

**DIONISIO FIESTAN AND JUANITA ARCONADO, PETITIONERS, VS.
COURT OF APPEALS; DEVELOPMENT BANK OF THE PHILIPPINES,
LAOAG CITY BRANCH; PHILIPPINE NATIONAL BANK, VIGAN
BRANCH, ILOCOS ...***G.R. No. 81552. May 28, 1990*

Ponente: FERNAN, C.J.

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In this petition for review on certiorari, petitioners spouses "Dionosio Fiestan and Juanita Arconado, owners of a parcel of land (Lot No. 2-B) situated in Ilocos Sur covered by TCT T-13218 which they mortgaged to the Development Bank of the Philippines (DBP) as security for their P22,400.00 loan, seek the reversal of the decision of the Court of Appeals[1] dated June 5, 1987 affirming the dismissal of their complaint filed against the Development Bank of the Philippines, Laoag City Branch, Philippine National Bank, Vigan Branch, Ilocos Sur, Francisco Peria and the Register of Deeds of Ilocos Sur, for annulment of sale, mortgage, and cancellation of transfer certificates of title.

Records show that Lot No. 2-B was acquired by the DBP as the highest bidder at a public auction sale on August 6, 1979 after it was extrajudicially foreclosed by the DBP in accordance with Act No. 3135, as amended by Act No. 4118, for failure of petitioners to pay their mortgage indebtedness. A certificate of sale was subsequently issued by the Provincial Sheriff of Ilocos Sur on the same day and the same was registered on September 28, 1979 in the Office of the Register of Deeds of Ilocos Sur. Earlier, or on September 26, 1979, petitioners executed a Deed of Sale in favor of DBP which was likewise registered on September 28, 1979.

Upon failure of petitioners to redeem the property within the one (1) year period which expired on September 28, 1980, petitioners' TCT T-13218 over Lot No. 2-B was cancelled by the Register of Deeds and in lieu thereof TCT T-19077 was issued to the DBP upon presentation of a duly executed affidavit of consolidation of ownership.

On April 13, 1982, the DBP sold the lot to Francisco Peria in a Deed of Absolute Sale and the same was registered on April 15, 1982 in the Office of the Register of Deeds of Ilocos Sur. Subsequently, the DBP'S title over the lot was cancelled and in lieu thereof TCT T-19229 was issued to Francisco Peria.

After title over said lot was issued in his name, Francisco Peria secured a tax declaration for said lot and accordingly paid the taxes due thereon. He thereafter mortgaged said lot to the PNB-Vigan Branch as security for his loan of P115,000.00 as required by the bank to increase his original loan from P49,000.00 to P66,000.00 until it finally reached the approved amount of P115,000.00. Since petitioners were still in possession of Lot No. 2-B, the Provincial Sheriff ordered them to vacate the premises.

On the other hand, petitioners filed on August 23, 1982 a complaint for annulment of sale, mortgage and cancellation of transfer certificates of title against the DBP-Laoag City, PNB-Vigan Branch, Ilocos Sur, Francisco Peria and the Register of Deeds of Ilocos Sur, docketed as Civil Case No. 3447-V before the Regional Trial Court

of Vigan, Ilocos Sur.

After trial, the RTC of Vigan, Ilocos Sur, Branch 20, rendered its decision[2] on November 14, 1983 dismissing the complaint, declaring therein, as valid the extrajudicial foreclosure sale of the mortgaged property in favor of the DBP as highest bidder in the public auction sale held on August 6, 1979, and its subsequent sale by DBP to Francisco Peria as well as the real estate mortgage constituted thereon in favor of PNB-Vigan security for the P115, 000.00 loan of Francisco Peria.

The Court of Appeals affirmed the decision of the RTC of Vigan, Ilocos Sur on June 20, 1987.

The motion for reconsideration having been denied[3] on January 19, 1988, petitioners filed the Instant petition for review on certiorari with this Court.

