

BIBIANO REYNOSO IV AND HIDELINA REYNOSO, PETITIONERS, VS. COMMERCIAL CREDIT CORP., RESPONDENT.*G.R. No. 78169. January 12, 1989*

Ponente: PARAS, J.

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Before Us is a petition for a writ of preliminary injunction and/or temporary restraining order filed by the petitioners seeking to preserve the status quo during the pendency of the appeal (involving a question of law before this Court) of the decision of the Regional Trial Court, National Capital Judicial Region Branch 162, Pasig, Metro Manila, rendered on September 18, 1985 in the case of "Bibiano Reynoso IV and Hidelina Reynoso versus Commercial Credit Corporation" Civil Case No. 42740 which is an action to annul defendant's foreclosure of a Real Estate Mortgage and for reconveyance to them of their residential house and lot (subject matter of the suit).

Petitioners anchor their petition on the ground that despite the pendency of their appeal from the decision dated September 18, 1985 rendered by Regional Trial Court (Branch 162) of Pasig, Metro Manila now before this Court respondent purportedly threatens to take possession of the subject premises by means of the questioned writ of possession issued by the Honorable Presiding Judge Alfredo C. Flores of the Regional Trial Court Branch 167 of Pasig, Metro Manila in its orders dated December 2, 1986; March 6, 1987 and April 10, 1987 and that the only way to stop its enforcement and/or implementation is for this Court to issue an injunction and/or a restraining order.

The facts of this case are undisputed as found by the trial Court.

The petitioners spouses Bibiano Reynoso IV and Hidelina Reynoso obtained on February 15, 1980 a loan in the sum of P218,000.28 with the Commercial Credit Corporation and which obligation was secured by pledges of certain promissory notes and shares of stocks delivered to the respondent, and was to mature on August 13, 1980. On March 13, 1980 the spouses again obtained an additional loan of P100,583.20, and as security for the payment of this second obligation the petitioners constituted a first mortgage over the subject property in favor of the respondent. The second obligation was to mature on March 30, 1980. By reason of the non-payment of P100,583.20 respondent on July 12, 1980 filed at the sheriff's office of Pasig a petition to foreclose the subject property under Act 3135, as amended. The petition also included the other obligation of P218,000.28. Pursuant to the petition, a notice of sheriff's sale was issued by acting Provincial Sheriff of Rizal, Maximo Contreras on July 31, 1980. On September 2, 1980, a certificate of sale over subject property was issued by the Provincial sheriff in favor of the respondent for the sum total of the two obligations. (Memorandum for the Petitioners, pp. 1-2).

These facts are crucial in the determination of whether or not the foreclosure of the mortgage upon the two obligations is valid. The records show that the lower court believes that the foreclosure of the Real Estate Mortgage is void with respect to the obligation of P218,000.28. Said obligation was secured by pledges of personal property and was obtained earlier than the second obligation of P100,583.20. If the Real Estate Mortgage was intended to secure not only the obligation of P100,583.20 but also the earlier loan of P218,000.28, the

parties could have easily inserted the latter amount so as to include it in the Real Estate Mortgage. They could also have cancelled the security of the first obligation so that the real estate mortgage would answer for both obligations. (Petitioner's Memorandum, pp. 3-4).

The lower court is also far from persuaded by the respondent's contention that the obligation of P218,000.28 is within the contemplation of the mortgage proviso which states that the mortgage was also for "other obligations..." (p. 283, Rollo). As already stated, the obligation of P218,000.28, which was secured by pledges of personal property, was obtained prior to the obligation of P100,583.20. The properties pledged were delivered to respondent. At the time respondent filed the petition for a foreclosure sale under Act 3135 as amended, on July 2, 1980 which formally commenced the foreclosure proceedings, the obligation of P218,000.28 was not yet due and payable. Such obligation was to mature only on August 13, 1980 or one month after the initiation of the foreclosure proceedings.

