

MASANTOL RURAL BANK, INC., PETITIONER, VS. THE HON. COURT OF APPEALS AND REMEDIOS B. SORIANO, RESPONDENTS.*G.R. No. 97132. December 10, 1991*

Ponente: FELICIANO, J.

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Petitioner spouses Antonio and Remedios Soriano in G.R. No. 70937 urge the Court to set aside the Order of the Regional Trial Court of Manila in LRC Record No. 302 granting a writ of possession to private respondent therein, the Masantol Rural Bank, Inc. ("Masantol Bank"), which Order was affirmed by the then Intermediate Appellate Court in its Decision and Resolution in A.C.-G.R. SP No. 04821.

Upon the other hand, petitioner Masantol Bank in G.R. No. 97132 seeks to annul the Decision of the Regional Trial Court of Manila in Civil Case No. 84-24524 declaring its auction sale and consolidation of ownership of the property owned by private respondent Soriano spouses null and void ab initio, which Decision was affirmed by the Court of Appeals in C.A.-G.R. CV No. 21337.

The spouses Antonio Soriano and Remedios Soriano had on two occasions, obtained from Masantol Bank three (3) loan accounts in the aggregate amount of P25,000.00. Each loan was covered by a promissory note and secured by a real estate mortgage constituted over a parcel of land and house owned by the Soriano spouses located at 3392 J.C. Cruz, Barrio Obrero, Tondo, Manila. The real estate mortgage contained a special power of attorney authorizing Masantol Bank to foreclose the property extrajudicially in the event the Soriano spouses defaulted on their obligations.[1]

Because the Soriano spouses were unable to pay their indebtedness on the dates each of the loans respectively fell due, Masantol Bank caused the mortgaged property to be foreclosed extrajudicially. The auction sale was initially scheduled for 20 October 1977 but for one reason or another, it did not take place on that date. At the auction sale subsequently held on 22 June 1978, Masantol Bank was the lone bidder and bought the mortgaged property for the sum of P38,280.44. The Sheriff of Manila who conducted the auction sale then executed a certificate of sale[2] in the name of Masantol Bank which, in turn, had the fact of sale annotated on the back of the certificate of title standing in the name of the Soriano spouses. On 10 December 1979, Masantol Bank, as attorney-in-fact, executed a deed of sale[3] assigning the property to itself for failure of the Soriano spouses to redeem the property within the redemption period of one (1) year from the date the certificate of sale was registered. The deed of sale was presented to the Register of Deeds of Manila who issued Transfer Certificate of Title No. 136368 in the name of Masantol Bank.

After it had consolidated its ownership of the Barrio Obrero house and lot, Masantol Bank filed in the Regional Trial Court of Manila, Branch 4 sitting as a land registration court, an ex parte motion for issuance of a writ of possession.[4] The land registration court allowed the Soriano spouses time to controvert the allegations in the motion filed by Masantol Bank but the period granted them lapsed without their having filed any pleading. On 18 August 1981, the land registration court issued an Order the dispositive portion of which reads as follows:

“WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of Manila or his duly authorized representative to place the herein petitioner in possession of the property described in said Transfer Certificate of Title No. 136368 and to eject therefrom the mortgagors, occupants, lessees, representatives and all persons claiming rights under them.

SO ORDERED.”[5]

The Soriano spouses questioned the above Order granting the writ of possession before this Court in G.R. No. 69171; however, the petition for certiorari and mandamus was referred by the Court to the Intermediate Appellate Court on 26 November 1984.

On 28 November 1984, the Intermediate Appellate Court restrained the enforcement of the writ of possession. The restraining order was later lifted and vacated when the Intermediate Appellate Court eventually dismissed the petition in its Decision dated 8 April 1985. The Soriano spouses filed a motion for reconsideration which was denied.

On 30 May 1985, the Soriano spouses filed with us a petition for review of the decision and resolution of the Intermediate Appellate Court, now docketed as G.R. No. 70937. The Court issued a temporary restraining order enjoining enforcement or implementation of the writ of possession dated 18 August 1981.[6] The Soriano spouses alleged in their petition for review that the Intermediate Appellate Court had erred -?

1. In sustaining the writ of possession issued by the respondent land registration court upon a reliance on private respondent’s alleged ‘title’ to the controverted property;
2. In ruling that the respondent land registration court did not commit grave abuse of discretion amounting to lack of jurisdiction in issuing the questioned writ considering that:

- a. private respondent’s alleged title was illegal and void; and
- b. serious questions and objections affecting said title were raised in the summary proceedings.

