

JUAN DE CASTRO, PARALUMAN DE CASTRO, PASTOR DE CASTRO, JR., CRISTINA DE CASTRO AND LOURDES DE CASTRO-GENERAL, PETITIONERS, VS. THE HON. INTERMEDIATE APPELLATE COURT, THE CITY SH...

G.R. No. 73859. September 26, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

The spouses Patricio and Angelina Reyes were the registered owners of a residential house and lot with an area of 284 square meters located in Malibay, Pasay City, covered by Transfer Certificate of Title No. 7600, which they mortgaged on 7 May 1973 to the Pasay City Development Bank to secure the payment of a loan of P25,000.00. On 5 July 1973, the spouses Reyes sold said mortgaged property to herein petitioners Juan, Paraluman, Pastor and Cristina, all surnamed de Castro and Lourdes de Castro-General, who all assumed the mortgage with the knowledge and consent of the mortgagee bank, pursuant to a "deed of sale with assumption of mortgage." However, said deed was not annotated at the back of the title of the mortgaged property nor registered with the Registry of Deeds of Pasay City.

Pursuant to the assumption of mortgage by petitioners, they paid the first monthly amortization and the subsequent monthly amortizations of the mortgage loan with the Pasay City Development Bank.[1] Petitioners requested from the mortgagee bank the receipts for their payments of the monthly amortizations, made and issued in their names, but the bank teller informed them that inasmuch as they were holding a passbook still in the name of Patricio Reyes (original debtor-mortgagor), the corresponding receipts of payments had to be made in the name of said original debtor-mortgagor.[2]

When the petitioners failed to fully pay the loan as it fell due, the mortgage was extrajudicially foreclosed by the mortgagee bank, and the property was sold at public auction on 2 March 1976 to Alfredo Garcia as the highest bidder, for P22,600.00. The said sale was registered with the Registry of Deeds of Pasay City on 3 March 1976.

On 25 February 1977, petitioners offered to redeem the property by depositing with the City Sheriff's Office the amount of P25,400.00 representing the purchase price, one (1) percent interest per month from 2 March 1976 to 2 March 1977, and the sheriff's fees, as evidenced by Official Receipt No. 028408 dated 25 February 1977.[3] Notwithstanding the full payment of the redemption price made by the petitioners and presentation of proofs of their claim as legal redemptioners, consisting of a copy of the deed of sale with assumption of mortgage dated 5 July 1973, a joint affidavit of petitioners, tax receipts for payments made by petitioners on the subject property for the years 1974-76 inclusive, the City Sheriff and the Pasay City Development Bank refused to issue in favor of petitioners a certificate of redemption and deed of conveyance over the property.[4] In view of their refusal, petitioners filed a petition for mandamus against the City Sheriff and the Pasay City Development Bank with the Regional Trial Court of Pasay, Branch VII, docketed as Civil Case No. 5520-P. Alfredo Garcia, the purchaser of the property at the public auction sale of 2 March 1976, was allowed to intervene in the case.

On 14 October 1981, the court a quo denied the petition[5] stating that:

"The buyers at public auction of the property in question buy the said property under the limitations properly annotated on the torrens title or the transfer certificate of title. Since the transfer of interest and ownership from the former owners to the new claimant does not appear thereon, the City Sheriff has the right to deny such redemption.

"The claim of petitioners that they may qualify as redemptioner under the provisions of Section 29, Rule 39 of the Rules of Court can not be given consideration for the recital thereof of the persons who may redeem clearly shows that the successors-in-interest or creditor who wants to redeem the property must be recorded either in the title itself or under any judgment or judicial sanction."

On appeal to the Intermediate Appellate Court, a decision dated 20 January 1986 was rendered affirming the decision of the trial court;[6] hence, this petition for review on certiorari.

The issues raised in this review are the following:

- whether or not the petitioners are redemptioners or successors-in-interest in contemplation of Sec. 6 of Act No. 3135 and related rules under the Rules of Court.
- whether or not damage was caused to the respondent bank and Alfredo Garcia.

