

THE CONSOLIDATED BANK AND TRUST CORPORATION (SOLIDBANK), PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, GOLDEN STAR INDUSTRIAL CORPORATION, NICOS INDUSTRIAL CORPORATION AND ...

G.R. No. 73976. May 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The basic issue for resolution in this petition for review of the December 13, 1985 decision of the Intermediate Appellate Court, now the Court of Appeals, as well as the resolution of March 13, 1986 denying the motion for reconsideration, is whether or not an attaching creditor acquires the right of redemption of a debtor over the attached properties of the latter which are subsequently extrajudicially foreclosed by third parties.

Briefly, the facts are as follows: Originally, petitioner Consolidated Bank and Trust Corporation (SOLIDBANK) loaned private respondent NICOS Industrial Corporation (NICOS) sums of money in the total amount of FOUR MILLION SEVENTY SIX THOUSAND FIVE HUNDRED EIGHTEEN AND 64/100 PESOS (P4,076,518.64).

Subsequently, NICOS failed to pay back the loan prompting SOLIDBANK to file a collection case before the Court of First Instance of Manila, Branch XXIX. The case was docketed as Civil Case No. 82-11611.

On August 30, 1982, the court in the aforecited case issued an order of attachment "x x x upon the rights, interests and participation of which defendants NICOS Industrial Corporation x x x may have in Transfer Certificate of Title No. T-210581 (T-32.505 M) and Transfer Certificate of Title No. T-210580 (T-32.504 M) (Annexes "B", "B-1", "B-2" and "B-3" of petition).

On September 1, 1982, pursuant to the writ of attachment issued by the Court and upon petitioner's posting of sufficient bond, the Sheriff of Manila levied and attached the two real properties described by the foregoing order of attachment, including the buildings and other improvements thereon. Afterwards, the Sheriff sent separate Notices of Levy Upon Realty to the Registrar of Deeds of Malolos, Bulacan, dated September 1, 1982 requesting him "to make the proper annotation in the books of your office" by virtue of the order of attachment dated August 30, 1982 issued by the Manila Court in Civil Case No. 82-11611.

Accordingly, on September 7, 1982, the Registrar of Deeds of Malolos, Bulacan, pursuant to the request of the Manila Sheriff, inscribed and annotated the Notices of Levy Upon Real Property at the back of Transfer Certificates of Title Nos. 210581 (T-32.505 M) and T-210580 (T-32.504 M).

Pursuant to the foregoing inscription and annotations, guards were deputized by the Manila Sheriff to secure the premises of the two attached realties.

A year later, however, on July 11, 1983, the attached properties which had been mortgaged by NICOS to the United Coconut Planters Bank (UCPB) on March 11, 1982, were extrajudicially foreclosed by the latter. As the

highest bidder therein, a certificate of sale was issued to it by the Sheriff of Bulacan over the subject realties including the buildings and improvements thereon.

Surprisingly, two transactions occurred soon thereafter, both on August 29, 1983. First, UCPB sold all of its rights, interests, and participation over the properties in question to a certain Manuel Go; Second, Manuel Go sold all the rights he acquired from UCPB over the same lots on that very same day to private respondent Golden Star Industrial Corporation (GOLDEN STAR).

Barely a month later, on October 5, 1983, respondent NICOS, though fully aware that it still had the right to redeem the auctioned properties within the one year period of redemption from July 11, 1983, suddenly executed a document entitled "Waiver of Right of Redemption" in favor of respondent GOLDEN STAR.

On September 15, 1983, GOLDEN STAR filed a petition for the issuance of a writ of possession over the subject realties before the Regional Trial Court, Branch VI of Malolos, Bulacan.

On November 4, 1983, the Malolos Court granted GOLDEN STAR's petition for a writ of possession and issued the writ. In accordance with these orders, armed men of GOLDEN STAR forcibly took over the possession of the properties in dispute from the guards deputized by the Sheriff of Manila to secure the premises.

Thus on November 21, 1983, petitioner SOLIDBANK, on the strength of its prior attachment over the lands in question filed with the Malolos court an omnibus motion to annul the writ of possession issued to GOLDEN STAR and to punish for contempt of court the persons who implemented the writ of possession with the use of force and intimidation.

The respondents NICOS and GOLDEN STAR, filed oppositions to the foregoing omnibus motion, the former on the basis of the waiver of its right of redemption to GOLDEN STAR, and the latter on its alleged ignorance that the lands in question were under custodia legis, having been attached by the Sheriff of Manila.