3. In applying to the case before it the doctrine enunciated in IFC Service Leasing and Barrameda.

Earlier, i.e. on 21 May 1984 pending litigation of the validity of the writ of possession, Remedios Soriano who had been separated from her husband for a period of at least one year, filed a complaint in the Regional Trial Court of Manila, Branch 26, seeking, among other things, the annulment of: (1) the auction sale held on 22 June 1978 of the foreclosed Barrio Obrero property; (2) the deed of sale executed in favor of Masantol Bank; and (3) the transfer certificate of title issued in the name of Masantol Bank. After the issues were joined, the case proceeded to trial. On 20 July 1987, the trial court rendered a decision with the following dispositive portion:

“WHEREFORE, premises considered, judgment is hereby rendered declaring the foreclosure sale and consolidation of ownership to Masantol Rural Bank, Inc. of the property covered by Transfer Certificate of Title No. 22324 null and void ab initio; and

ORDERS the following:

- (a) the cancellation of Transfer Certificate of Title No. 136368 in the name of Masantol Rural Bank, Inc. and the reinstatement of Transfer Certificate of Title No. 22324 in the name of Antonio P. Soriano and Remedios B. Soriano;
- (b) the defendant Masantol Rural Bank, Inc. to allow the plaintiff Remedios B. Soriano to redeem the mortgaged property covered by Transfer Certificate of Title No. 22324 in the amount of twenty five thousand (P25,000.00) pesos plus interest from the dates of the loans to June 1980, when plaintiff first offered to redeem the property;

(c) the defendant Masantol Rural Bank, Inc. to pay the plaintiff the amount of P10,000.00 as moral and exemplary damages; and to pay the cost of litigation.

No award is ordered for attorney's fees.

SO ORDERED.”[7]

On appeal to the Court of Appeals, the trial court's decision was affirmed except that the award of P10,000.00 for moral and exemplary damages was deleted.

Masantol Bank accordingly filed the instant Petition for Review docketed as G.R. No. 97132. Its position is anchored on the following grounds:

1. Resolution No. 542, Series of 1956 of the Municipal Board of the City of Manila and the case of Citizens' Surety Insurance Co., Inc. vs. Hon. Ricardo Puna, et al. (119 SCRA 216 [1982]) are not applicable to the instant case.
2. Under the prevailing circumstances, the foreclosure auction sale and consolidation of ownership cannot be declared null and void ab initio.
3. The redemption of the mortgaged property, and the suspension of the running of interest from June 1980 are without basis in law.
4. The issue of republication was not admitted as an issue in the trial court and therefore should not have been passed upon by the Court of Appeals.[8]

Ordinarily, G.R. No. 97132, as the case with the higher or later general records number, should have been consolidated with G.R. No. 70937. However, since the principal issue litigated in G.R. No. 70937, i.e., the validity of the writ of possession issued on the basis of Masantol Bank's title is peripheral to the principal issue in G.R. No. 97132 where the validity of Masantol Bank's title itself is directly questioned, the Court decided to consolidate G.R. No. 70937 with G.R. No. 97132.

The ultimate question of the validity of Masantol Bank's title to the house and lot in Barrio Obrero relates to two (2) issues: firstly, the issue of whether or not Masantol Bank was legally qualified to acquire ownership of the house and lot in Barrio Obrero; and secondly, the issue of whether or not the necessary notices for the foreclosure auction sale at which Masantol Bank bought the Barrio Obrero real property had been given.

Turning to the first issue, the complete text of Resolution No. 168, as amended by Resolution No. 542, of the Municipal Board of the City of Manila, dated 29 November 1956, reads as follows:

“RESOLVED, That Resolution No. 168, Series of 1922, as Amended by Resolution No. 218, Series of 1946, Resolution No. 228, Series of 1948, Resolution No. 66, Series of 1950 and Resolution No. 283, Series of 1954 be, and the same hereby is, further amended, by deleting Item No. 6 therefrom, so that same shall read as follows:

BE IT RESOLVED by the Municipal Board of the City of Manila, that:

The following shall be the plan in establishing the Barrio Obrero:

1. The Barrio Obrero shall be parcelled out in accordance with the plan now under preparation by the City Engineer.
2. Each lot, according to said plan, shall contain 108 square meters with a frontage of 9 and a depth of 12 meters.

3. Not more than one lot shall be sold to a person or persons belonging to the same household.
4. Only Filipino laborers who are bona fide residents in Manila whose wages do not exceed P180.00 per month, or P6.00 per day, according as they receive monthly or daily compensation shall have the privilege of buying lots in the Barrio.
5. Only residential houses shall be built in the Barrio.