The sale of a mortgaged property at public auction by reason of an extrajudicial foreclosure of mortgage is governed by Act No. 3135, as amended by Act No. 4118. Under the cited law, a right of redemption is granted to the debtor, his successor-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, within a period of one (1) year from the date of the sale; and such redemption is governed by Sections 29, 30 and 31. Rule 39 of the Revised Rules of Court.[7]

The matter of redemption is wholly statutory. Only such persons can redeem from an execution sale as are authorized to do so by statute[8]

In determining whether a person is included within the terms of a redemption statute, the principle is stated to be that, if one is in privity in title with the mortgagor, and he has such an interest that he would be a loser by the foreclosure, he may redeem.[9] Redemption is proper where made by debtors, grantee, or assignee for the benefit of creditors, or assignee or trustee in insolvency proceedings.[10] In *Gorospe vs. Santos*[11] the Court, citing *Magno vs. Viola and Sotto*,[12] said:

"We held in *Magno v. Viola* that the term 'successor-in-interest' includes one to whom the debtor has transferred his statutory right of redemption; or one to whom the debtor has conveyed his interest in the property for the purpose of redemption; or one who succeeds to the interest of the debtor by operation of law; or one or more joint debtors who were joint owners of the property sold; or the wife as regards her husband's homestead by reason of the fact that some portion of her husband's title passes to her."

In the instant case, the petitioners, as the assignees or transferees of all the rights of the original debtors, i.e., spouses Patricio and Angelina Reyes, over the subject property by virtue of a "deed of sale with assumption of mortgage" may validly exercise the right of redemption as "successors-in-interest" of said debtors.

The claim of private respondent Alfredo Garcia that petitioners are neither redemptioners nor successors-in-interest of the redemptioners, due to lack of registration of the prior deed of sale in their favor, is devoid of merit. While it is true that the act of registration is the operative act to convey and affect titled land,[13] actual notice by the contracting parties is equivalent to registration, so that, an unregistered contract affecting registered land has the effect of a perfected executory contract between the parties thereto. There was thus a

perfected sale of the property in question from the original owners to the petitioners, subject to the delivery of the property by the registration of the sale with the Registry of Deeds in favor of the petitioners; but actual registration of the deed of sale was not necessary to render the contract valid and effective. As between the original owners-debtors and herein petitioners, the "deed of sale with assumption of mortgage" was binding, and effective. The petitioners "stepped into the shoes" of the original debtors, and all the latter's rights and interests including their right to redeem the property are deemed transferred to petitioners as their successors-in-interest.

In *Magno v. Viola and Sotto*,^[14] it was held that:

"x x x the right of redemption is not predicated on proprietary right, which, after the sale of property on execution, leaves the judgment debtor and vests in the purchaser, but on a bare statutory privilege to be exercised only by the persons expressly named in the statute. (*McQueeney vs. Toomey*, 36 Mont., 282; 122 Am. St. Rep., 358; 92 Pac., 561 12 Ann. Cas., 316; *Banking Corporation of Montana vs. Hein*, 52 Mont., 238; 156 Pac., 1085.) In other words, - the statute does not make actual ownership at the time of sale or redemption a condition precedent, the right following the person and not the land. (*Henderson vs. Prestwood*, 115 Ala., 464; 22 S., 15; *Yoakum vs. Bower*, 51 Cal., 539; *Floyd vs. Sellers*, 7 Colo. A., 491; 44 Pac., 371; *Livingston vs. Arnoux*, 56 N.Y., 507)."

There is no question, in our mind, that the right of redemption of petitioners exists and jurisprudence has established that transfer of said right from the original debtor-mortgagor need not be registered with the Register of Deeds to enable the transferee or assignee to exercise the same. Thus -

"Neither do We find any substantial weight in PNB's pose that the transfer or conveyance of STANDARD'S right of redemption to CITADEL and the latter to Leticia Co is not binding on it. In *Lichauco vs. Olegario*, et al., 43 Phil. 540, this Court held that 'whether or not x x x an execution debtor was legally authorized to sell his right of redemption, is a question already decided by this Court in the affirmative in numerous decisions on the precepts of Sections 463 and 464 and other sections related thereto, of the Code of Civil Procedure.' (The mentioned provisions are carried over in Rule 39 of the Revised Rules of Court.) That the transfers or conveyances in question were not registered is of miniscule significance, there being no showing that PNB was damaged or could be damaged by such omission. When CITADEL made its tender on May 5, 1976, PNB did not question the personality of CITADEL at all. It is now too late and purely technical to raise such an innocuous failure to comply with Article 1625 of the Civil Code."^[15] (Underscoring supplied).

Pursuant to the above ruling, there is equally no damage caused to private respondents in allowing herein petitioners to exercise the right of redemption. Private respondent Garcia should have been aware that since he acquired the property in question by virtue of an extrajudicial foreclosure proceeding, the law specifically gives the original debtor-mortgagor or his successors-in-interest the right to redeem the same within a one (1) year period from its sale. The purchaser at the foreclosure sale cannot refuse to allow such redemption, considering that his right over the property is purely inchoate until after the period of redemption has lapsed without the right being exercised by those allowed by law.

