

**EPIFANIO CRUZ AND EVELINA CRUZ, PETITIONERS, VS.
INTERMEDIATE APPELLATE COURT, CALIXTRO O. ADRIATICO,
RUFINO J. SANTIAGO AND GODOFREDO VALMEO, RESPONDENTS.**

G.R. No. 72806. January 09, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioners seek herein the review and reversal of the decision of the respondent Intermediate Appellate Court in AC-G.R. No. SP-06317[1] which dismissed their petition for certiorari questioning, inter alia, the judicial foreclosure and the judicial confirmation of the subsequent sale of their property pursuant to the judgment of the therein respondent Regional Trial Court of Bulacan, Malolos Branch VIII[2]; as well as the resolution[3] of the herein respondent court denying their motion for reconsideration.

The challenged decision of the respondent court provides the factual background of this case, thus:

"The relevant and undisputed facts indicate that petitioners mortgaged certain properties to private respondents who eventually sued them for non-payment and for the judicial foreclosure of aforementioned mortgages under Rule 68 of the Rules of Court. In the course of the proceedings a compromise agreement was reached and this became the basis of the Judgment on Compromise issued by the respondent Judge of the Regional Trial Court (RTC) of Bulacan.

"Pertinent parts of the Agreement, as embodied in the decision, reads:

'3. Upon full payment of the sums of P55,000.00 and P320,000.00 within the period agreed upon, the plaintiff shall deliver to the defendants Transfer Certificate of Title No. T-32286 (M) of the Registry of Deeds of Bulacan, Meycauayan Branch, together with all the documents submitted to the plaintiff;

4. Should the defendants fail to pay the sums agreed upon within the period stipulated, the defendants shall pay plaintiff the entire sum of P92,149.00 under the Deed of Real Estate Mortgage attached to the complaint as Annex 'C' and an additional sum of P44,700.00 as attorney's fees;

5.

Upon failure of the defendants to pay the sums agreed upon within the period stipulated, plaintiff shall be entitled to a writ of execution directing the foreclosure of all the mortgages subject matter of this litigation and to the principal sum of P300,000.00 in the Deed of Real Estate Mortgage attached to the complaint as Annex 'B' shall be added the sum of P44,700.00 as attorney's fees.'

"For failure of the petitioners to comply with certain provisions of the agreement, private respondent moved

for a writ of execution. The mortgaged properties were foreclosed upon in an auction sale and were purchased by the private respondents as the highest bidder. The sale was later judicially confirmed."[4]

Preliminarily, We dispose of the procedural issue raised by petitioners over the statement of respondent court that appeal should have been their proper remedy in said court at that juncture, since their objections to the judicial foreclosure proceeding and the subsequent confirmation of the sale, if correct, would constitute errors of judgment and not of jurisdiction. Petitioners' justification of their remedy, contending that the compromise agreement was null and void and that the writ of execution thereafter issued and enforced was invalid, as well as their arguments thereon, are pointless at this stage. The fact remains that, obviously in the broader interests of justice, the respondent court nevertheless proceeded to decide the petition for certiorari and ruled on the specific points raised therein in a manner akin to what would have been done on assignments of error in a regular appeal. The petition therein was, therefore, disposed of on the merits and not on a dismissal due to erroneous choice of remedies or technicalities.

Central to the controversy as the vital issue for resolution, instead, is the submission of petitioners that the aforesaid judgment on compromise was null and void ab initio because it allegedly "denied them their equity of redemption under Sec. 2, Rule 68 of the Rules of Court, by not allowing the petitioners to pay 'into court within a period of not less than ninety (90) days from the date of the service of said order', and that it is only if the petitioners default in said payment that the property should be sold to pay the judgment debt".[5]

The provision relied upon reads as follows:

"Sec. 2. Judgment on foreclosure for payment or sale. - If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment for the sum so found due and order the same to be paid into court within a period of ninety (90) days from the date of the service of such order, and that in default of such payment the property be sold to realize the mortgage debt and costs."

