

FRANCISCO M. ANGELES PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND HEIRS OF THE LATE FILOMENA VDA. DE CAYETANO, RESPONDENTS.

G.R. No. 75009. September 29, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Intermediate Appellate Court (now Court of Appeals) dated April 24, 1986 and its resolution dated June 25, 1986 in AC-G.R. SP No. 05190 entitled; "HEIRS OF THE LATE FILOMENA VDA. DE CAYETANO, petitioners, versus HONORABLE REGIONAL TRIAL COURT OF MANILA, BRANCH IV, DEPUTY SHERIFF ANDRES BONIFACIO AND FRANCISCO M. ANGELES, respondents."

The antecedent facts are as follows:

The spouses Pablo Cayetano and Filomena Mendoza were the registered owners of a lot in Sampaloc, Manila, covered by Transfer Certificate of Title No. 42347. Pablo died on January 3, 1960. On April 10, 1961, Filomena and her children, private respondents herein, namely: Eleuterio, Isaias, Rosal, Heracleo. Fortunata, Candido, Pablo, Jr., Laura, Jose, Zenaida, Antonio and Juanito, executed an extrajudicial settlement and sale of his estate, whereby Eleuterio and Candido sold their shares to their mother, and the other children (except Manuel who had predeceased his parents), transferred their shares to her, so that Filomena and the three (3) children of Manuel became the co-owners of the property. Upon the registration of the deed of extrajudicial settlement and sale, TCT No. 42347 was cancelled and TCT No. 68065 was issued to Filomena and the children of Manuel.

On November 10, 1980, Filomena sold to Juanito one-half (1/2) of the lot on which stand apartment Nos. 807, 809 and 811 occupied respectively by Concepcion (Manuel's wife) and her children, Heracleo and Juanito. On the basis of the sale, TCT No. 140500 was issued to Juanito, Filomena and the children of Manuel. Not content with the sale his mother made to him, Juanito presented to the Register of Deeds of Manila an Agreement of Partition of Common Property purportedly signed by all the heirs of Pablo, including Filomena, adjudicating to Juanito the same one-half (1/2) portion of the property which had previously been sold by Filomena to him. Based on that document, the Register of Deeds of Manila issued on December 14, 1981, TCT No. 146787 to Juanito for his one-half portion (Lot 40-A) and TCT No. 146788 to Filomena and the children of Manuel, for the other half.

Sometime in 1981, Filomena brought an action against Juanito to annul the sale of Lot 40-A to him on account of his failure to pay the consideration of the sale. The complaint was docketed as Civil Case No. 81-001 in Branch XIX of the Court of First Instance of Manila. Despite his mother's suit for annulment of the sale, Juanito transferred his one-half (1/2) share of the property to Bartolome Guevarra for P100,000.00 on December 22, 1981, under a deed of sale with right to repurchase. Before the expiration of the redemption period, Juanito borrowed P25,000 from petitioner Francisco M. Angeles to redeem the property from Guevarra. Upon paying Guevarra, he mortgaged the property to Angeles on January 21, 1982. The mortgage was registered on January

22, 1982. On March 6, 1982, Juanito obtained an additional loan of P70,000.00 from Angeles the repayment of which was secured by the same mortgage. It was registered on March 8, 1982.

Having learned of the execution of the Agreement of Partition of Common Property, the other heirs of Pablo disowned the document as a forgery because some of the supposed signatories were outside the country when the agreement was made. In a letter dated April 20, 1982, they demanded that Juanito pay the mortgage to Angeles and reconvey the property to them. Angeles was notified in writing of private respondents' demand to Juanito. Angeles acknowledged receipt of that notice and even assured private respondents that he would not dispose of the property.

On May 24, 1982, Angeles foreclosed his mortgage on the property. It was sold at public auction on June 28, 1982 to Angeles himself, being the highest bidder.

On July 9, 1982, Jose, Heracleo and Isaias each filed a charge of falsification of public document against Juanito and his wife Antoinette Sadorna, Angeles, and notary public Quirino Carpio. The investigating fiscal recommended the filing of an information against Juanito and Atty. Quirino Carpio, but dismissed the charge against Angeles and Antoinette Sadorna. The information was docketed as Criminal Case No. 82-12849 in the Court of First Instance of Manila.

On August 13, 1982, Filomena died.

On June 22 and 27, 1983, notices of the pendency of Civil Case No. 81-001 were recorded on Juanito's title. For failure of Juanito to redeem the property from Angeles, the sheriff delivered to the latter a final deed of sale which, upon registration, resulted in the issuance of TCT No. 155284 to Angeles on July 1, 1983 by the Register of Deeds of Manila.