The foregoing facts and the dispositive portion of the September 18, 1985 decision pending appeal which was rendered by Judge Rizalina Bonifacio Vera became the basis of the petitioners' filing of this instant petition with this Court. The dispositive portion of the decision states as follows:

"WHEREFORE, judgment is hereby rendered:

"(1) Declaring the foreclosure of the Real Estate Mortgage constituted over the plaintiff's property situated at No. 12 Macopa St., Valle Verde I, Pasig, Metro Manila and the public auction sale conducted by reason of the foreclosure and the title issued thereto in defendant's favor valid with respect to the obligation incurred on March 13, 1980, and null and void as regards the obligation incurred on February 15, 1980;

"(2) Ordering the application of the amount in excess of the March 13, 1980 obligation as payment for the obligation incurred on February 15, 1980;

"(3) Declaring that Transfer Certificate of Title No. 29940 in the name of defendant be maintained;

"(4) Ordering defendant to pay attorney's fees in the sum of P20,000.00; and

"(5) To pay the costs of suit.

"SO ORDERED." (Rollo, p. 44)

By this petition the petitioner assails the said decision and interposes the following grounds/reasons in support of their petition for injunctive remedy as follows:

I. -

THE QUESTIONED WRIT OF POSSESSION SHOULD NOT HAVE BEEN ISSUED, AND ITS ENFORCEMENT/IMPLEMENTATION SHOULD BE ENJOINED/RESTRAINED TO PRESERVE THE STATUS QUO PENDING APPEAL, SINCE DEFENDANT'S TITLE HAS BEEN DECLARED PARTLY INVALID/ DEFECTIVE AND THE APPEAL WILL DETERMINE NOT ONLY THE RIGHT OF MERE POSSESSION BUT ALSO THE GREATER RIGHT OF OWNERSHIP;

II.-

ENFORCEMENT OF THE QUESTIONED WRIT OF POSSESSION WILL DISTURB/PREEMPT THE PENDING APPEAL AND WILL RESULT IN GRAVE INJUSTICE TO THE PETITIONERS;

III-

HEREIN PETITION FOR INJUNCTIVE RE-MEDY IS FILED DIRECTLY IN THIS PENDING APPEAL TO PRESERVE THE STATUS QUO HEREIN SINCE THE RELATED ISSUE RAISED IS ALSO PURELY OF LAW, AND URGENCY WARRANTS IMMEDIATE AND MORE DIRECT ACTION FOR PLAIN, SPEEDY AND ADEQUATE REMEDY; AND,

IV-

PETITIONERS ARE READY, WILLING AND ABLE TO POST BOND EXECUTED TO DEFEN-DANT-APPELLEE IN AN AMOUNT TO BE FIXED BY THE HONORABLE COURT TO THE EFFECT THAT THEY WILL PAY ALL DAMAGES WHICH THE PARTY ENJOINED MAY SUSTAIN BY REASON OF THE INJUNCTION IF THIS HONORABLE COURT SHOULD FINALLY DECIDE THAT PETITIONERS ARE NOT ENTITLED THERETO. (Rollo, p. 12)

The main issue is whether or not the enforcement/ implementation of the writ of possession issued by a special land registration court should be suspended to preserve the status quo during the pendency of an ordinary civil action for reconveyance of the subject house and lot.

The answer is in the negative.

Firstly, there is no question that the foreclosure sale is valid insofar as the later obligation (the sum of P100,583.20) is concerned, since petitioners themselves admit that this obligation is already due and demandable, and admittedly also, the real estate is security for said loan. The title was therefore validly trans-ferred.

Secondly, whether the real estate is also security for the earlier loan of P218,000.28 is immaterial. If indeed it was, the foreclosure would be completely valid, and the transfer of title would be unassailable. If on the other hand, it is not a security for said earlier loan, it does not matter for then the foreclosure would still be valid insofar as the later loan is concerned. Otherwise stated, the foreclosure would be valid not because of the two loans together, but only because of the later loan.

Thirdly, the denial of injunctive relief to the petitioners would not result in irreparable injury to them. Should the pending appeal be resolved in their favor, reconveyance can still be done in the future.

WHEREFORE, premises considered, the instant petition is DENIED.

SO ORDERED.

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

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