

MARIA V. DE CASIMIRO, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, HON. MARCELINO N. SAYO, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXXII, CALOO...

G.R. No. 65236. October 12, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioner seeks a review of the decision dated July 28, 1983 of the Court of Appeals in AC-G.R. No. 00120-SP, entitled "Maria V. de Casimiro vs. Hon. Marcelino N. Sayo, et al.," denying the petition for certiorari against the order in Civil Case No. C-9523 of the Court of First Instance of Rizal, which dismissed the petitioner's complaint for reconveyance of real property.

The Court of Appeals held that: (1) the proper remedy of the petitioner, was an appeal, not a petition for certiorari; and (2) the redemption of the property by the private respondent, Eliseo Pambid, was lawful because the debtor-mortgagor Eduardo Casimiro (petitioner's son), had waived and forfeited the right to redeem.

On August 5, 1979, herein petitioner Maria V. de Casimiro had caused the constitution of two real estate mortgages on a parcel of land consisting of 5,109 square meters registered in her name in Transfer Certificate of Title No. 3573 (38903) of the Register of Deeds of Rizal, as security for two separate loans, both in the amount of P75,000.00 obtained by her sons, Eduardo V. Casimiro and Alfonso V. Casimiro, from the Traders Royal Bank. Upon the borrowers' default, the two mortgages were foreclosed extrajudicially. The property was sold at a public auction where the Traders Royal Bank was the highest bidder. Two certificates of sale both dated August 14, 1979, were issued to the bank by the Deputy Sheriff of Pasig, Metro Manila.

The two certificates of sale referred to were inscribed in the books of the Register of Deeds on September 14, 1979 and January 11, 1980, respectively. The one-year period for the legal redemption of the property under the latter instrument, with which the issues in the present case are concerned, would therefore expire on January 11, 1981.

The private respondent, Eliseo Pambid, had filed a complaint against Eduardo V. Casimiro and Hijos de P. Casimiro, Inc. for Specific Performance and/or Compliance in the Court of First Instance of Caloocan City, where it was docketed as Civil Case No. C-7669. On October 1, 1979, judgment by default was rendered in Pambid's favor which among other things, ordered Eduardo Casimiro:

"xxx xxx xxx

"3. To pay plaintiff [Pambid] the amount of P200,000.00 as moral damages and P200,000.00 as exemplary damages and P10,000.00 by way of and as attorney's fees;

"In the event that Titles to the aforesaid properties could not be delivered for reasons that the same has been alienated to other parties, the defendants are hereby ordered to:

"1. To reimburse the plaintiff the amount of P101,000.57 paid to defendants for the purchase of lots 21, 22, 23 and 24 of Block IV of defendants' subdivision with compound interest from date of each payment and until such amount has been fully paid;

"2. To pay plaintiff the amount of P200,000.00 as moral damages; and P200,000.00 as exemplary damages; P10,000.00 by way of and as attorney's fees; and costs." (p. 31, Rollo.)

An Alias Writ of Execution dated December 4, 1980, was issued in Civil Case No. C-7669 authorizing the levy on "all the rights, titles, shares, interests, claims and participation" of the defendants therein "especially their rights as redemptioner" in the parcel of land covered by Transfer Certificate of Title No. 3573 (383903) (p. 31, Rollo).

On January 6, 1981, a Certificate of Sale was issued by the respondent Deputy Sheriff to private respondent Eliseo Pambid conveying to him Eduardo Casimiro's interest in said parcel of land (p. 53, Rollo).

When Pambid offered to redeem the property from the Bank, the Bank called up Eduardo Casimiro to find out if he would redeem the mortgage. He gave a negative answer.

On January 8, 1981, Pambid paid the redemption price to Traders Royal Bank. Neither Eduardo V. Casimiro nor the herein petitioner Maria V. Casimiro, as the mortgagor, exercised the rights of legal redemption before and after private respondent paid the redemption money.

On June 25, 1981, an Order was issued in Civil Case No. 7669 directing the issuance of the corresponding writ of possession to Pambid.

Subsequently, ownership over the parcel of land covered by TCT No. 3573 (383903) was consolidated in Pambid and Transfer Certificate of Title No. R-41218 was issued in his name.

On September 7, 1981, Civil Case No. C-9523 for reconveyance was instituted in the Court of First Instance of Caloocan City by Maria V. de Casimiro against Pambid, the Ex-Oficio Sheriff Rodrigo N. Saure, and the Register of Deeds, District III of Caloocan City. She alleged that the levy upon the right of redemption of the land covered by TCT No. 3573 (383903) was illegal because she was the owner of the land; she was not a party in said Civil Case No. C-7669 and Eduardo V. Casimiro and Hijos de P. Casimiro, Inc., defendants in Civil Case No. C-7669, were not the owners of the land.

The main argument in the petition for review is that Eduardo V. Casimiro's waiver of the right to redeem the mortgaged property of his mother was invalid because she did not authorize him to waive said right of redemption which allegedly belongs to her as owner of the property.

That argument is not well taken. Petitioner's property was mortgaged to the Bank by her son, Eduardo V. Casimiro, with her consent. Section 6 of Article 3135 provides that the debtor (Eduardo Casimiro), not the owner of the mortgaged property (the petitioner), may exercise the right of redemption.

"SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act." (Underlining supplied.)

The petitioner's allegation that she could have redeemed the property from the bank on or before the deadline on January 11, 1981, had not Pambid exercised the right of redemption on January 8, 1981, is a hollow boast for

there is no evidence that she tendered the redemption money to the bank before the redemption period expired. Her complaint in Civil Case No. C-9523 against Pambid and the sheriff to compel them to reconvey the property to her, was filed on September 7, 1981 or almost nine (9) months after the redemption period had expired, and was not accompanied by a tender of the redemption price (representing Eduardo's obligation to the Bank) which Pambid paid to the bank.

WHEREFORE, finding no reversible error in the decision of the Court of Appeals, the petition for review is denied for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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