On July 13, 1984, private respondents, except Juanito, filed an action to annul the sale of the property by their mother to their brother as well as the Agreement of Partition of Common Property. It was docketed as Civil Case No. 84-25611 in the Regional Trial Court of Manila, Branch 53.

On July 6, 1984, Angeles filed in LRC Record No. 11546 a petition for the issuance of a writ of possession of the property covered by his TCT No. 155284. On August 23, 1984, the trial court issued an order granting the petition, the dispositive portion of which reads (p. 52, Rollo):

"WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of Manila or his duly authorized representative to place the herein petitioner in actual possession of the foreclosed property described in Transfer Certificate of Title No. 155284 and to eject therefrom the Spouses Juanito Cayetano and Antoinette Cayetano, their agents and other persons in possession of the premises.

"SO ORDERED."

The private respondents asked for the setting aside of that order which was, however, denied. On December 26, 1984, a writ of possession was issued to Angeles.

In Civil Case No. 84-25611, private respondents asked for a writ of preliminary injunction or restraining order against the writ of possession, but the judge refused to oblige.

On January 16, 1985, on the same day when the private respondents filed their petition for certiorari in the respondent Court of Appeals, the Manila Sheriff and Angeles enforced the writ of possession and ejected Heracleo, Concepcion and Juanito from the property in question. Although a restraining order was issued by the respondent court on January 21, 1985, it was too late to stop the eviction of private respondents from the premises.

The petition for certiorari prayed that the order dated August 23, 1984 be set aside as the trial court committed a grave abuse of discretion amounting to lack of jurisdiction in issuing a writ of possession against the heirs of Filomena Mendoza who were not parties to the mortgage transaction.

On April 24, 1986, the respondent court granted the petition, the dispositive portion of which reads (p. 40, Rollo):

"WHEREFORE, the petition for certiorari is granted. The respondent court's order dated August 23, 1984 is amended in the sense that the Sheriff should limit the implementation of the writ of possession only against the mortgagors spouses Juanito Cayetano and Antoinette Cayetano, their agents, and other persons claiming title under them. The other heirs of Filomena Mendoza Vda. de Cayetano, specifically the plaintiffs in Civil Case No. 84-25611 of the Regional Trial Court of Manila should be excluded from the implementation of the writ of possession and the public respondents are ordered to restore them in the possession of the premises which possession should be respected pending the final adjudication of their claims thereto in Civil Case No. 84--25611."

Angeles filed a motion for reconsideration which was, however, denied in the resolution dated June 25, 1986. Hence, this present petition for review on certiorari.

This petition basically questions only the main finding of respondent court that the writ of possession issued by the trial court cannot be implemented against the private respondents, particularly the plaintiffs in Civil Case No. 84-25611.

In support of his petition, Angeles alleges that he was an innocent mortgagee and purchaser for value and in good faith since he was not aware of any flaw whatsoever in the title of Juanito, it being clear of any liens and encumbrances at the time of the execution of the real estate mortgage contracts. Angeles submits next that notices of lis pendens were recorded on Juanito's title almost two (2) years after the registration of the real estate mortgage contracts on January 22 and March 8, 1982. Thus, on the basis of *Bank of the Philippine Islands, et al. v. Noblejas, etc., et al.*, 105 Phil. 418, any subsequent lien or encumbrance at the back of the certificate of title cannot, in any way, prejudice the mortgage previously registered and the lot subject thereto passes to the purchaser at the public auction sale, free from liens or encumbrances. In the same manner, the letter dated April 20, 1982, which is much later in point of time to the registration of the real estate mortgage contracts, has no more material significance other than a mere scrap of paper. Angeles, who is first in time, is preferred in right. Angeles avers also that the writ of possession under Act 3135, as amended, is a right given a purchaser in an extra-judicial foreclosure. Finally, Angeles contends that the period within which the orders of the trial judge may be impugned by appeal has already elapsed. It is settled that the remedy of certiorari cannot be a substitute for appeal.

We agree with the respondent court that there is no merit in the allegation that Angeles was an innocent mortgagee and purchaser for value and in good faith (pp. 39-40, Rollo):

"x x x he (Angeles) was notified in writing of the petitioners' demand dated April 20, 1982 to Juanito Cayetano to discharge the mortgage debt and reconvey the property to them on the ground that the Partition Agreement was a forgery. The private respondent acknowledged receipt of that notice and even assured the petitioners that he would not dispose of the property. The fact that Cayetano's certificate of title was clean when he mortgaged it to Angeles will not protect the mortgagee from the unregistered claims or rights of the other heirs of Filomena Mendoza since, at the time of the foreclosure sale the mortgagee had actual knowledge of such adverse claims or rights of the other heirs of Filomena Mendoza who were in actual possession of the land.

'One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith, as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.

