

**DAVID P. FORNILDA, JUAN P. FORNILDA, EMILIA P. FORNILDA OLILI,
LEOCADIA P. FORNILDA LABAYEN AND ANGELA P. FORNILDA
GUITERREZ, PETITIONERS, VS. THE BRANCH 164, REGIONAL TRIAL
COU...**

G.R. No. 72306. January 24, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On 5 October 1988, this Court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, Certiorari is granted; the Order of respondent Trial Court, dated 25 July 1985, granting a Writ of Possession, as well as its Orders, dated 25 April 1986 and 16 May 1986, directing and authorizing respondent Sheriff to demolish the houses of petitioners Angela and Leocadia Fornilda are hereby set aside, and the Temporary Restraining Order heretofore issued, is made permanent. The six (6) parcels of land herein controverted are hereby ordered returned to petitioner unless some of them have been conveyed to innocent third persons.

"With respect to petitioners' prayer for disbarment by reason of malpractice of Respondent Amonoy embodied in their pleading entitled "Mahigpit na Musiyun para Papanagutin Kaugnay ng Pagalapastangan" and "Masasamang Gawain (Mal-Practices)" and "Paninindigan (Memorandum)", both filed on 16 June 1988, Respondent Sergio I. Amonoy is hereby required, within fifteen (15) days from notice hereof, to submit an answer thereto. After receipt of the same, a new docket number will be assigned to the case.

"Costs against respondent, Sergio I. Amonoy." (pp. 497-498, Rollo)

The case for disbarment is dealt with in a separate Resolution of even date in AC No. 3277.

On 25 October 1988 respondent Amonoy filed his Motion for Reconsideration, followed by his "Supplemental Arguments in Support of Motion for Reconsideration" dated 8 November 1988. In essence, he advances the following points:

- 1) The transaction involved herein being a mortgage, Article 1491[5] of the Civil Code does not apply. Consequently, the mortgage contract executed in favor of respondent Amonoy is valid;
- 2) Article 1491[5] does not apply to foreclosure sales in favor of judgment creditors;
- 3) The instant petition is barred by res judicata;
- 4) The jurisdiction of the foreclosing court does not depend on the alleged invalidity of the mortgage being foreclosed. Thus, the lower court had jurisdiction over the foreclosure case, the alleged invalidity of the contract merely serving as a ground for the dismissal of the petition due to lack of cause of action;
- 5) Under BP 129, only the Court of Appeals has original and exclusive jurisdiction over actions for annulment of judgment.

We find the foregoing submissions without merit.

Respondent Amonoy avers that at the time of the execution of the mortgage on 20 January 1965, subject properties were no longer "properties in litigation" since the Project of Partition (as signed by the intestate heirs) covering said properties was approved by the lower Court as early as 12 January 1965.

This argument must fail for the reason that while the Project of Partition was approved on 12 January 1965, it was only on 6 August 1969, and after all charges against the estate had been paid, that the estate was declared closed and terminated. In fact, by his own admission, he had acted as counsel from 1959 until 1968 (Comment, p. 145, Rollo). Thus, at the time of the execution of the mortgage contract, the Controverted Parcels were still in litigation and a fiduciary relationship of lawyer and client, which Article 1491[5] precisely seeks to protect, still existed between the parties. To state that mortgages are not included within the prohibition is to open the door to an indirect circumvention of that statutory injunction, acquisition of the property being merely postponed till eventual foreclosure.

Respondent asserts further that Article 1491[5] does not apply to judgment creditors of which, he claims, he was one. Under ordinary circumstances, the argument of respondent could be considered plausible. Unfortunately, however, as heretofore explained, the mortgage was executed in violation of Article 1491[5] so that this Article has a direct bearing on this case and respondent can not escape its provision. Having violated the same, he cannot be considered in the general run of a judgment creditor.

Respondent likewise stresses that *res judicata* should apply herein since it was a little more than four (4) years from the 22 July 1981 Decision of the Court of Appeals in the Annulment Case (CA-G.R. No. 63214-R) when this Petition was filed. Consequently, he contends that this Petition should be dismissed since it merely raises the same issues brought up and already resolved in the earlier case.

The question of *res judicata* and jurisdiction of the lower Court over the subject matter of the Foreclosure Case had been amply discussed in the Decision sought to be reconsidered, citing the case of *Municipality of Antipolo vs. Zapanta* (133 SCRA 822 [1984]), and we find no need to dwell on them again.

Neither of the cases cited by respondent to support his contention that the lower Court had jurisdiction over the Foreclosure Case notwithstanding the invalidity of the mortgage contract, viz., *Florentin vs. Galera* (5 SCRA 500 [1962] and *Talosig vs. Vda. de Nieba* (43 SCRA 472 [1972])), refers to a void subject matter over which the Courts involved could not acquire jurisdiction.

Finally, respondent movant submits that only the Court of Appeals has original and exclusive jurisdiction over actions for annulment of judgments of the lower Court under BP Blg. 129 so that the Supreme Court should not take cognizance of the instant case. The focal issue raised herein, however, i.e., whether or not the acquisition by respondent of the property in litigation is valid or not, is a pure question of law. As such, this Court is vested with jurisdiction to take cognizance of this case.

ACCORDINGLY, private respondent's Motion for Reconsideration is hereby DENIED and this denial is FINAL.

SO ORDERED.

Paras, Sarmiento, and Regalado, JJ., concur.

Padilla, J., no part.

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