

**SPOUSES TEOFISTO VERCELES AND EULALIA VERCELES,
PETITIONERS, VS. COURT OF FIRST INSTANCE OF RIZAL (BRANCH
XV-PASIG), BANCO DE ORO SAVINGS & MORTGAGE BANK AND
THE SHERIFF OF RIZA...**

G.R. No. 62219. February 28, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Respondents describe the petitioners' theory in this petition for certiorari to be like the man who proclaimed authoritatively before a group that "there is no God" but conveniently omitted the phrase "said the devil." [1] There appears to be a cogent basis in the comparison.

On March 20, 1979, petitioners obtained a loan of P250,000.00 from respondent bank secured by a mortgage covering a parcel of land and improvements thereon located in Pasig, Metro Manila belonging to petitioners as evidenced by Transfer Certificate of Title No. 278951 of the Registry of Deeds for Rizal. Upon failure of the petitioners to pay several installments stipulated in spite of several demands, respondent bank instituted the extrajudicial foreclosure of the property as provided in the mortgage contract. After due publication and notice as well as several postponements of the public auction upon request of petitioners, the property was sold by respondent sheriff at public auction to respondent bank on April 30, 1980 for P389,367.74 representing the outstanding obligation of petitioners. Respondent bank was the only bidder. It was represented by its assistant vice president who was also its legal counsel and secretary thereof. The sheriff's certificate of sale was duly registered in the Registry of Deeds on May 12, 1980.

Upon failure of petitioners to redeem the property respondent bank took steps to consolidate its ownership of the property. The attorney-in-fact designated by petitioners in the mortgage contract executed the deed of absolute sale of the property in favor of the respondent bank on August 1, 1981. Upon the registration of said instrument, the Register of Deeds issued TCT No. 29373 in the name of the respondent bank. As of August 6, 1981, respondent bank consolidated its ownership of the said property. [2]

On August 28, 1981, respondent bank filed a petition for a writ of possession before respondent Court of First Instance of Rizal. Petitioner failed to appear at the hearing of September 11, 1981 despite due notice. The writ of possession was granted by the trial court in its order dated September 14, 1981.

On November 16, 1981, petitioner filed a petition to set aside sheriff's certificate of sale and/or to set aside writ of possession. An opposition thereto was filed by respondent bank. On October 13, 1982, the petition was denied. The possession of subject property was turned over by respondent sheriff to, respondent bank on October 28, 1982.

Hence the herein petition where petitioners question the aforesaid orders of the trial court dated September 14, 1981 and October 13, 1982 on the following grounds ?

- "1. Respondent Bank was not represented by any duly authorized representative during the auction sale; and
2. The issuance of a Writ of Possession without a bond is not in accord with law."[3]

The petition is devoid of merit. The minutes of the public auction show that the respondent bank was duly represented by its assistant vice president, who was also its legal counsel and secretary. He need not present a special power of attorney to establish his authority under the circumstances. The authority of said official was confirmed by respondent bank when it registered the sheriff's certificate of sale, consolidated its ownership over the property after the expiration of the period of redemption and thereafter when it secured a writ of possession of the property and took actual possession thereof. The first ground is obviously untenable.

The second ground is also without any merit. The sheriff's certificate of sale was duly registered with the Register of Deeds for Rizal and annotated on the title of the property on May 12, 1980. The one-year period of redemption of the property extrajudicially foreclosed and sold at public auction starts from the date of the registration of the sheriff's certificate of sale in the office of the Register of Deeds.[4] In fact, this is specifically provided in the sheriff's certificate of sale.[5]

Petitioners contend that the one-year period of redemption should be reckoned not only from the date of registration of the sheriff's certificate of sale but also from the registration of the final deed of sale executed by the attorney-in-fact. The contention of petitioner is absurd. Section 63-B of Presidential decree No. 1529, also known as the Property Registration Decree, provides:

"If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.

"xxx xxx xxx

In case of non-redemption, the purchaser at (the) foreclosure sale shall file with the Register of Deeds, either a final deed sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage, x x x whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled."

The certificate of sale is executed by the sheriff after the public auction and the same is intended as a memorandum of purchase that is only registered and annotated on the title. On the other hand the deed of absolute sale is executed by the attorney-in-fact after the expiration of the period of redemption.[6]

No doubt the writ of possession was applied for and granted to respondent bank after the expiration the redemption period and the consolidation of its ownership. There was no need for respondent bank to post a bond to take possession. It is a right granted to it by law. Indeed, it is a ministerial duty of the trial court to issue such writ of possession in favor of the purchaser in a foreclosure sale of mortgaged property after the one-year period for redemption has expired and ownership has been consolidated in the purchaser.[7]

Lastly, petitioners aver that the period of redemption had not yet expired as respondent bank failed to comply with the condition of the certificate of sale which provides:

"It is hereby required of said highest bidder, that a statement of any amount of assessment or taxes which may have been paid on account of this purchase and such other liens chargeable of a redemptioner, with PROOF thereof, be submitted within thirty (30) days immediately preceding the expiration of the period of redemption, furnishing the Mortgagor/s a copy thereof, as required by law, for purposes of computing the actual amount payable by the Mortgagor/Redemptioner in case of redemption."

Preceding this provision is the paragraph that reads; "The period of redemption of the real property/ies described above will expire one (1) year from and after the date of registration of this Certificate of Sale." [8] There is no stipulation therein that non-compliance by respondent bank with the following paragraph (requiring respondent bank as purchaser to submit to the sheriff a statement of any amount of assessment or taxes that may have been paid on account of the purchase and such other liens chargeable to redemptioner, furnishing a copy to mortgagor, for purposes of computing the actual amount payable by mortgagor/redemptioner in case of redemption) will interrupt the running of the one (1) year period of redemption. There is no law that supports this novel theory of petitioners even assuming respondent bank failed to comply with this requirement.

What is clear from the records is that petitioners have not paid even a single centavo on their account to respondent bank nor demonstrated any honest effort to redeem the property.

Respondents correctly pictured the concepts advanced by petitioners to be a distortion of the rules on extrajudicial foreclosure, redemption and writs of possession.

WHEREFORE, the petition is DISMISSED for lack of merit, with costs against petitioners. This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 22, Rollo.

[2] Annexes 2, 3 and 4 to Compliance; pages 41-44, Rollo.

[3] Page 4 and 5, Rollo.

[4] Reyes vs. Noblejas, 21 SCRA 1027 (1967); Salazar vs. Meneses, 8 SCRA 495 (1963)

[5] Annex 2 to Compliance, page. 41, Rollo.

[6] Gonzalez vs. Calimbas and Poblete 51 Phil. 355 (1927).

[7] De los Angeles vs. Court of Appeals, 60 SCRA 116 (1974); IFC Service Leasing and Acceptance Corp. vs. Nera, 19 SCRA 181 (1967), and De Gracia vs. San Jose, 94 Phil. 623 (1964).

[8] Annex 2 to Compliance, supra.

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