

FORTUNE MOTORS, (PHILS.), INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, METROPOLITAN BANK AND TRUST COMPANY, RESPONDENTS.

G.R. No. 76431. October 16, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking the reversal of: (a) the July 30, 1986 decision of the Court of Appeals in AC-G.R. SP No. 09255 entitled “Metropolitan Bank & Trust Co. v. Hon. Herminio C. Mariano, et al.” dis-missing Civil Case No. 85-33218 entitled “Fortune Motors (Phils.) Inc. v. Metropolitan Bank & Trust Co.” filed in the Regional Trial Court of Manila, Branch IV for improper venue and (b) the resolution dated October 30, 1986 denying petitioner's motion for reconsideration.

The undisputed facts of the case are as follows:

On March 29, 1982 up to January 6, 1984, private respondent Metropolitan Bank extended various loans to petitioner Fortune Motors in the total sum of P32,500,000.00 (according to the borrower; or P34,150,000.00 according to the Bank) which loan was secured by a real estate mort-gage on the Fortune building and lot in Makati, Rizal. (Rollo, pp. 60-62)

Due to financial difficulties and the onslaught of economic recession, the petitioner was not able to pay the loan which became due. (Rollo, p. 62)

For failure of the petitioner to pay the loans, the respondent bank initiated extrajudicial foreclosure proceedings. After notices were served, posted, and published, the mortgaged property was sold at public auction for the price of P47,899,264.91 to mortgagee Bank as the highest bidder. (Rollo, p. 11)

The sheriff's certificate of sale was registered on October 24, 1984 with the one-year redemption period to expire on October 24, 1985. (Rollo, p. 12)

On October 21, 1985, three days before the expiration of the redemption period, petitioner Fortune Motors filed a complaint for annulment of the extrajudicial foreclosure sale alleging that the foreclosure was premature because its obligation to the Bank was not yet due, the publication of the notice of sale was incomplete, there was no public auction, and the price for which the property was sold was "shockingly low". (Rollo, pp. 60-68)

Before summons could be served private respondent Bank filed a motion to dismiss the complaint on the ground that the venue of the action was improperly laid in Manila for the realty covered by the real estate mortgage is sit-uated in Makati, therefore the action to annul the foreclosure sale should be filed in the Regional Trial Court of Makati. (rollo, pp. 67-71-A)

The motion was opposed by petitioner Fortune Motors alleging that its action "is a personal action" and that "the issue is the validity of the extrajudicial foreclosure proceedings" so that it may have a new one year period to

redeem. (Rollo, pp. 72-73)

On January 8, 1986 an order was issued by the lower court reserving the resolution of the Bank's motion to dismiss until after the trial on the merits as the grounds relied upon by the defendant were not clear and indubitable. (Rollo, p. 81)

The Bank filed a motion for reconsideration of the order dated January 8, 1986 but it was denied by the lower court in its order dated May 28, 1986. (Rollo, Annex "L" pp. 93-96; Annex "N" p. 99)

On June 11, 1986 the respondent Bank filed a petition for certiorari and prohibition in the Court of Appeals. (Rollo, Annex "O" pp. 100-115)

And on July 30, 1986, a decision was issued by the Court of Appeals, the dispositive part of which reads as follows:

"WHEREFORE, the petition for certiorari and prohibition is granted. The complaint in the Civil Case No. 85-33218 is dismissed without prejudice to its being filed in the proper venue. Costs against the private respondent."

SO ORDERED. (Rollo, p. 15)

A motion for reconsideration was filed on August 11, 1986 on the said decision and on October 30, 1986 a resolution was issued denying such motion for reconsideration. (Rollo, Annex "O" pp. 121-123; Annex "S" p. 129)

Hence, the petition for review on certiorari.

On June 10, 1987 the Court gave due course to the petition, required the parties to file their respective memoranda within twenty (20) days from the notice hereof, and pay deposit for costs in the amount of P80.40.

Both parties have filed their respective memoranda, and the case was submitted for Court's resolution in the resolution dated December 14, 1987. (Rollo, Metrobank's Memorandum pp. 45-59; petitioner's memorandum pp. 130-136; Res. p. 138)

The only issue in this case is whether petitioner's action for annulment of the real estate mortgage extra-judicial foreclosure sale of Fortune Building is a personal action or a real action for venue purposes.

In a real action, the plaintiff seeks the recovery of real property, or as indicated in Sec. 2 (a) of Rule 4, a real action is an action affecting title to real property, or for the recovery of possession, or for the partition or condemnation of, or foreclosure of a mortgage on real property. (Comments on the Rules of Court by Moran, Vol. I, p. 122)

Real actions or actions affecting title to, or for the recovery of possession, or for the partition or condemnation of, for foreclosure of mortgage on real property, must be instituted in the Court of First Instance of the province where the property or any part thereof lies. (Enriquez v. Macadaeg, 84 Phil. 674, 1949; Garchitorena v. Register of Deeds, 101 Phil. 1207, 1957)

Personal actions upon the other hand, may be instituted in the Court of First Instance where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff (Sec. 1, Rule 4, Revised Rules of Court).

A prayer for annulment or rescission of contract does not operate to efface the true objectives and nature of the action which is to recover real property. (Inton, et al., v. Quintan, 81 Phil. 97, 1948)

An action for the annulment or rescission of a sale of real property is a real action. Its prime objective is to recover said real property. (Gavieres v. Sanchez, 94 Phil. 760 1954)

An action to annul a real estate mortgage foreclosure sale is no different from an action to annul a private sale of real property. (Munoz v. Llamas, 87 Phil. 737, 1950)

While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action. Respondent Court, therefore, did not err in dismissing the case on the ground of improper venue (Sec. 2, Rule 4) which was timely raised (Sec. 1, Rule 16). (Punzalan, Jr. v. Vda. de Lacsamana, 121 SCRA 336, [1983]).

Thus, as aptly decided by the Court of Appeals in a decision penned by then Court of Appeals Associate Justice now Associate Justice of the Supreme Court Carolina C. Grino-Aquino, the pertinent portion reads: "Since an extra-judicial foreclosure of real property results in a conveyance of the title of the property sold to the highest bidder at the sale, an action to annul the foreclosure sale is necessarily an action affecting the title of the property sold. It is therefore a real action which should be commenced and tried in the province where the property or part thereof lies."

PREMISES CONSIDERED, the instant petition is DENIED for lack of merit and the assailed decision of the respondent Court of Appeals is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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