

TOMASA VDA. DE JACOB, AS SPECIAL ADMINISTRATRIX OF THE ESTATE OF THE DECEASED ALFREDO E. JACOB, PETITIONER, VS. HONORABLE COURT OF APPEALS, BICOL SAVINGS & LOAN ASSOCIATION, JOR...

G.R. NO. 88602. April 06, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The question of whether or not an extrajudicial foreclosure of a mortgage may proceed even after the death of the mortgagor and whether or not a petition for the issuance of a writ of possession may be barred by estoppel, are the issues presented in this petition.

Dr. Alfredo E. Jacob was the registered owner of a parcel of land described under Transfer Certificate of Title No. 1433 of the Register of Deeds of Naga City.[1] Sometime in 1972 Jorge Centenera was appointed as administrator of Hacienda Jacob until January 1, 1978 when the Special Power of Attorney executed in his favor by Dr. Jacob was revoked by the latter.[2] The land in question is located at Liboton, Naga City and has an area of approximately 3,376 square meters. Because of the problem of paying realty taxes, internal revenue taxes and unpaid wages of farm laborers of the hacienda, Dr. Jacob asked Centenera to negotiate for a loan. For this purpose, a special power of attorney was executed and acknowledged by Dr. Jacob before notary public Lorenzo Rosales, the material portions of which read as follows:

"That I, ALFREDO E. JACOB, Filipino, of legal age, widower, address at Tigaon, Camarines Sur, have named, constituted and appointed and by these presents do name, constitute and appoint JORGE CENTENERA, Filipino, of legal age, married to Judith E. Centenera, resident of and with postal address at Naga City, to be my true and lawful attorney-in-fact, for me and in my name, place and stead, and to do and perform all the necessary acts and deeds, to wit:

1. To mortgage and/or hypothecate with any banking institution in the City of Naga or elsewhere in the Philippines, the following described properties of which I am the absolute owner, as follows:

‘A parcel of land (Plan Ps-80014, Lot 818 of Naga Cad. 290 Case No. M-472 L.R.C. Rec. No. N-5986) located at Liboton, Naga City. Bounded on the NE, by Alfredo Cleto (Lot 383); Martin Perez (Lot 385) and Benedicto Naz (Lot 394); SE. by Benedicto Naz (Lot 394); S. by Pedro San Juan (Lot 317); SW by Margarita Narciso, vs. Simeon Ty Ganco (Lot 319); and NW, by the Calawag Street, containing an area of 3,376 square m. covered by TCT No. 1433.

‘A parcel of land (lot 15, Block 4 of the subdivision plan Psd-46484, being a portion of Lot 1105-now of the Cad. survey of Naga, L.R.C. Cad. Rec. N. N-78), situated in Tinago, Naga City. Bounded on the SE., along line 1-2 by Lot 17, Block 4; along line 2-3 by road lot 4; along line 3-4 by Lot 13, Block 4; and along line 4-1 by Lot 14, Block 4 all of the subdivision plan. Containing an area of 236 square meters, covered by TCT No. 393.

‘A parcel of land (Lot 14, Block 4 of the subdivision plan Psd-46464, being a portion of Lot 1106-now Cad.

survey of Naga, L.R.C. Cad. Rec. No. N-78), situated in Tinago, Naga City. Bounded on SW., along line 1-2 by Lot 15; Block 4; along line 2-3 by Lot 12, Block 4; along line 3-4 by road lot 3; and along line 4-1 by Lot 16, Block 4, all of the subdivision plan, containing an area of 239 square meters, covered by TCT No. 397.'

2. To receive cash in any amount made in payment of the mortgage of the above described properties; to sign checks, drafts, money orders, treasury warrants, to indorse the same, to cash and make deposits with any bank here or elsewhere and to withdraw such deposit; to execute, sign and deliver any or all documents of mortgage, contracts, deeds or any instrument necessary and pertinent for purposes of mortgaging and/or encumbering said properties in favor of any banking institution in the City of Naga or elsewhere and lastly, to do and perform any and all acts and deeds which to him may seem most to my own benefit and advantage.

HEREBY GIVING AND GRANTING unto my said attorney-in-fact full power and authority to do and perform any and every act and thing whatever requisite or necessary or proper to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present and acting in person and I hereby ratify and confirm all that my said attorney shall do and had done lawfully or cause to be done under and by virtue of these presents."[3]

Consequently, Centenera secured loan in the amount of P18,000.00 from the Bicol Savings & Loan Association sometime in September 1972. Centenera signed and executed the real estate mortgage and promissory note as attorney-in-fact of Dr. Jacob.[4] When the loan fell due in 1975 Centenera failed to pay the same but was able to arrange a restructuring of the loan using the same special power of attorney and property as security. Another set of loan documents, namely: an amended real estate mortgage and promissory note dated November 27, 1975 was executed by Centenera as attorney-in-fact of Dr. Jacob.[5] Again, Centenera failed to pay the loan when it fell due and so he arranged for another restructuring of the loan with the bank on November 23, 1976. The corresponding promissory note was again executed by Centenera on behalf of Jacob under the special power of attorney.