'A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.' "

(Leung Yee vs. F.L. Strong Machinery Co. and Williamson, 37 Phil. 644, 645)

As correctly remarked by the private respondents, the demand letter placed Angeles on his toes that Juanito was not the sole owner of the property. The maxim that the spring cannot rise higher than its source applies squarely to Angeles. However, We do not subscribe to the observation made by the respondent court that (p. 39, Rollo):

"x x x. Although the notices of lis pendens were not carried over to his title, it was proven that before he foreclosed the mortgage, notices of the pendency of Civil Case No. 81001 for annulment of Juanito's purchase of the lot, had been recorded on June 22 and 27, 1983 on Juanito's title x x x."

since it runs counter to the facts on record. The foreclosure was made earlier, or on May 24, 1982 whereas the notices of lis pendens were recorded on Juanito's title later, or on June 22 and 27, 1983. At any rate, the determination of whether or not Angeles was an innocent mortgagee and purchaser for value and in good faith is of little significance, because of the following more important considerations that We shall now elucidate.

Under section 6 of Act No. 3135 and sections 29 to 31 and section 35 of Rule 39 of the Revised Rules of Court, in case of an extrajudicial foreclosure of a real state mortgage, the possession of the property sold may be given to the purchaser by the sheriff after the period of redemption had expired (IFC Service Leasing and Acceptance Corporation v. Nera, G.R. No. L-21720, January 30, 1967, 19 SCRA 181; Clapano v. Gapultos, G.R. No. 51574-77, September 30, 1984, 132 SCRA 429). The same rule was followed in a judicial foreclosure of mortgage and in an execution sale (Rivera v. Court of First Instance of Nueva Ecija, 61 Phil. 201). We also held that it is ministerial upon the court to issue a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property (De los Angeles, etc., et al. v. Court of Appeals, et al., G.R. No. L-34317, September 30, 1974, 60 SCRA 116). However, the aforestated provision provides for an exception, that is, "unless a third party is actually holding the property adversely to the judgment debtor." In the case at bar, the writ of possession ordered the ejectment not only of "x x x the spouses Juanito M. Cayetano and Antoinette Cayetano, their agents" but included also "x x x other persons in possession of the premises" which, in this case, were the private respondents.

In the case of Rivero de Ortega v. Natividad, etc., et al., 71 Phil. 340, We held:

"x x x where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree. (See 2 Wiltsie on Mortgage Foreclosure, 1061-1062; 3 Jones on Mortgages, 301; and the cases cited therein). Thus, it was held that only parties to the suit, persons who came in under them pendente lite, and trespassers or intruders without title, can be evicted by a writ of possession. (Thompson v. Campbell, 57 Ala. 183, 188; Cooper v. Cloud, 194 Ala., 449, 452). The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. A very serious question may arise upon full proofs as to where the legal title to the property rests, and should not be disposed of in a summary way. The petitioner, it is held, should be required to establish his title in a proceeding directed to that end."

It is clear from the foregoing that the writ of possession may not be enforced against the private respondents inasmuch as 1) they possess the property adversely, as evidenced by the cases they filed (Civil Case No. 84-25611) for annulment of the sale their mother made to Juanito and the partition agreement, and (Criminal Case No. 82-12849) for falsification of the partition agreement; 2) they were not parties to the mortgages executed by Juanito in favor of Angeles nor to the foreclosure proceedings; 3) they have been in possession even prior to the foreclosure sale; and 4) they did not derive the right to possess the land from Juanito but from Pablo, the original

owner of the lot.

The case of *Bank of the Philippine Islands, et al. v. Noblejas, etc., et al.*, supra, cited by Angeles is not in point because the issue there was whether or not the notice of adverse claim may be cancelled and removed from the new certificates of title, which is obviously not the issue here.

As correctly held by the respondent court, in issuing the writ of possession also against the private respondents, the trial judge clearly acted without or in excess of his jurisdiction.

The allegation that the period within which the orders of the trial judge may be impugned by appeal has already elapsed was not substantiated by facts to show that the period has indeed elapsed. Brushing aside this allegation, certiorari is the proper remedy when appeal is inadequate and will not promptly relieve private respondents from the injurious effects of the judgment (see *Romero, et al. v. Court of Appeals, et al.*, G.R. No. L-29659, July 30, 1971, 40 SCRA 172). Appeal could not have been an adequate remedy in view of the speedy implementation of the writ of possession against the private respondents who were ejected from the premises.

ACCORDINGLY, the petition for review on certiorari is hereby DENIED. The decision of the respondent Intermediate Appellate Court is AFFIRMED.

SO ORDERED.

Narvasa, Cruz, and Gancayco, JJ., concur.

Grino-Aquino, J., no part. I was the ponente in CA.

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