

SPOUSES TRINIDAD AND EPIFANIO NATINO, PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT, THE RURAL BANK OF AGUILAR, INC. AND THE PROVINCIAL SHERIFF EX-OFFICIO OF PANGASINAN, RES...

G.R. No. 73573. May 23, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Unsatisfied with the decision of 4 June 1985 and the resolution of 23 December 1985 of the then Intermediate Appellate Court (IAC) in A.C.-G.R. CV No. 69539[1] which, respectively, reversed the decision of the then Court of First Instance of Pangasinan, Branch II, of 1 December 1981 in Civil Case No. 15573, and denied the motion for the reconsideration of the 4 June 1985 decision, petitioners filed with this Court the instant petition to seek reversal thereof. They submit one principal issue: whether or not the conclusion drawn by the Intermediate Appellate Court from proven facts is correct.[2]

The following facts are not disputed:

On 12 October 1970 petitioners executed a real estate mortgage in favor of respondent bank as security for a loan of P2,000.00. Petitioners failed to pay the loan on due date. The bank applied for the extrajudicial foreclosure of the mortgage. At the foreclosure sale on 11 December 1974 the respondent bank was the highest and winning bidder with a bid of P2,945.11. A certificate of sale was executed in its favor by the sheriff and the same was registered with the Office of the Register of Deeds on 29 January 1975. The certificate of sale, a copy of which was furnished the petitioners by registered mail, expressly provided that the redemption period shall be two years from the registration thereof.

Since no redemption was made by petitioners within the two-year period, which expired on 29 January 1977, the sheriff issued a Final Deed of Sale on 15 February 1977.

Petitioners, however, claimed that they were granted by respondent bank an extension of the redemption period; but the latter denied it.

On 22 November 1979 respondent bank filed a petition for a writ of possession, which petitioners later opposed on the ground that they had consigned the redemption money of P4,000.00 on 12 December 1979. The court rejected the opposition and issued the writ of possession. However, to prevent its execution, petitioners instituted with the then Court of First Instance of Pangasinan a complaint against respondent bank and the Ex-Officio Provincial Sheriff for the annulment of the aforementioned final deed of sale and for the issuance of a writ of preliminary injunction. The case was docketed as Civil Case No. 15573 which was raffled to Branch II thereof. In their complaint petitioners alleged that the final deed of sale was prematurely issued since they were granted an extension of time to redeem the property.

In resolving the issue of extension of the redemption period, the trial court, in its Decision of 1 December 1981,

made the following findings and conclusion:

.....

“From the bank’s evidence, it is difficult to believe that the plaintiffs who are personally known to the president and manager herself, and from whom she had to hire trucks, would not have made any move or offer to redeem the property within the redemption period. The presumption is that they exercised ordinary care of their concerns (Sec. 5 (d), Rule 131, Rules of Court, *Cabigao vs. Lim*, 50 Phil. 844). If indeed, the plaintiffs made no such offer during the redemption period, the defendant bank should have presented evidence rebutting the plaintiffs’ evidence. But it did not. While the plaintiff testified that the tender was made to Mr. Salgado, loan clerk, and Mr. Madrid, Acting Manager of the Bank and also board members Dr. Jing Zarate and Mr. Rosario, none of them were presented to rebut plaintiffs’ evidence. Hence, the presumption that if their testimony were produced, it would be adverse to the defendant bank under Sec. 5(e) Rule 131 of the Rules of Court, would apply.

Furthermore, the very evidence of the defendant bank shows that there was indeed an extension of the period to redeem the property. The statutory period of redemption granted the mortgagor in the certificate of sale registered on January 29, 1975 was 2 years. The period should have terminated on January 29, 1977. However, the Sheriff’s Certificate of Final sale was only executed on February 15, 1977 and registered only on November 14, 1979 which registration date is the effective date of the confirmation of the sale which cuts off redemption. Such extension of nearly 3 years strengthens the plaintiffs’ claim that indeed, there was an agreement to extend the redemption date.

The plaintiffs’ evidence has shown that there was an agreement between them and the defendant bank through its personnel and its president and manager, acting as its agents, to extend the period for redemption for the plaintiffs. However, the plaintiffs were not given a specific time to pay and redeem but were given by the President and Manager of the bank such time when their means permit them to do so. This created an obligation with a period under Art. 1180 of the Civil Code of the Philippines, which provides:

‘Art. 1180. When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of Article 1197.’

This does not mean that the condition was exclusively dependent of the will of the plaintiffs, for they had already promised payment. If therefore became necessary, under Article 1197 for the Court to fix the term in order that the condition may be fulfilled. Any action to recover before this is done is considered premature (*Patente vs. Omega*, 93 Phil. 218).