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7. The lots shall be paid for at a price to be fixed by the Appraisal Committee within ten years in 120 equal monthly installments, and shall be mortgaged in favor of the City to guarantee payment of the entire price: Provided, That non-payment of six consecutive installments shall be considered sufficient cause for the forfeiture of the laborer's right to purchase and of all the installments previously paid.

8. The awarding of lots shall be done by lot." (Underscoring supplied)

In *Citizens' Surety and Insurance Co., Inc. v. Judge Ricardo C. Puno, et al.*,^[9] Maria Barcelon, owner of a piece of land in Barrio Obrero, mortgaged the land to Citizens' Surety and Insurance Co., Inc. (Citizens') to secure a loan. Citizens' foreclosed the mortgage extrajudicially when the loan was not paid. Citizens' bought the land at the foreclosure sale and, after expiration of the period of redemption, sought to consolidate its ownership. The Register of Deeds of Manila refused to register the consolidation. Citizens' then brought suit against the Register of Deeds and the City of Manila, praying that Resolution No. 542 of the City of Manila be declared null and void and the Register of Deeds ordered to register the consolidation of title. The trial Judge dismissed the suit. The Court, in affirming the decision of the trial court, held that Citizens' being a corporate entity, was not qualified to acquire the lot and hence not competent to raise the question of invalidity of Resolution No. 542. In effect, the Court held that only persons qualified under paragraph 4 of Resolution No. 542 (quoted above) could acquire ownership of a Barrio Obrero lot whether the sale be a voluntary one or a forced sale on execution.

Remedios Soriano invokes and relies upon the Citizens' Surety case. Upon the other hand, Masantol Bank, a juridical entity licensed by the Central Bank to operate as a rural bank, in effect asks us to re-examine and overrule Citizens' Surety and to hold that paragraph 4 of Resolution No. 542 is not applicable to a subsequent purchaser in an auction sale of a mortgaged Barrio Obrero lot.

We believe that the rule in Citizens' Surety should be re-affirmed. As noted earlier, Resolution No. 542, amended Resolution No. 168, as previously amended by deleting paragraph 6 from Resolution No. 168, which deleted paragraph read as follows:

"6. No lot shall be transferred, leased, mortgaged or otherwise encumbered without the express approval of the Mayor of the City of Manila. The mortgage or other encumbrance shall not be for an amount greater than the original purchase price nor for a period of more than five (5) years: Provided, however, that in case of fore-closure or auction sale, the City of Manila reserves the right to redeem the lot so foreclosed at not more than the price of its original acquisition excluding necessary costs and expenses."

Clearly, the deleted paragraph 6 had imposed onerous limitations in respect of mortgages established on Barrio Obrero lots: (a) the Mayor of the City of Manila had to approve transfers, leases or mortgages of a Barrio Obrero lot; (b) a loan secured by the mortgage could not exceed the original purchase price of the lot nor could the life of the mortgage exceed five (5) years; and (c) in case of a foreclosure or auction sale, the City of Manila had a right to redeem the lot at not more than the original selling price to the mortgagor. Deletion of paragraph 6 thus indicated an intent on the part of the Municipal Board to mitigate the restrictions attaching to Barrio Obrero lots. By the same token, however, the Municipal Board had the opportunity to exclude foreclosures or auction sales

from the application of paragraph 4; the Municipal Board did not, however, choose to do so and did not go beyond deleting paragraph 6. The Court is aware that the rule in Citizens' Surety does not necessarily make good economic or financial sense. It is not even necessarily good for the Filipino laborers or lowly- paid employees themselves who must expect to find difficulties in securing bank credit since banks would naturally be reluctant to accept Barrio Obrero lots as collateral if the banks cannot bid for such lots even to save themselves from loss in case of default. Moreover, there realistically would not be many Filipino laborers resident in Manila whose wages do not exceed P180.00 a month or P6.00 a day (or, perhaps, the current minimum daily wage of P118.00) who would be in a position to bid for and purchase a Barrio Obrero lot in a foreclosure sale. We believe, however, that further modification of Resolution No. 168 as amended by Resolution No. 542 should be left to the Municipal Board of Manila, that the Municipal Board should be given the opportunity to correct the difficulty posed by the unqualified language of paragraph 4, just as the Board corrected some of the difficulties created by the restrictions in the original paragraph 6 of Resolution No. 168.

It is essential to note, however, that the application of the rule in Citizens' Surety does not in any way affect the validity or the enforceability of the mortgage lien held by Masantol Bank; that mortgage lien continues to be good and valid and effective as against the debtor and the whole world. The obligation secured by the mortgage remained valid and enforceable and that obligation could be enforced by foreclosure so long as the successful bidder is a person qualified under paragraph 4 of Resolution No. 542.

