumbrance to which is subjected the purchased thing and which is at the disposal of the creditor 'in order that he, under the terms of the contract, may recover the amount of his credit therefrom.' (*Bischoff vs. Pomar*, 12 Phil. 690, 700) For, a recorded real estate is a right in rem, a lien on the property whoever its owner may be. (*Altavas, The Law of Mortgages in the Philippine Islands*, 1924 ed., p. 2) Because the personality of the owner is disregarded; the mortgage subsists notwithstanding changes of ownership; the last transferee is just as much of a debtor as the first one; and this, independent of whether the transferee knows or not the person of the mortgagee. (*Id.*, at p. 5) So it is, that a mortgage lien is inseparable from the property mortgaged. All subsequent purchasers thereof must respect the mortgage, whether the transfer to them be with or without the consent of the mortgagee. For, the mortgage, until discharge, follows the property. (*Peña, Registration of Land Titles and Deeds*, 1961 ed., p. 225; emphasis supplied. See also *V Tolentino, Civil Code of the Philippines*, 1962 ed., p. 477)"

Applying the principles underlying the nature of a mortgage, the real estate mortgage constituted on Lot No. 1901-E-61-B-1F of the subdivision plan Psd-27482, located in the District of Molo, Iloilo City covered by Transfer Certificate of Title No. T-50324 can not be substituted by a surety bond as ordered by the trial court. The mortgage lien in favor of petitioner Rodolfo Ganzon is inseparable from the mortgaged property. It is a right in rem, a lien on the property. To substitute the mortgage with a surety bond would convert such lien from a right in rem, to a right in personam. This conversion can not be ordered for it would abridge the rights of the mortgagee under the mortgage contract.

Moreover, the questioned orders violate the non-impairment of contracts clause guaranteed under the

Constitution. Substitution of the mortgage with a surety bond to secure the payment of the P40,000.00 note would in effect change the terms and conditions of the mortgage contract. Even before trial on the very issues affecting the contract, the respondent court has directed a deviation from its terms, diminished its efficiency, and dispensed with a primary condition.

WHEREFORE, the instant petition is hereby GRANTED. The Orders dated November 20, 1980 and February 24, 1981 of the trial court are SET ASIDE. Our March 18, 1981 Temporary Restraining Order is made PERMANENT. No costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Escolin and Relova, JJ., concur.
Vasquez, J., on leave.

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