The mortgage was annotated on the title[6] and when the loan was twice re-structured, the proceeds of the same were not actually given by the bank to Centenera since the transaction was actually nothing but a renewal of the first or original loan and the supposed proceeds were applied as payment for the loan. The accrued interest for sixty (60) days was, however, paid by Centenera.

Centenera again failed to pay the loan upon the maturity date forcing the bank to send a demand letter.[7] A copy of the demand letter was sent to Dr. Jacob but no reply or denial was received by the bank. Thus, the bank foreclose the real estate mortgage and the corresponding provisional sale of the mortgaged property to the respondent bank was effected. On November 5, 1982 a definite deed of sale of the property was executed in favor of the respondent bank as the sole and highest bidder.[8]

Tomas Vda. de Jacob who was subsequently named administratrix of the estate of Dr. Jacob and who claimed to be an heir of the latter, conducted her own investigation and therefore she filed a complaint in the Regional Trial Court of Camarines Sur alleging that the special power of attorney and the documents therein indicated are forged and therefore the loan and/or real estate mortgages and promissory notes are null and void. After trial on the merit a decision was rendered on July 30, 1987, the dispositive part of which reads as follows:

"WHEREFORE, plaintiff's complaint is ordered DISMISSED for lack of a cause of action and/or her failure to prove the cause(s) of action alleged in the complaint; and judgment is rendered against the Estate of the late Dr. Alfredo Jacob in favor of the defendants on their respective counterclaim, ordering payment from said estate of the following:

(a) actual damages in the sum of P30,000.00; exemplary damages in the sum P20,000.00; and attorney's fees of P10,000.00; to defendant Bicol Savings and Loan Association;

(b) actual damages in the sum of P30,000.00; exemplary damages in the sum of 20,000.00; moral damages in the sum of P50,000.00; attorney's fees in the sum of P10,000.00 to defendant Jorge Centenera;

(c) actual damages in the sum of P30,000.00; exemplary damages in the sum of P20,000.00; attorney's fees in the sum of P10,000.00 to defendant Atty. Lorenzo Rosales.

with interest at the legal rate from the time of the filing of the complaint, until full payment.

Costs against the plaintiff.

SO ORDERED.”[9]

Not satisfied therewith the plaintiff appealed therefrom to the Court of Appeals wherein on May 30, 1989 a decision was rendered affirming in toto the decision of the lower court and dismissing the appeal for lack of merit.[10]

Hence, the herein petition for review docketed as G.R. No. 88602 that was filed by plaintiff therein and which raises two issues, to wit:

- The Honorable Court of Appeals failed and completely neglected to exercise appellate determination on material issues which, independently of what said Court determined, would cause nullification of the mortgage deed and amendment thereto, as well as extrajudicial foreclosure proceedings and sale thereof.
- The Honorable Court of Appeals likewise ignored to resolve, nay, pass upon, the issue of excessive and unfounded award of damages, which certainly calls for appellate determination as it was squarely raised on appeal.[11]

However, while the action for annulment of mortgage, etc. aforesated was pending in the trial court, on November 5, 1982, a definite deed of sale was issued by the sheriff in favor of respondent bank. Without redemption having been exercised within the prescribed period, the title in the name of Dr. Jacob was cancelled and in its place, Transfer Certificate of Title No. 14661 was issued on August 9, 1983 in favor of respondent bank. Respondent bank then filed a petition for the issuance of a writ of possession in the Regional Trial Court of Naga City which was opposed by petitioner. In due course a writ of possession was issued by the trial court in a decision dated July 21, 1987 in favor of the respondent bank, the dispositive part of which reads as follows:

"WHEREFORE, the petitioner UNITED BICOL SAVINGS BANK being entitled to possession of the property covered by Transfer Certificate of Title No. 14661 (registry of Naga City) let a Writ of Possession issue addressed to the respondent ESTATE OF THE LATE ALFREDO JACOB, by its administratrix Tomasa Vda. de Jacob, directing the said respondent to deliver the possession of said property to the petitioner United Bicol Savings Bank within thirty (30) days from the date this judgment becomes final; and for the Provincial Sheriff to enforce said writ and to place said petitioner United Bicol Savings Bank in possession of said property, with costs against the said respondent.