There is another reason why the sale in favor of the mortgagee Masantol Bank must be set aside: Masantol Bank failed to comply with the requirements of publication. Act No. 3135, as amended, which governs the extrajudicial foreclosure of mortgages on real property specifies the following publication requirements:

“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.” (Underscoring supplied)

Republic Act No. 720, as amended, the Rural Banks Act, provides for exemption of foreclosures of mortgages securing loans granted by rural banks in the case of loans not exceeding P10,000.00 (including interest due and unpaid). The loans secured by the mortgage on the Obrero lot in favor of Masantol Bank were well in excess of P10,000.00. Notice of the first auction sale scheduled for 20 October 1977 had been duly published as required by Section 3 of Act No. 3135, as amended. No auction sale, however, took place on that day. The auction sale during which Masantol Bank bought the property as sole bidder was conducted eight (8) months later, on 22 June 1978. Masantol Bank alleged that there was re-publication of the notice of the 22 June 1978 auction sale; Remedios B. Soriano contends otherwise.

The evidence submitted by Masantol Bank as tending to prove its compliance with the publication requirement in respect of the 22 June 1978 auction sale, consisted simply of the testimony of Atty. Venancio Viray^[10] and a provisional receipt of payment of the alleged publication expenses signed by a stenographer of the newspaper Economic Monitor.^[11] Remedios Soriano, upon the other hand, presented a solicitor of the Economic Monitor -- where the notice of auction sale was supposed to have been published -- who testified that he had not seen from their records any document indicating that the notice of auction sale was in fact published.^[12]

It is settled doctrine that failure to publish the notice of auction sale as required by the statute constitutes a jurisdictional defect which invalidates the sale.^[13] The Court is not persuaded either that the evidence presented by Masantol Bank sufficiently established its compliance with the statutory requirement of notice, or that the testimony of Remedios Soriano's witness showed non-compliance with such requirement. In *Tambunting v. Court of Appeals*,^[14] this Court said:

“One issue of a newspaper of general circulation is not substantial compliance with the required publication of once (1) a week for at least three (3) consecutive weeks. Petitioners claim the publisher’s affidavit of publication is merely a customary proof, hence, it should not be considered as the sole evidence of publication. This may be so in the presence of equally convincing evidence. In the case at bar, however, there is no such other proof of publication. To show compliance, the published notices and certificate of posting by the sheriff of the notice of sale of 26 January 1968 should have been presented. They do not appear in the record. Neither can the sale be considered as an adjournment of an earlier sale under Sec. 24 of Rule 39 of the Rules of Court. As correctly posed by the Court of Appeals, why was there one (1) publication of the notice of sale scheduled on 26 January 1968? The presumption of compliance with official duty has been rebutted by the failure to present proof of posting and publication of the notice of sale of 26 January 1968.” (Underscoring supplied)

Masantol Bank argues that the issue on publication or re-publication of notice of auction sale should not have been passed upon by the Court of Appeals, since that issue had not been admitted as such at the pre-trial of the case. The pre-trial order of the trial court dated 25 April 1985 had narrowed down the issues to the following: (a) the validity of the auction sale of 22 June 1978; (b) the applicability of Resolution No. 542, Series of 1956, of the Municipal Board of the City of Manila; and (c) the amount of damages each party may be entitled to claim from the other. While the issue of re-publication had not been specifically identified and included in the above list of issues, that issue is properly deemed included within the broader question relating to the validity of the auction sale.

We turn to the question of suspension of the running or accruing of interest on the loans of the Soriano spouses from Masantol Bank starting from June 1980. In its questioned decision, the Court of Appeals ruled that interest at the rate of twelve percent (12%) per annum was due on each of the loans from the date they were obtained and until June 1980, when Remedios Soriano first asked for an accounting of the loan, at the same time offering to pay the same.

A mere offer to pay, not accompanied or promptly followed by consignment in court of the amount tendered but refused by the creditor, is not sufficient to cause cessation of the running of interest. The applicable rule was stated by the Court in *State Investment House, Inc. v. Court of Appeals*,^[15] in the following manner:

“Where the creditor unjustly refuses to accept payment, the debtor desirous of being released from his obligation must comply with two (2) conditions: (a) tender of payment; and (b) consignment of the sum due. Tender of payment must be accompanied or followed by consignment in order that the effects of payment may be produced. Thus, in *Llamas vs. Abaya*, the Supreme Court stressed that a written tender of payment alone, without consignment in court of the sum due, does not suspend the accruing of regular or monetary interest.