Petitioners seek to annul the extrajudicial foreclosure sale of the mortgaged property on August 6, 1979 in favor of the Development Bank of the Philippines (DBP) on the ground that it was conducted by the Provincial Sheriff of Ilocos Sur without first effecting a levy on said property before selling the same at the public auction sale. Petitioners thus maintained that the extrajudicial foreclosure sale being null and void by virtue of lack of a valid levy, the certificate of sale issued by the Provincial Sheriff cannot transfer ownership over the lot in question to the DBP and consequently the deed of sale executed by the DBP in favor of Francisco Peria and the real estate mortgage constituted thereon by the latter in favor of PNB-Vigan Branch are likewise null and void.

The Court finds these contentions untenable.

The formalities of a levy, as an essential requisite of a valid execution sale under Section 15 of Rule 39 and a valid attachment lien under Rule 57 of the Rules of Court, are not basic requirements before an extrajudicially foreclosed property can be sold at public auction. At the outset, distinction should be made of the three different kinds of sales under the law, namely: an ordinary execution sale, a judicial foreclosure sale, and an extrajudicial foreclosure sale, because a different set of law applies to each class of sale mentioned. An ordinary execution sale is governed by the pertinent provisions of Rule 39 of the Rules of Court. Rule 68 of the Rules of Court applies in cases of judicial foreclosure sale. On the other hand, Act No. 3135, as amended by Act No. 4118 otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages" applies in cases of extrajudicial foreclosure sale.

The case at bar, as the facts disclose, involves an extrajudicial foreclosure sale. The public auction sale conducted on August 6, 1979 by the Provincial Sheriff of Ilocos Sur refers to the "sale" mentioned in Section 1 of Act No. 3135, as amended, which was made pursuant to a special power inserted in or attached to a real estate mortgage made as security for the payment of money or the fulfillment of any other obligation. It must be noted that in the mortgage contract, petitioners, as mortgagor, had appointed private respondent DBP, for the purpose of extrajudicial foreclosure, "as his attorney-in-fact to sell the property mortgaged under Act No. 3135, as amended, to sign all documents and perform any act requisite and necessary to accomplish said purpose x x x In case of foreclosure, the Mortgagor hereby consents to the appointment of the mortgagee or any of its employees as receiver, without any bond, to take charge of the mortgaged property at once, and to held possession of the same x x x." [4]

There is no justifiable basis, therefore, to apply by analogy the provisions of Rule 39 of the Rules of Court on ordinary execution sale, particularly Section 15 thereof as well as the jurisprudence under said provision, to an extrajudicial foreclosure sale conducted under the provisions of Act. No. 3135, as amended. Act No. 3135, as amended, being a special law governing extrajudicial foreclosure proceedings, the same must govern as against the provisions on ordinary execution sale under Rule 39 of Rules of Court.

In that sense, the case of *Aparri v. Court of Appeals*, 13 SCRA 611 (1965), cited by petitioners, must be distinguished from the instant case. On the question of what should be done in the event the highest bid made for the property at the extrajudicial foreclosure sale is in excess of the mortgage debt, this Court applied the rule and practice in a judicial foreclosure sale to an extrajudicial foreclosure sale in a similar case considering that the governing provisions of law as mandated by Section 6 of Act. No. 3135, as amended, specifically Sections 29, 30 and 34 of Rule 39 of the Rules of Court (previously Sections 464, 465 and 466 of the Code of Civil Procedure) are silent on the matter. The said ruling cannot, however, be construed as the legal basis for applying the requirement of a levy under Section 15 of Rule 39 of the Rules of Court before an extrajudicially foreclosed property can be sold at public auction when none is expressly required under Act No. 3135, as amended.

Levy, as understood under Section 15, Rule 39 of the Rules of Court in relation to execution of money judgments, has been defined by this Court as the act whereby a sheriff sets apart or appropriates for the purpose satisfying the command of the writ, a part of the whole of the judgment-debtor's property.[5]

In extrajudicial foreclosure of mortgage, the property sought to be foreclosed need not be identified or set apart by the sheriff from the whole mass of property of the mortgagor for the purpose of satisfying the mortgage indebtedness. For, the essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness. In case of default of payment. By virtue of the special power inserted or attached to the mortgage contract, the mortgagor has authorized the mortgagee-creditor or any other person authorized to act for him to sell said property in accordance with the formalities required under Act. No. 3135, as amended.