That agreement or contract entered into between the President and Manager of the bank was not an writing is of no moment since under Article 1315 of the Civil Code, “contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.” The defendant’s claim that the agreement must be in writing citing the ruling in the case of *Pornellosa vs. Land Tenure Administration*, 1 SCRA 375, only applies to executory contracts, not to those either totally or partially performed, (*Inigo vs. Estate of Maloto*, 21 SCRA 246). In this case, the bank had already partially performed its obligation thereunder by extending the period redemption from January 29, 1977 to November 14, 1979.

The agreement does not novate the original contract of mortgage but only changes one of its conditions, that which concerns the period of redemption. The period of redemption may be extended by the parties under special circumstances (*Lichauco vs. Olegario*, 43 Phil. 540, 542). This the parties may do, since the right of the mortgagee to demand compliance within the 2 year period of redemption maybe waived, unless the waiver is contrary to the public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.” None of the inhibitions enumerated are present in this case.

Hence, the action of the defendant bank in securing the Sheriff's Final Sale prior to the fixing of the period within which the plaintiffs had to pay was not in order by reason of the extension of the period of redemption without a term. Not being in order, the period for redemption by the plaintiffs still exists but has to be set.”[3]

and on the basis thereof, decreed to (a) annul the Sheriff's Final Deed of Sale, dated 15 February 1977 and its registration of 17 March 1979, (b) fix the period of redemption to ninety (90) days from receipt of the decision by petitioners, (c) order petitioners to pay the respondent bank, within ninety (90) days from receipt of the decision the amount of P2,945.11, the purchase price, with 1% interest per month from 11 December 1974 to 14 December 1979, together with any amount representing assessment or taxes which the bank may have paid after 11 December 1974, with interest thereon at 1% per month up to 14 December 1979, (d) order the Bank to receive and credit the petitioners with such amounts, restore petitioners to the property and to deliver to them a certificate of redemption, and to pay petitioners the sum of P2,000.00 as attorney's fees and the costs.[4]

Respondent bank appealed from said Decision to the then Intermediate Appellate Court which docketed the appeal as C.A.-G.R. CV No. 69539.

In support of its appeal, respondent bank assigned the following errors:

“-I-

THE LOWER COURT ERRED IN NOT HOLDING THAT THE OFFERS BY THE APPELLEES TO THE APPELLANTS WERE MADE AFTER THE PERIOD OF REDEMPTION HAD ALREADY EXPIRED AND AS A MATTER OF FACT, WERE MADE ONLY AFTER THE EXECUTION OF THE DEED OF FINAL SALE BY THE SHERIFF.

-II-

THE LOWER COURT ERRED IN HOLDING THAT THE APPELLANTS GRANTED THE APPELLEES AN EXTENSION OF THE PERIOD FOR THE REDEMPTION OF THE PROPERTY WHICH WAS SOLD DURING THE FORECLOSURE SALE.

-III-

THE LOWER COURT ERRED IN HOLDING THAT THE PREPONDERANCE OF EVIDENCE FAVORS THE APPELLEES DESPITE THE FACT THAT THE ONLY EVIDENCE PRESENTED BY THEM IS THE SOLE TESTIMONY OF EPIFANIO NATINO, WHICH IS NOT ONLY UNCORROBORATED, BUT IS EVEN CONTRARY TO THE IMPORT OF HIS DECLARATIONS AND ADMISSIONS MADE IN OPEN COURT; AS AGAINST THE TESTIMONY OF THE APPELLANTS' WITNESS WHICH IS CORROBORATED, NOT ONLY BY DOCUMENTARY EVIDENCE, BUT EVEN BY THE IMPORT OF PLAINTIFF-APPELLEES' TESTIMONY.

-IV-

THE LOWER COURT ERRED IN NOT REJECTING THE TESTIMONY OF PLAINTIFF-APPELLEE WHICH DID NOT PROVE AN OFFER TO REDEEM WITHIN THE REGLEMENTARY PERIOD IN AN AUTHENTIC MANNER AS REQUIRED BY THE LAW, RULES AND JURISPRUDENCE.

-V-

THE LOWER COURT ERRED IN NOT REJECTING THE TESTIMONY OF PLAINTIFF-APPELLEE ON THE ALLEGED EXTENSION OF THE REDEMPTION PERIOD INASMUCH AS IT IS NOT IN A PUBLIC DOCUMENT OR AT LEAST IN AN AUTHENTIC WRITING.