The procedure outlined therein obviously refers to the situation where a full-blown trial, with the introduction of evidence is entailed, such that the trial court has to thereafter determine whether the allegations in the complaint have been proved, then ascertain the total amount due to the plaintiff, and thereafter render judgment for such amount with an order for the payment thereof in accordance with the prescription of the aforequoted section, sans the agreement of the parties on those particulars. There being no such agreement, the specified procedure has necessarily to be followed and the minimum period of ninety (90) days for payment, also referred to as the period for the exercise of the equity, as distinguished from the right, of redemption has to be observed and provided for in the judgment in the foreclosure suit. Jurisprudentially, it has also been held that the exercise of the equity of redemption may be made beyond the 90-days period but before the foreclosure sale is confirmed by the court.[6]

It stands to reason, however, that the aforesaid procedure cannot be of substantial application to, and can be modified by, a valid agreement of the parties, such as in the compromise agreement subject of and constituting the basis for the judgment on compromise rendered in Civil Case No. 7418-M of the Regional Trial Court of Bulacan, as hereinbefore stated. The dispositions of Section 2 of Rule 68 clearly cannot apply since the parties therein had specifically agreed on the amounts to be paid, when they should be paid and the effects of non-payment or violation of the terms of their agreement. Thus, the petitioners undertook to pay on the obligation subject of the compromise agreement, P55,000.00 on or before August 20, 1984 and P320,000.00 on or before September 30, 1984[7] and, in case of default on their part, the consequences are spelled out in Paragraphs 3, 4 and 5 of their aforequoted compromise agreement[8], all of which are premised on the precise contingency of failure by the petitioners to comply within the period stipulated.

Paragraph 5 lucidly provides that, upon the happening of the aforesaid contingency contemplated therein, private respondent Godofredo Valmeo shall be entitled to a writ of execution directing the foreclosure of all the mortgages subject matter of said litigation. It is noteworthy that this particular proviso is what distinguishes this case from other judicial foreclosure cases decided on the bases of compromise agreements but which did not have the same specification. Ineluctably, therefore, the petitioners herein thereby waived their so-called equity of redemption and the case was necessarily removed from the operation of Section 2, Rule 68 insofar as its provisions are inconsistent with the judgment on compromise.

This is not an isolated proposition as it may initially appear. True, the procedural requirement in Section 2 grants a substantive right to the mortgagor, consisting of the so-called equity of redemption, which after the ordinary adversarial course of a controverted trial of a case may not be omitted in the relief to be awarded in the judgment therein.[9] The same, however, may be waived, as already demonstrated.

In the same manner, the procedural requirements for the appointment of and proceedings by commissioners in actions for expropriation[10] and judicial partition[11] may be said to likewise confer substantive rights on the party defendants therein, which procedural steps may not be omitted over their objection but can likewise be waived or dispensed with on mutual agreement. In these three special civil actions, although dissimilar in the specific procedure in their special features, their rationale and specific objectives are congruent in that they afford added protection to proprietary rights, but which additional protection may be waived, as by stipulations to that effect in compromise agreements.

It is hornbook knowledge that a judgment on compromise has the effect of *res judicata* on the parties and should not be disturbed except for vices of consent or forgery.[12] To challenge the same, a party must move in the trial court to set aside the said judgment and also to annul the compromise agreement itself, before he can appeal from that judgment.[13] Definitely, the petitioners have ignored these remedial avenues.

There can be no pretension that the compromise agreement as formulated and approved is contrary to law, public policy or morals or that the same was tainted with circumstances vitiating consent. The petitioners entered into the same duly assisted by competent counsel and the entire judicial proceeding was under judicial scrutiny and supervision.

Hence, as correctly observed by the respondent court:

"(1) Re the 'equity of redemption'. It is true that under Rule 68 of the Rules of Court, the debtor-mortgagor is allowed a period of 90 days within which to pay his 'debt, to prevent foreclosure, but this right, to Our mind was impliedly waived when the parties signed the compromise agreement, which was later embodied in the Judgment. The agreement in effect says that upon breach of the same (and this fact is not disputed), foreclosure should be resorted to. The agreement was clear that payment had to be made within the stipulated period. It would be absurd to say that after said stipulated period, petitioners would still be given an additional 90-day period for the 'equity'. Had petitioners intended still an exercise in 'equity', they should have insisted on a clarificatory provision in the agreement." [14]

Petitioners next shift to the writ of execution pursuant to which the foreclosure sale was conducted by respondent sheriff, stigmatizing it as a falsified writ of execution. This is unwarranted and baseless.

