

**ALEJANDRO MIRASOL, AND LILIA E. MIRASOL (SPOUSES),
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, PHILIPPINE
NATIONAL BANK, BACOLOD BRANCH, AND THE PROVINCIAL
SHERIFF OF NEGROS ...**

G.R. No. 67588. June 20, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Intermediate Appellate Court affirming an order of the Regional Trial Court, Sixth Judicial Region, Branch XI, Silay City, Negros Occidental, directing the issuance of a writ of possession in favor of respondent Philippine National Bank (PNB).

On October 22, 1971, the petitioners and PNB entered into a contract of real estate mortgage as security for a loan to finance the agricultural sugar crop loans of the petitioners.

In the crop years of 1973-74 and 1974-75 the price of sugar rose to \$90.45 per picul. In terms of pesos at the then average currency rate of exchange which was P7.50 to \$1.00, the price of sugar per picul amounted to P678.35.

The PNB liquidated the planters' export sugar at P180.00 per picul only. The petitioners agitated for an accounting and demanded from the bank the balance of their export sugar's price, the difference between the liquidated price of P180.00 and the price the bank sold at world markets minus expenses.

Receiving no definite commitment from the bank, the petitioners filed on August 15, 1979, a complaint, which was later amended, before the then Court of First Instance of Negros Occidental for accounting, specific performance, damages, and other reliefs. To this amended complaint, the bank in its answer set up its defense that the petitioners have no cause of action; the amended complaint is not brought against the real party in interest, which should have been the Philippine Government; and that the petitioners are estopped from denying the validity of the appraisal of the properties covered by the dacion en pago which they voluntarily signed.

Meanwhile, the petitioners did not pay their agricultural sugar crop loans for 1976-77 because of the above development. Consequently, the bank extra-judicially foreclosed the real estate mortgage and purchased the property at public auction on August 10, 1982, as the sole bidder. A certificate of sale was then issued by the Sheriff.

Claiming that they came to know of the sale at public auction only after it was consummated, the petitioners filed on October 4, 1982, a complaint for annulment of the real estate mortgage against the bank with the then Court of First Instance of Iloilo alleging that the real estate mortgage on the basis of which the sale was made had already prescribed; the obligation contained in it was fully paid for; and the claim is barred for not having been set up in a counterclaim.

On January 10, 1983, the bank filed an ex-parte petition for writ of possession with the Court of First Instance of

Negros Occidental contending that it is entitled to the writ prayed for as a matter of right. After hearing, the trial court issued an order dated March 14, 1983 granting the ex-parte motion and directing the issuance of the writ of possession. The appellate court sustained this order.

The issue raised in this case is whether or not the pendency of the civil case for annulment of the real estate mortgage on the subject property of the petitioners to the PNB and which the latter had already extra-judicially foreclosed, constitutes a bar or a legal impediment to the enforcement of the writ of possession issued by the trial court in favor of the bank.

The appellate court sustained the lower court's order granting the ex-parte motion for the issuance of a writ of possession in favor of the private respondent bank in line with the case of *Philippine National Bank v. Adil*, (118 SCRA 110, 114-115) wherein we stated:

"x x x that since pursuant to *De Los Angeles v. Court of Appeals, et al.* 60 SCRA 116, citing *De Gratia v. San Jose*, 94 Phil. 675, it is ministerial upon the court to issue a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property, it follows that the execution of the writ of possession, cannot be suspended, much less, restrained by respondent Judge. It also contends that, as purchaser, it becomes the owner of the property entitled to *jus possidendi* as provided in Article 428 of the Civil Code.

x x x

x x x

x x x

"Section 4 of P.D. No. 385 'requiring governmental financial institutions to foreclose mandatorily all loans with arrearages, including interest and charges amounting to at least 20% of the total outstanding obligations,' provides.

'Section 4. As a result of foreclosure or any other legal proceeding wherein the properties of the debtor which are foreclosed, attached, or levied upon in satisfaction of a judgment are sold to a government financial institution, the said properties shall be placed in the possession and control of the financial institution concerned, with the assistance of the Armed Forces of the Philippines whenever necessary. The Petition for Writ of Possession shall be acted upon by the court within fifteen (15) days from the date of filing."

"Pursuant to the above provision, it is mandatory for the court to place the government financial institution, which petitioner is, in the possession and control of the property. As stated, the said decree was enacted 'in order to effect the early collection of delinquent loans from government financial institutions and enable them to continue effectively financing the development needs of the country' without being hampered by actions brought to the court by borrowers."

These principles are reiterated in the case of *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, (142 SCRA 44) and *Banco Filipino Savings & Mortgage Bank v. Pardo* (151 SCRA 481).

The petitioners, however, contend that the *Philippine National Bank v. Adil* case is not applicable to the case at bar because the cited case presupposes that the real estate mortgage is valid. They argue that since the real estate mortgage is under attack it cannot be invoked to serve as basis for any fruitful action thereon and if the real estate mortgage itself is void, it follows that the extra-judicial sale and all other pertinent proceedings pursuant thereto, must also be void. Therefore, the writ of possession should not have been issued.

These arguments are not well-taken.

An examination of the petitioners' complaint captioned as Annulment and other Reliefs with Prayer for Interlocutory Order/ s in the pending civil case (Civil Case No. 14665) reveals that they ask for the setting aside of the real estate mortgage on the following grounds: (1) that the action on the real estate mortgage has already prescribed; and (2) that the real estate mortgage has become "innocuous/lifeless considering that (a) the indebtedness it covered was more than paid for had defendant PNB rendered an accounting and liquidated in full, (b) it was already barred, not having been set off as a counterclaim and (c) assuming that it can be so maintained, action thereon has prescribed."

Hence, the petitioners do not question the validity of the real estate mortgage at its inception. Not one of their defenses can be considered as ground for declaring the contract void under the law. Their defenses consist of circumstances after the execution of the real estate mortgage. Their defenses of prescription and that the mortgage has become "innocuous and lifeless" clearly show that the petitioners are attacking the extra-judicial foreclosure sale on the ground that there is no longer any basis for it. In effect the petitioners admit the validity and existence of the real estate mortgage but are resisting the extra-judicial foreclosure of mortgage because according to them the action has already prescribed and that the mortgage has become "innocuous and lifeless."

The pending civil case has for its purpose the annulment of the extra-judicial foreclosure of mortgage based on the aforementioned grounds and not the annulment of a void real estate mortgage. The real estate mortgage is challenged only in relation to its extra-judicial foreclosure. We cannot act one way or another on that case.

Consequently, Philippine National Bank v. Adil and other related cases are applicable.

The petitioners are not without remedies. Any question regarding the regularity and validity of the sale and the setting aside of the writ can be threshed out in the still pending civil case. Such question may not be raised, however, as a justification for opposing the issuance of the writ of possession, since, given the circumstances provided by law, the proceeding for this is ex parte (De Gracia v. San Jose, et al. supra). The law may sometimes be harsh in its application. The petitioners, however, have failed to show why so many established precedents, not to mention the provisions of specific law, should be set aside or not applied in their case. Their recourse is to speed up the resolution of the main case.

WHEREFORE, the petition is hereby DISMISSED. The questioned decision of the then Intermediate Appellate Court is AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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