In the instant case, respondent spouses Aquino, while they are properly regarded as having made a written tender of payment to petitioner State, failed to consign in court the amount due at the time of the maturity of Account No. IF-82-0904-AA. It follows that their obligation to pay principal-cum-regular or monetary interest under the terms and conditions of Account No. IF-82-0904-AA was not extinguished by such tender of payment alone.

For the respondent spouses to continue in possession of the principal of the loan amounting to P110,000.00 and to continue to use the same after maturity of the loan without payment of regular or monetary interest, would constitute unjust enrichment on the part of the respondent spouses at the expense of petitioner State even though the spouses had not been guilty of mora. It is precisely this unjust enrichment which Article 1256 of the Civil Code prevents by requiring, in addition to tender of payment, the consignment of the amount due in court which amount would thereafter be deposited by the Clerk of Court in a bank and earn interest to which the creditor would be entitled.” (Underscoring supplied)

Both Remedios Soriano and Antonio Soriano had failed to consign in court the amount due to Masantol Bank.

Accordingly, regular or monetary interest did not cease to run or accrue in respect of the loans granted to the Soriano spouses, and it was reversible error for the Court of Appeals to have held otherwise.

Remedios Soriano asks us to restore the award for moral and exemplary damages made by the trial court; but we see no reason for overturning the Decision of the Court of Appeals deleting such award.

WHEREFORE, the Decision dated 8 April 1985 and the Resolution dated 9 May 1985 of the then Intermediate Appellate Court in A.C.-G.R. SP No. 04821 as well as the Decision dated 23 August 1990 and the Resolution dated 23 January 1991 of the Court of Appeals in C.A.-G.R. CV No. 21337 are hereby SET ASIDE. A new judgment is hereby rendered providing as follows:

(1) Declaring null and void: (a) the auction sale held on 22 June 1978; (b) the sale of the property located in 3392 J.C. Cruz, Barrio Obrero, Tondo, Manila to Masantol Bank; (c) Transfer Certificate of Title No. 136368 issued in the name of Masantol Bank; and (d) the writ of possession granted by the land registration court.

(2) Ordering the Register of Deeds of Manila to cancel Transfer Certificate of Title No. 136368 issued in the name of Masantol Bank and to reinstate Transfer Certificate of Title No. 22324 in the names of the spouses Antonio Soriano and Remedios Soriano and to annotate thereon the mortgage lien of Masantol Bank;

(3) Requiring Antonio Soriano and/or Remedios Soriano to pay forthwith Masantol Bank the principal amount of their obligation which is P25,000.00, or so much thereof as has remained unpaid, plus interest thereon at the rate of twelve percent (12%) per annum computed from the time each of the loans were obtained and until full actual payment thereof. After full payment, the mortgage lien of Masantol Bank shall be cancelled;

(4) Declaring Masantol Bank as entitled, in case of failure of the spouses Antonio and Remedios Soriano to pay in full their obligation with interest as above stated within sixty (60) days from notice hereof, to foreclose its mortgage on the Barrio Obrero property, after due compliance with publication requirements, at a public auction sale where only persons qualified under Resolution No. 168 as amended by Resolution No. 542, dated 29 November 1956, of the Municipal Board of the City of Manila, shall be allowed to bid for and purchase the mortgaged property.

No pronouncement as to costs.

SO ORDERED.

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

[1] Record in G.R. No. 97132, pp. 194-198.

[2] *Id.*, p. 201.

[3] *Id.*, p. 202.

[4] Rollo in G.R. No. 70937, pp. 51-53.

[5] *Id.*, pp. 47-48.

[6] *Id.*, pp. 69-71.

[7] Record in G.R. No. 97132, pp. 244-253.

[8] Memorandum for the Petitioner, G.R. No. 97132, p. 11.

[9] 119 SCRA 215 (1982).

[10] TSN, 28 January 1986, p. 5.

[11] Record in G.R. No. 97132, p. 200.

[12] TSN, 17 June 1986, pp. 3-4.

[13] *Borja v. Addison*, 44 Phil. 895 (1922); *Campomanes v. Bartolome and Germann & Co.*, 38 Phil. 808 (1918). See also *Cortes v. Intermediate Appellate Court*, 175 SCRA 545 (1989); *Government Service Insurance System v. Court of Appeals*, 170 SCRA 533 (1989); *Bonnevie v. Court of Appeals*, 125 SCRA 122 (1983).

[14] 167 SCRA 16 (1988).

[15] G.R. No. 90676, 19 June 1991.

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