"Section 24, Rule 39, of the Rules of Court, provides that the purchaser of real property at an execution sale 'shall be substituted to and acquire all the right title interest and claim of the judgment debtor thereto', subject to the right of redemption therein provided. The right acquired by the purchaser is, of course, inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. But inchoate though it be, it is like any other right entitled to protection and must be respected until it is extinguished by redemption."^[16]

Besides, public policy should, as much as possible, allow the original debtor-mortgagor or his successor-in-interest to redeem a foreclosed property.

The case of Medina vs. The Court of Appeals, et al. (G.R. No. 82735, promulgated 18 August 1988) is not in conflict with this decision. There, the Court held that the original owners-mortgagors of property foreclosed by the mortgagee rural bank, cannot validly complain when said mortgagee rural bank after a year from consolidating title to the property, sold the same to a third person for value. The sale by the bank was made without notice to the original owners-mortgagors in violation of Section 222 of the Revised Rules and Regulations of the Central Bank; but the right to such notice was not annotated on the back of the title to the property, and therefore the purchaser of the property from the bank acquired, according to the court, a valid and indefeasible title prevailing over any claim of the original owners-mortgagors. On the other hand, in the case at bar, respondent Pasay City Development Bank had given its consent to the transfer of the mortgage by the Spouses Reyes to the petitioners, while respondent Garcia acquired the property in the foreclosure sale subject to the right of redemption by the original debtors-mortgagors or their successors-in-interest. No transfer was subsequently made by respondent Garcia to any innocent party for value who was unaware of the right of redemption appertaining to the original debtors-mortgagors or their successors-in-interest, by reason of the non-registration or non-annotation of such right of redemption on the title over the property.

For purposes of exercising the right of redemption by herein petitioners as "successors-in-interest" of the original debtors-mortgagors, the act of the petitioners in depositing the redemption money with the City Sheriff is sufficient to effect payment of the redemption price, and there is no need to resort to consignment in court. When the redemptioner has tendered the necessary payment for the redemption of land sold at sheriffs' sale and the tender has been refused, it is not necessary that such tender be followed by a deposit of the money in Court or elsewhere.[17]

Pertaining to the allegations of private respondent that petitioners are guilty of laches and that the civil action for mandamus is not the proper remedy in this case, We find no need to discuss the same in view of the conclusions earlier arrived at.

WHEREFORE, the appealed decision is hereby SET ASIDE and another one entered ordering the Sheriff of Pasay City to issue the certificate of redemption in favor of petitioners and private respondents to deliver to petitioners TCT No. 7600 or the certificate of title issued subsequent thereto, covering the controverted property. With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Paras, J., no part.

[1] Exhibits D & P, Rollo, pp. 64-65

[2] Rollo, pp. 78-79

[3] Exhibit U, Rollo, p. 67

[4] Rollo, p. 78

[5] Penned by Judge Enrique A. Agana, Sr., District Judge, RTC of Pasay, Branch XXVIII before whom the case was re-raffled due to the retirement of Judge Francisco de la Rosa, RTC of Pasay, Branch VII, who heard the case.

[6] Penned by Justice Vicente Mendoza, Fourth Special Cases Division of the Intermediate Appellate Court and with the concurrence of Justices Edgardo L. Paras and Luis A. Javellana.

[7] Section 6, Act No. 3135 as amended by Act No. 4118

[8] 33 CJS 525

[9] North Dakota Horse & Cattle Co. v. Serumgard, 17 ND 466, 117 NW 453, 29 LRA (NS) 508

[10] Director of Lands vs. Lagniton, 103 Phil 889, citing 21 Am Jur 176

[11] G.R. No. L-30079, Jan. 30, 1976, 69 SCRA 191, 206

[12] G.R. No. 37521, Dec. 22, 1934, 61 Phil. 80, 84

[13] Section 50, Act No. 496 (Land Registration Act)

[14] *supra*, footnote 12

[15] Co vs. Phil. National Bank, G.R. No. L- 51767, 29 June 1982, 114 SCRA 842

[16] Bautista v. Fule, No. L-11577, Jan. 31, 1953; 47 OG. 3494; 85 Phil. 391

[17] Enage v. Vda. de Hijos de F. Escano, G.R. No. L-13151, September 24, 1918, 38 Phil. 658

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