What actually transpired was that the respondent Branch Clerk of Court issued a writ of execution on October 9, 1984 containing the following directives:

"NOW THEREFORE, you are hereby commanded to execute and make effective the aforequoted decision of this Honorable Court dated August 20, 1984 and make a return of this writ within sixty (60) days from receipt hereof. But if sufficient property cannot be found thereon, then we command you that of the land and building

of said defendants you make the said sum of money."[15]

This honest and inconsequential mistake on the part of the respondent clerk, subsequently rectified by the respondent sheriff, was satisfactorily explained by the court a quo in its order resolving several motions on May 27, 1985[16] as follows:

"As to the alleged defect in the writ of execution, the mortgagors could have moved to have the writ quashed before the confirmation of the sale, but they failed to raise that point or any point for that matter. The alleged defect in the writ of execution is that it differs from that quoted in the notice of sale. The writ issued by the Branch Clerk of Court included an extra sentence which reads: 'But if sufficient personal property cannot be found thereon, then we command you that of the land and buildings of said defendants you make the said sum of money.' The surplusage is understandable and excusable as these wordings are usually included in the standard form copied by the stenographer in ordinary writs of execution. It has been held that if the writ of execution does not conform to the judgment, the writ may be amended so that the judgment may be properly satisfied. In fact, the slight difference between the writ handed by the Branch Clerk and that reproduced in the notice of sale was for the reason that the Deputy Sheriff, realizing the imperfection of the original writ, rectified it by eliminating the surplusage to make it conform to the terms of the judgment. Although the better step that should have been taken by the sheriff was to inform the Branch Clerk about it for the proper amendment, the rectification done by said sheriff, in effect, was confirmed and adopted by the court when it confirmed the sale without any objection from the herein movants. At any rate, there is no showing of any detriment to the interest of the mortgagee resulting from this rectification."[17]

Petitioners' complaints about the supposed irregularity in the publication of the notice of sale involve questions of fact which cannot be resolved by this Court. Furthermore, petitioners had all the opportunity, in the several motions filed in and heard by the trial court and especially in the hearing for the confirmation of sale, to ventilate the alleged irregularities but they never did so.

Neither are We inclined to nor justified in disturbing the factual findings of the respondent court debunking petitioners' claim that private respondent Valmeo had, subsequent to the foreclosure sale of the property, agreed to allow petitioners to redeem the property. In reliance upon the findings of the trial court in its orders of October 8, 1984[18] and March 20, 1985,[19] the respondent court categorically declared:

"(5) Re the 'new agreement to redeem'. There was actually NO SUCH AGREEMENT. True, petitioners had been informed in Court by private respondents' previous counsel (Atty. Cecilio de la Merced) that he was allowing petitioners 'to redeem'. BUT this was without any authorization from the private respondents. In fact, in due time, private respondents were able to inform the respondent Judge of this non-authorization and the Judge was able to rectify her previous order allowing such 'redemption'. Be it noted that aforementioned previous counsel's services were TERMINATED by the private respondents."[20]

Petitioners close their jeremiad by an appeal for consideration on grounds of equity. However, We also recognize the principle of countervailing equity in favor of the adverse party, opposed to that which petitioners seek to be recognized, and which should not be subordinated because it is of equal strength and equally deserving of consideration.

WHEREFORE, the petition at bar is hereby DENIED, with costs against the petitioners.

SO ORDERED.

Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

Paras, J., no part, penned the CA decision.

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- [1] Penned by Edgardo L. Paras, J., with the concurrence of Vicente V. Mendoza and Luis Javellana, JJ.
- [2] Civil Case No. 7418-M; Judge Elsie Ligot-Telan, presiding.
- [3] Annex B, Petition; Rollo, 38-39.
- [4] Annex A, Petition; Rollo, 34-35.
- [5] Brief for Petitioners, 7; Rollo, 186.
- [6] Anderson, et al. vs. Reyes, et al., 54 Phil. 944 (1930); Castillo vs. Samonte, 106 Phil. 1023 (1960).
- [7] Petition, 3; Rollo, 8.
- [8] See Annex A, Petition, Footnote 4, ante.
- [9] De Leon vs. Ibañez, 95 Phil. 119 (1954).
- [10] Sections 6 to 8, Rule 67.
- [11] Sections 3 to 7, Rule 69.
- [12] Dormitorio, et al. vs. Fernandez, et al., 72 SCRA 388 (1976); Arcenas, et al. vs. Cinco, et al., 74 SCRA 118 (1976); Arts. 2037 and 2038, Civil Code.
- [13] Mabale, et al. vs. Apalisok, et al., 88 SCRA 234 (1979).
- [14] Rollo, 36.
- [15] Brief for Respondents, 4; Rollo, 197.
- [16] Annex F, Petition; 48-53.
- [17] Ibid., 51-52.
- [18] Annex D, Petition; Rollo, 42.
- [19] Annex E, *ibid.*; *ibid.*, 43-47.
- [20] Annex A, *ibid.*; *ibid.*, 37.

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