

ARTURO GRAVINA AND ZENAIDA GRAVINA, PETITIONERS, VS. THE HON. COURT OF APPEALS, THE HON. ALFIN S. VICEN-CIO, PRESIDING JUDGE, BR. 50, RTC, MANILA, ALFREDO B. TAN, LUCILA EDNA TA...

G.R. No. 97070. March 19, 1993

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Petitioners herein, Spouses Arturo Gravina and Zenaida Gravina, were original owners of a 116 square-meter lot in Tondo, Manila, which they mortgaged to the Daily Savings Loan Association (DLSA) in 1973, as security for loans totalling P109,000.00, obtained by them from the Association.

Having failed to settle their obligation when it fell due, the DLSA foreclosed the mortgage on September 10, 1974, and bought the property as the highest bidder at the public auction sale.

On October 10, 1974, ownership of the foreclosed property was consolidated in favor of DLSA and Transfer Certificate of Title No. 119695 of the Registry of Deeds of Manila was issued in its name.

On January 29, 1976, DLSA sold the property to Mercantile Financing for P40,000.00. TCT No. 119695 was cancelled and TCT No. 120865 of the Registry of Deeds of Manila was issued to Mercantile Financing Corporation.

On February 25, 1976, Mercantile Financing Corporation sold the property to the Spouses Alfredo and Lucila Edna Tan for P66,500.00. TCT No. 1121130 of the Registry of Deeds of Manila was issued to the vendees.

On March 3, 1983, the Tans filed an ejectment complaint against the petitioners, Arturo and Zenaida Gravina, in the Metropolitan Trial Court of Manila (Civil Case No. 011866). A decision was rendered in favor of the Tans. Petitioners appealed to the Regional Trial Court of Manila. The RTC dismissed the case holding that the proper remedy of the Tans was an accion reivindicatoria or for recovery of property.

The Tans filed an action to recover possession in the Regional Trial Court of Manila (Civil Case No. 83-16015). On November 7, 1986, the trial court rendered a decision in their favor, ordering the Gravinas to vacate and surrender the possession of the property to them (the Tans). The Gravina spouses filed a notice of appeal.

However, before the perfection of the appeal, the petitioners (now private respondents) filed on November 26, 1986, a motion for execution pending appeal. The trial judge denied the motion. The private respondents went to the Court of Appeals on certiorari assailing the denial of their motion.

The Court of Appeals consolidated the appeal of the Gravinas (CA-G.R. CV No. 13369) with the petition for certiorari filed by the Tans. On July 9, 1990, the Court of Appeals rendered judgment as follows:

"WHEREFORE, the judgment appealed from in CA-G.R. CV No. 13369 entitled 'Alfredo Tan, et al. vs. Arturo

Gravina, et al., Defendants and Third Party Plaintiffs' is hereby AFFIRMED. Costs against the appellants; and

"In the certiorari case, CA--G.R. SP No. 12432 entitled 'Alfredo Tan, et al., vs. Hon. Alfin Vicencio, et al.,' the petition is DENIED DUE COURSE and ordered DISMISSED. No pronouncement as to costs." (p. 37 Rollo.)

The Gravinass have filed the instant petition for review of the Court of Appeals' decision raising the following issues:

1. Whether or not the foreclosure of the mortgage executed by the Daily Savings and Loan Association Inc., was valid;
2. Whether or not the public auction sale by the sheriff was made in accordance with law;
3. Whether or not the consolidation of title in the name of Daily Savings and Loan Association was valid; and
4. Whether or not the sale to the mortgagee bank personnel is valid.

The first three issues focus on the validity of the extrajudicial foreclosure of the mortgage which according to the petitioners, was done without notice to them as mortgagors. Whether or not they were notified of the extrajudicial foreclosure is, however, a factual issue.

The finding of the trial court, which was sustained by the Court of Appeals, was that the DLSA did send a letter to the petitioners informing them of the foreclosure of the mortgage but the petitioners failed to claim the letter. The Court also found that said notice was published in the Evening News, a newspaper of general circulation in the City of Manila. We are bound by those factual findings of the Court of Appeals (*Leuterio vs. CA*, 197 SCRA 369).

Moreover, Section 3 of Act No. 3135 (Mortgage Law) requires only the posting of the notices of sale in three public places and the publication of the same in a newspaper of general circulation. Personal notice is not required.

"Sec. 3 Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or City."

In the case of *Philippine National Bank vs. International Corporate Bank*, 199 SCRA 508, 509, the Court likewise ruled that:

"The contention of private respondent in its opposition that the extrajudicial foreclosure is null and void for failure of the petitioner to inform them of the said foreclosure and the pertinent dates of redemption so that it can exercise its prerogatives under the law is untenable. There being obviously no contractual stipulation therefor, personal notice is not necessary and what governs is the general rule in Section 3 of Act 3135, as amended, which directs the posting of notices of the sale in at least three (3) public places of the municipality where the property is situated, and the publication thereof in a newspaper of general circulation in said municipality."

There is no merit in petitioners' contention that the sale of the foreclosed property to Lucila Edna Tan, an employee of the bank, was invalid. In the first place, the Tans did not buy the property from the mortgagee, the Daily Savings and Loan Association, but from the Mercantile Financing Corporation. Secondly, it is not prohibited for the bank to sell to its employee property acquired by the bank at a mortgage foreclosure sale. The claim of the petitioners that there was collusion between DLSA and the Tans was not proven. The Court of

Appeals held:

"As to the argument of the appellant that there was conspiracy and collusion among the plaintiffs and the third party defendants, the trial court held that there was no sufficient proof to sustain the defense and We see no cogent reason for Us to disturb these findings of fact on appeal." (p. 36, Rollo.)

WHEREFORE, the petition for review of the decision of the Court of Appeals in CA G.R. SP No. 12432 is DENIED for lack of merit.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.

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