-VI-

THE LOWER COURT ERRED IN APPLYING ARTICLES 1180 AND 1197 OF THE CIVIL CODE, BOTH OF WHICH HAS NO RELEVANCE OR MATERIALITY TO THE CASE AT BAR.

-VII-

ASSUMING ARGUENDO THAT SOME OFFICERS OR EMPLOYEES OF THE APPELLANT BANK MANIFESTED TO THE PLAINTIFF-APPELLEE THAT THEY CAN RECOVER THE LAND IN QUESTION, AS TESTIFIED BY THE PLAINTIFF- APPELLEE, THE LOWER COURT ERRED IN HOLDING THAT SUCH OFFICERS ACTED AS AGENTS OF THE APPELLANT-BANK.

CONSEQUENTLY, THE LOWER COURT ERRED IN NOT HOLDING THAT ONLY THE ACTION BY THE BOARD OF DIRECTORS OF THE BANK CAN BIND THE LATTER.

-VIII-

THE LOWER COURT ERRED IN HOLDING THAT THAT THE EXECUTION OF THE DEED OF FINAL SALE WAS NOT IN ORDER AND IN HOLDING THAT THE APPELLEES MAY STILL REDEEM THE PROPERTY BY PAYING THE PURCHASE PRICE PLUS 1% INTEREST PER MONTH, DESPITE THE LAPSE OF THE PERIOD OF REDEMPTION.

-IX-

THE LOWER COURT ERRED IN NOT DECIDING THE CASE IN FAVOR OF THE APPELLANTS AND CONSEQUENTLY ERRED IN NOT AWARDING DAMAGES TO THE APPELLANTS HEREIN.”[5]

Herein petitioners, as appellees, did not file their Brief.

In its Decision of 4 June 1985, the Intermediate Appellate Court disposed of the assigned errors as follows:

.....

“The bank has assigned eight (8) errors in the decision but the determinants are the first and the second. But before going into their merits We must take note of the failure of the appellees to file their brief. Appellees did not file any motion for reconsideration. It has to be stated there that, generally, appellee’s failure to file brief is considered as equivalent to a confession of error, warranting, although not necessarily requiring a reversal, but any doubt entertained by the appellate court as to what disposition should be made of the case will be resolved against the appellee (4 CJS 1832, cited in Francisco, the Revised Rules of Court Civil Procedure; Vol. III, p. 638).

Re the first error -

THE LOWER COURT ERRED IN NOT HOLDING THAT THE OFFERS BY THE APPELLEES TO THE APPELLANTS WERE MADE AFTER THE PERIOD OF REDEMPTION HAD ALREADY EXPIRED AND AS A MATTER OF FACT, WERE MADE ONLY AFTER THE EXECUTION OF THE DEED OF FINAL SALE BY THE SHERIFF.

It will take better proofs than appellees’ mere declaration for the Court to believe that they had tendered the redemption money within the redemption period which was refused by the bank. There would have been no valid reason for a refusal; it is an obligation imposed by law on every purchaser at public auction that admits of redemption, to accept tender of redemption money. And should there be refusal, the correlative duty of the mortgagor is clear: he must deposit the money with the sheriff. The evidence does not show that appellees complied with this duty.

All that was shown by way of compliance was the deposit made with the Clerk of Court of the sum of P4,000.00. This deposit is a belated and last ditch attempt to exercise a right that had long expired. It was made only on

December 12, 1979, or after the redemption period of two (2) years from January 29, 1977 when the sheriff's certificate of sale was registered and after sheriff's final sale which was registered on November 14, 1979. And, it is clear that the late deposit was utilized to defeat the bank's vested right which it sought to enforce by its petition for a writ of possession. The lower court correctly ruled against any validity to it.

The right to redeem becomes *functus officio* on the date of its expiry, and its exercise after the period is not really one of redemption but a repurchase. Distinction must be made because redemption is by force of law; the purchaser at public auction is bound to accept redemption. Repurchase however of foreclosed property, after redemption period, imposes no such obligation. After expiry, the purchaser may or may not re-sell the property but no law will compel him to do so. And, he is not bound by the bid price; it is entirely within his discretion to set a higher price, for after all, the property already belongs to him as owner.

This brings Us to the second error -

THE LOWER COURT ERRED IN HOLDING THAT THE APPELLANTS GRANTED THE APPELLEES AN EXTENSION OF THE PERIOD FOR THE REDEMPTION OF THE PROPERTY WHICH WAS SOLD DURING THE FORECLOSURE SALE.