On June 9, 1984, the Malolos Court issued an order denying the omnibus motion, the decretal portion of which is as follows:

"WHEREFORE, the Omnibus Motion of movant Consolidated Bank and Trust Corporation to annul the writ of possession issued by this Court in favor of Golden Star Industrial Corporation and to cite for contempt those who fraudulently secured and unlawfully implemented the writ of possession is hereby DENIED for lack of merit." (p. 8 of the Brief for the Complainant--Oppositor-Appellant in AC-G.R. CV No. 04398 [p. 118, Rollo])

The petitioner SOLIDBANK forthwith interposed an appeal before the Intermediate Appellate Court arguing inter alia that the properties were under custodia legis, hence the extrajudicial foreclosure and the writ of possession were null and void, and that the right of NICOS to redeem the auctioned properties had been acquired by SOLIDBANK.

On December 13, 1985, the Intermediate Appellate Court rendered its assailed decision "finding no merit in this appeal and affirming in toto the appealed order of June 9, 1984, ruling that "the properties in issue x x x were not in custodia legis at the time of the extrajudicial foreclosure."

The petitioner moved for reconsideration, arguing that its writ of attachment over the properties in question was duly registered in the Register of Deeds of Malolos, Bulacan, and that the right to redeem said properties should be retained or given back to SOLIDBANK as attaching creditor.

On March 13, 1986, the Intermediate Appellate Court promulgated its resolution denying the motion for reconsideration for lack of merit.

Hence this petition for review, on the grounds that respondent appellate court decided the case contrary to law and applicable decisions of the Supreme Court, and has departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision of this Court.

The fundamental question herein, which is determinative of the other issues, is whether or not the subject properties were under custodia legis by virtue of the prior annotation of a writ of attachment in petitioner's favor at the time the properties were extrajudicially foreclosed.

We rule in the affirmative on the following grounds:

First of all, the records show (specifically Annexes "B", "B-1" to "B-3" of the petition) that on September 1, 1982, the Sheriff of Branch XXIX of the Court of First Instance of Manila, sent separate Notices of Levy Upon Realty to the Registrar of Deeds of Malolos Bulacan, requesting him "to make the proper annotation in the books of your office", "by virtue of an order of attachment issued in Civil Case No. 82-11611 dated August 30, 1982, x x x upon the rights, interests and participation of which defendant NICOS Industrial Corporation in this case may have in x x x " Transfer Certificate of Title No. T-210581 (T-32.505 M) and Transfer Certificate of Title No. T-210580 (T-32.505 M).

Secondly, and more significant, the records clearly show (page 4, Annex "D" of petition) that the Registrar of Deeds of Malolos, Bulacan, on September 7, 1982, inscribed and annotated the foregoing Notices of Levy at the back of Transfer Certificate of Title Nos. 210580 and 210581, to wit:

TRANSFER CERTIFICATE OF TITLE

No. T-210580 (T-32.504 M)

"Entry No. 79524 (M): Kind: NOTICE OF LEVY UPON REALTY, Executed in favor of the CONSOLIDATED BANK AND TRUST CORPORATION (SOLIDBANK); - Plaintiff; Conditions; Notice is hereby given that by virtue of an Order of Attachment issued by the C.F.I. of Manila, Branch XXIX, in Civil Case No. 82-11611, all the rights, interest and participation of NICOS INDUSTRIAL CORPORATION - Defendant over the herein described lot is hereby levied upon attached.; Date of Instrument: September 1, 1982; Date of Inscription: September 7, 1982 at 2:35.

Meycauayan, Bulacan.

(SGD.) VIOLETA R. LINCALLO GARCIA

Branch Register of Deeds

TRANSFER CERTIFICATE OF TITLE

No. T-210581 (T-32.505 M)

"Entry No. 79524 (M); Kind: NOTICE OF LEVY UPON REALTY, Executed in favor of THE CONSOLIDATED BANK AND TRUST CORPORATION (SOLIDBANK) - Plaintiff; Conditions: Notice is hereby given that by virtue of an Order of Attachment issued by the C.F.I. of Manila, Branch XXIX, in Civil Case No. 82-11611, all the rights, interest and participation of NICOS INDUSTRIAL CORPORATION - Defendants over the herein described lot is hereby levied upon attached.; Date of Instrument; September 1, 1982; Date of Inscription: September 7, 1982 at 2:35.

Meycauayan, Bulacan.

(SGD.) VIOLETA R. LINCALLO GARCIA

Branch Register of Deeds"

(pp. 91-92, Rollo)

Based on the foregoing evidence on record, the conclusion is clear that the disputed real properties were under custodia legis by virtue of a valid attachment at the time the same were extrajudicially foreclosed by a third party mortgagee.

The rule is well settled that when a writ of attachment has been levied on real property or any interest therein belonging to the judgment debtor, the levy thus effected creates a lien which nothing can destroy but its dissolution (*Chua Pua Hermanos v. Register of Deeds of Batangas*, 50 Phil. 670; *Government, et. al. v. Mercado*, 67 Phil. 409).