The Court finds that the formalities prescribed under Sections 2, 3 and 4 of Act No. 3135, as amended, were substantially complied with in the Instant case. Records show that the notices of sale were posted by the Provincial Sheriff of Ilocos Sur and the same were published in *Ilocos Times*, a newspaper of general circulation in the province of Ilocos Sur, setting the date of the auction sale on August 6, 1979 at 10:00 a.m. in the Office of the Sheriff, Vigan, Illocos Sur.[6]

The nullity of the extrajudicial foreclosure sale in the instant case is further sought by petitioners on the ground that the DBP cannot acquire by purchase the mortgaged property at the public auction sale by virtue of par. (2) of Article 1491 and par. (7) of Article 1409 of the Civil Code which prohibits agents from acquiring by purchase, even at a public or judicial auction either in person or through the mediation or another, the property whose administration or sale may have been entrusted to them unless the consent of the principal has been given.

The contention is erroneous.

The prohibition mandated by par. (2) of Article 1491 in relation to Article 1409 of the Civil Code does not apply in the instant case where the sale of the property in under dispute was made under a special power inserted in or attached to the real estate mortgage pursuant to Act. No. 3135 as amended. It is a familiar rule of statutory construction that, as between a specific statute and general statute, the former must prevail since it evinces the legislative intent more clearly than a general statute does.[7] The Civil Code (R.A. 386) is of general character while Act No. 3135, as amended, is a special enactment and therefore the latter must prevail.[8]

Under Act No. 3135, as amended, a mortgagee-creditor is allowed to participate in the bidding and purchase under the same conditions as any other bidder, as in the case at bar, thus:

"Section 5. At any sale, the creditor, trustee, or other person authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale made."

In other words, Section 5 of Act No. 3135, as amended, creates and is designed to create an exception to the general rule that a mortgagee or trustee in a mortgage or deed of trust which contains a power of sale on default may not become the purchaser, either directly or through the agency of a third person, at a sale which he himself makes under the power. Under such an exception, the title of the mortgagee-creditor over the property cannot be impeached or defeated on the ground that the mortgagee cannot be a purchaser at his own sale.

Needless to state, the power to foreclose is not an ordinary agency that contemplates exclusively the representation of the principal by the agent but is primarily an authority conferred upon the mortgagee for the latter's own protection. It is an ancillary stipulation supported by the same causa or consideration for the mortgage and forms an essential and inseparable part of that bilateral agreement.[9] Even in the absence of statutory provision, there is authority to hold that a mortgagee may purchase at a sale under his mortgage to protect his own interest or to avoid a loss to himself by a sale to a third person at a price below the mortgage debt.[10] The express mandate of Section 5 of Act No. 3135, as amended, amply protects the interest of the mortgagee in this jurisdiction.

WHEREFORE, in view of the foregoing, the petition is DENIED for lack of merit and the decision of the Court of Appeals dated June 20, 1987 is hereby AFFIRMED. No cost.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes JJ., concur.

[1] Rollo, pp. 10-20.

[2] Rollo, pp. 52-55.

[3] Rollo, pp. 57-59.

[4] Rollo, pp. 57-58.

[5] Valenzuela v. de Aguilar, 8 SCRA 212 (1963).

[6] Rollo, p. 14.

[7] De Jesus v. People, 120 SCRA 760; Wilbensen v. Baluyot, 83 SCRA 38; Lacsamana v. Baltazar, 92 Phil. 32.

[8] Arayata v. Joya, et al., 51 Phil. 654.

[9] Perez v. Philippine National Bank, 17 SCRA 833.

[10] 55 Am Jur 2d, 643, citing Heighe v. Evans, 164 MJ 259, 164 A 671, 93 ALR 81; Bergen v. Bennet (NY); Caines Cas.

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