SO ORDERED."

Not satisfied therewith petitioner appealed to the Court of Appeals wherein in due course a decision was rendered on June 27, 1989 affirming the decision appealed from without pronouncement as to costs.[12] A motion for reconsideration of said decision which was filed by the petitioner was denied in a resolution dated July 28, 1989.

Hence the petition for review docketed as G.R. No 89544 wherein petitioner contends that the writ of possession may not validly issue where from the admitted facts the extrajudicial foreclosure and auction sale is patently void.

The petition in G.R. No. 89544 was consolidated with the petition in G.R. No. 88602 herein above discussed

being closely related to each other.

The petition in G.R. No. 88602 is devoid of merit.

Petitioner contends that the extrajudicial foreclosure proceedings and the sale of the property mortgaged under the amended real estate mortgage after the mortgagor died are null and void. It is pointed out that Dr. Jacob died on March 9, 1979 and that the extrajudicial foreclosure proceedings were effected after his death, that is, the public auction sale was made on May 11, 1979. Petitioner argues that such extrajudicial foreclosure can only be prosecuted during the lifetime of Dr. Jacob for the reason that such kind foreclosure under Act No. 3135, as amended, is authorized only because of the special power of attorney inserted in the mortgage deed: and that said special power of attorney cannot extend beyond the lifetime of the supposed mortgagor.

Section 7, Rule 86 of the Rules of Court provides as follows:

"SEC. 7. Mortgage debt due from estate. – A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made."

From the foregoing provision of the Rules it is clearly recognized that a mortgagee has three remedies that may be alternately availed of in case the mortgagor dies, to wit:

- (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;
- (2) to foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and
- (3) to rely on the mortgage exclusively, or other security and foreclose the same at anytime, before it is barred by prescription, without the right to file a claim for any deficiency.

From the foregoing it is clear that the mortgagee does not lose its right to extrajudicially foreclose the mortgage even after the death of the mortgagor as a third alternative under Section 7, Rule 86 of the Rules of Court.

The power to foreclose a mortgage 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. That power survives the death of the mortgagor.[13]

The right of the mortgagee bank to extrajudicially foreclose the mortgage after the death of the mortgagor, acting through his attorney-in-fact, did not depend on the authority in the deed of mortgage executed by the latter. That right existed independently of said stipulation and is clearly recognized in Section 7, Rule 86 of the Rules of Court aforesaid.[14]

The other issues raised in the petition are questions of fact which cannot be considered in this proceeding. The findings of facts of the appellate court are conclusive and cannot be reviewed at this level.

Likewise, the petition in G.R. No. 89544 is devoid of merit.

It is premised on the assumption that the extrajudicial foreclosure and auction sale was patently void and was without basis. On the contrary the appellate court found and so does this Court, that the extrajudicial foreclosure and auction sale was regular and in accordance with law.

While it is true that the question of the validity of said mortgage and consequently the extrajudicial foreclosure thereof was raised in a separate proceeding before the trial court, the pendency of such separate civil suit can be no obstacle to the issuance of the writ of possession which is a ministerial act of the trial court after a title on the property has been consolidated in the mortgagee.[15]

WHEREFORE, petitions in G.R. Nos. 88602 and 89544 are hereby DISMISSED for lack of merit, with costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit C.

[2] Exhibits D and D-1.

[3] Pages 41 to 43, Rollo, G.R. No. 88602.

[4] Exhibits A-1 to 1-C, and 8-Bisala).

[5] Exhibit 1-Bisala.

[6] Exhibits 10, 11, and 12.

[7] Exhibits 14, 15, and 16-Bisala.

[8] Exhibits 17 and 18-Bisala.

[9] Page 46, Rollo, G.R. No. 88602.

[10] Mr. Justice Manuel C. Herrera, was the ponente, concurred in by Justices Minerva Reyes and Alicia B. Sempio Diy.

[11] Page 17, Rollo, G.R. No. 88602.

[12] Justice Jose A.R. Melo, ponente, concurred in by Justices Ricardo Pronove and Alfredo Benipayo.

[13] Bicol Savings and Loan Association vs. Hon. Court of Appeals, et al., G.R. No. 85302, March 31, 1989, citing Perez vs. PNB, 17 SCRA, 833-839 (1966).

[14] Bicol Savings and Loan Association vs. Court of Appeals, et al., Ibid, at note 13.

[15] Section 7, Act No. 3135, as amended by Act No. 4118; Section 35, Rule 39, Rules of Court.

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