The foregoing conclusion has two necessary consequences.

Firstly, it follows that the writ of possession issued by the Malolos court in favor of respondent GOLDEN STAR is null and void ab initio because it interfered with the jurisdiction of a co-ordinate and co-equal court (See *De Leon v. Salvador*, 36 SCRA 567):

"While property or money is in custodia legis, the officer holding it is the mere hand of the court, his possession is the possession of the court, and to interfere with it is to invade the jurisdiction of the court itself (*Gende v. Fleming*, 371 N.E. 2d. 191; *Bishop v. Atlantic Smokeless Coal Co.*, 88F. Supp. 27, 7 CJS 320)."

Of equal importance is the fact that the transactions on which respondent GOLDEN STAR's right to a writ of possession are based are highly irregular and questionable, to say the least, considering the following circumstances:

On July 11, 1983, the Sheriff of Bulacan executed a certificate of sale over the two lots in question in favor of UCPB.

On August 29, 1983, or about a month and a half later, UCPB sold its rights, interests and participation over the lands to Manuel Go.

On that very same day, August 29, 1983, Manuel Go sold the same properties to respondent GOLDEN STAR.

On October 5, 1983, respondent NICOS, which had a one year right of redemption over the lands in question executed a "Waiver of Right of Redemption in favor of respondent GOLDEN STAR." The attempts to bring the disputed properties out of the petitioner's reach, in spite of the attachment, are plain and apparent.

Based on the foregoing facts, we find that respondents NICOS and GOLDEN STAR conspired to defeat petitioner's lien on the attached properties and to deny the latter its right of redemption.

It appears that in issuing the writ of possession, the Malolos court relied on copies of documents (which did not show the memorandum of encumbrance) submitted to it by GOLDEN STAR. It was thus led into the error of ruling that the petitioner's attachment was not properly annotated.

Secondly, it likewise follows that the petitioner has acquired by operation of law the right of redemption over the foreclosed properties pursuant to Sec. 6 of Act No. 3135, to wit:

"In all such cases in which an extrajudicial sale is made x x x any person having a lien on the property subsequent to the mortgage x x x may redeem the same at any time within the term of one year from and after the date of sale."

It has been held that "an attaching creditor may succeed to the incidental rights to which the debtor was entitled

by reason of his ownership of the property, as for example, a right to redeem from a prior mortgage" (Lyon v. Stanford, 5 Conn. 541, 7 CJS 505).

The fact that respondent NICOS executed a waiver of right of redemption in favor of respondent GOLDEN STAR on October 5, 1983 is of no moment as by that time it had no more right which it may waive in favor of another.

Finally, GOLDEN STAR argues that even if the attachment in issue was duly registered and the petitioner has a right of redemption, the certificate of sale of the lands in question was registered on September 6, 1983. It claims that the period to redeem therefore lapsed on September 6, 1984 without the petitioner bank ever exercising any right of redemption.

This argument is untenable. Well settled is the rule that the pendency of an action tolls the term of the right of redemption. Specifically, this Court in *Onq Chua v. Carr*, (53 Phil. 975, 983), categorically ruled that:

x x x x x x x x

"x x x Neither was it error on the part of the court to hold that the pendency of the action tolled the term for the right of redemption; that is an old and well established rule."

This was reiterated in *Fernandez v. Suplido* (96 Phil. 541, 543), as follows:

x x x x x x x x

"x x x As pointed out in *Ong Chua V. Carr*, 53 Phil. 975, the pendency of an action brought in good faith and relating to the validity of a sale with pacto de retro tolls the term for the right of redemption. x x x ."

Not only that. It has been held that "under a statute limiting the time for redemption x x x, the right of redemption continues after perfection of an appeal x x x until the decision of the appeal (*Philadelphia Mortgage Co. v. Gustus*, 75 N.W. 1107).

In the case at bar, petitioner commenced the instant action by way of an omnibus motion before the Bulacan Court on November 21, 1983 or barely two months after certificate of sale was registered on September 6, 1983, well within the one year period of redemption.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is granted and judgment is hereby rendered:

- 1) declaring as valid and binding the levy and attachment by the Manila Sheriff on the two realties in question including the buildings and improvements thereon;
- 2) declaring that petitioner has acquired the right of redemption over the aforesaid properties which it may exercise within one year from notice of entry of judgment in this case; and
- 3) declaring as null and void (a) the order of the Bulacan Court dated November 4, 1983 granting the writ of possession to respondent GOLDEN STAR, (b) its order of June 9, 1984 denying the petitioner's omnibus motion, and (c) the Waiver of Right of Redemption executed by respondent NICOS in favor of respondent GOLDEN STAR.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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