Appellees' main premise is the alleged assurances of the bank's officers that they could redeem the property. From the testimony of Epifanio Natino, however, it is clear that these assurances were given before expiry of redemption (tsn, pp. 15 & 16). Such assurances were not at all necessary since the right to redeem was still in existence. Those assurances however could not and did not extend beyond the redemption period.

It seems clear from testimony elicited on cross-examination of the president and manager of the bank that the latter offered to re-sell the property for P30,000.00 but after the petition for a writ of possession had already been filed, and well after expiry of the period to redeem. Appellants failed to accept the offer; they deposited only P4,000.00. There was therefore no meeting of the minds, and accordingly, appellants may no longer be heard.”[6]

and in the light thereof, REVERSED and SET ASIDE the appealed decision. Their motion to reconsider the same having been denied in the resolution of 23 December 1985,[7] petitioners have come to Us on appeal by certiorari raising the sole issue stated in the beginning of this decision.

We find the petition to be devoid of merit. Petitioners have failed to demonstrate that the conclusion made by the respondent Intermediate Appellate Court from the proven facts is wrong. We agree with said Court, and, therefore, set aside the contrary conclusion of the trial court, that the attempts to redeem the property were done after the expiration of the redemption period and that no extension of that period was granted to petitioners.

The contrary conclusion made by the trial court is drawn from inferences which are not supported by adequate or sufficient facts or is based on erroneous assumptions. We note that its decision is remarkably silent as to the dates when petitioner Epifanio Natino went to the respondent bank to talk with a bank personnel to offer to pay the loan. If indeed the offer was made within the redemption period, but the Bank refused to accept the redemption money, petitioners should have made the tender to the sheriff who made the sale and who then had the duty to accept the tender and execute the certificate of redemption. (*Enage vs. Vda. de Hijos de Escano*, 38 Phil. 657, cited in *II MORAN*, Comments on the Rules of Court, 1979 Ed., pp. 326-327).

There was no such tender to the Sheriff.

Again, if indeed this occurred during the redemption period, then, as correctly pointed out by respondent IAC, it was not necessary to ask for extension of the period to redeem.

In respect to the alleged assurance given by Mrs. Brodeth, the President and Manager of the Bank, sometime in

May of 1978 to the effect that petitioners can redeem the property as soon as they have the money, it is obvious that this took place after the expiration of the redemption period. As correctly pointed out by the respondent IAC, this could only relate to the matter of re-sale of the property, not redemption.

Furthermore, even assuming for the sake of argument that Mrs. Brodeth gave the assurance, the same could bind the bank only if its Board of Directors approved or ratified it. No evidence was offered to prove such action by the Board. Moreover, Mrs. Brodeth denied that during that meeting in May 1978 she made the assurance; according to her petitioner Epifanio neither mentioned the loan nor offered to redeem, although earlier he was told that to “redeem” the property he should pay P30,000.00. The latter statement supports the conclusion of respondent IAC that this was the Bank’s offer for the re-sell (not redemption of the property), which, logically took place after the expiration of the redemption period.

Even if Mrs. Brodeth is to be understood to have promised to allow the petitioners to buy the property at any time they have the money, the Bank was not bound by the promise not only because it was not approved or ratified by the Board of Directors but also because, and more decisively, it was a promise unsupported by a consideration distinct from the re-purchase price.

The second paragraph of Article 1479 of the Civil Code expressly provides:

.....

“An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.”

Thus in *Rural Bank of Parañaque Inc. vs. Remolado et al.*,^[8] a commitment by the bank to resell a property, within a specified period, although accepted by the party in whose favor it was made, was considered an option not supported by a consideration distinct from the price and, therefore, not binding upon the promissor. Pursuant to *Southwestern Sugar and Molasses Co. vs. Atlantic Gulf and Pacific Company*,^[9] it was void.

WHEREFORE, the instant petition is DISMISSED, with costs against the Petitioners.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Entitled Spouses Trinidad Natino and Epifanio Natino, plaintiffs-appellees, versus Rural Bank of Aguilar and the Provincial Sheriff Ex-Officio of Pangasinan, defendants-appellants.

[2] Petition, 1; Rollo, 4.

[3] Pp. 5-7, Annex “A” of Petition; Rollo, 20-22.

[4] P. 7, Annex “A” of Petition, Rollo, 22.

[5] Pp. 5-7, Petition; Rollo, 8-10.

[6] Annex “B” of Petition; Rollo, 24-27.

[7] Annex “C” of Petition; Rollo, 28.

[8] 135 SCRA 409.

[9] 97 Phil. 249.

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