

**LUIS CASTRO, JR., MARISSA CASTRO, RAMON CASTRO, MARY ANN CASTRO, CATHERINE CASTRO AND ANTONIO CASTRO,
PETITIONERS, VS. HON. COURT OF APPEALS AND UNION BANK OF
THE PHILIPPINES, R...**

G.R. No. 97401. December 06, 1995

Ponente: VITUG, J.

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VITUG, J.:

The instant petition for review on certiorari of the decision,[1] dated 11 October 1990, of the Court of Appeals is focused on the issue of whether or not a residential house, which was constructed by a lessee on a portion of the leased property theretofore encumbered under a real estate mortgage by the lessor, can be rightly covered by a writ of possession following the foreclosure sale of the mortgaged land.

The facts are not in any serious dispute.

On 15 August 1974, Cabanatuan City Colleges obtained a loan from the Bancom Development Corporation. In order to secure the indebtedness, the college mortgaged to Bancom two parcels of land covered by TCT No. T-45816 and No. T-45817 located in Cabanatuan City. The parcels were both within the school site. While the mortgage was subsisting, the college board of directors agreed to lease to petitioners a 1,000-square-meter portion of the encumbered property on which the latter, eventually, built a residential house. Bancom, the mortgagee, was duly advised of the matter.

The school defaulted in the due payment of the loan. In time, Bancom extrajudicially foreclosed on the mortgage, and the mortgaged property was sold at public auction on 22 August 1979 with Bancom coming out to be the only bidder. A certificate of sale was accordingly executed by the provincial sheriff in favor of Bancom. Subsequently, the latter assigned its credit to herein private respondent Union Bank of the Philippines.

On 10 October 1984, following the expiration of the redemption period without the college having exercised its right of redemption, private respondent consolidated title to the property.

On 08 May 1985, private respondent filed with the Regional Trial Court of Nueva Ecija, Branch XXVIII in Cabanatuan City, an ex-parte motion for the issuance of a writ of possession not only over the land and school buildings but also the residential house constructed by petitioners.[2] On 10 May 1985, the lower court granted the motion and directed the issuance of the corresponding writ.

The ex-officio provincial sheriff, in implementing the writ, thereby also sought the vacation of the premises by petitioners. When the latter refused, private respondent filed an ex-parte motion for a special order directing the physical ouster of the occupants.

On 23 May 1986, petitioners formally entered their appearance in the proceedings to oppose the ex-parte motion. Petitioners averred that, being the owners of the residential house which they themselves had built on the

foreclosed property with the prior knowledge of the mortgagee, they could not be ousted simply on the basis of a petition for a writ of possession under Act No. 3135.

On 27 May 1986, the lower court,[3] nevertheless, issued an order granting private respondent's motion, and it directed Atty. Luis T. Castro, in representation of petitioners, to deliver "all the keys to all the rooms and premises" found on the property foreclosed and authorized, in the event petitioners would refuse to surrender the keys, private respondent "to enter the premises in question and do what is best for the preservation of the properties belonging to the Cabanatuan City Colleges." [4]

Petitioners sought reconsideration of the order but the lower court denied the motion on 13 June 1986.[5] It ruled that the residential building was included in the writ of possession pursuant to Article 2127 of the Civil Code. Private respondent still sought clarification of the Order, praying that the court issue another order specifically mentioning the residential house to be among the property which the sheriff should deliver to it.[6] Although the court found no need to clarify its previous ruling, "in the interest of justice and to obviate any possible misunderstanding between the parties," however, it issued its order of 18 June 1986 stating:

"WHEREFORE, the Ex-Officio Provincial Sheriff, Atty. Numeriano Y. Galang should implement the order of May 27, 1986 to include therein the residential house being the subject of dispute between the parties hereto there being no compelling reasons to exclude it.

"SO ORDERED." [7]

Petitioners elevated the case to the Court of Appeals, assailing the orders of the court a quo of 27 May 1986, 13 June 1986 and 18 June 1986. On 11 October 1990, the appellate court rendered decision affirming the questioned orders.[8]

There is merit in the instant petition for review on certiorari.

Shorn of unrelated matters,[9] the basic question raised in the petition relates to the proper application of Article 2127 of the Civil Code. The law reads:

"Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or passes into the hands of a third person."

This article extends the effects of the real estate mortgage to accessions and accessories found on the hypothecated property when the secured obligation becomes due. The law is predicated on an assumption that the ownership of such accessions and accessories also belongs to the mortgagor as the owner of the principal.[10] The provision[11] has thus been seen by the Court, in a long line of cases beginning in 1909 with *Bischoff vs. Pomar*, [12] to mean that all improvements subsequently introduced or owned by the mortgagor on the encumbered property are deemed to form part of the mortgage. That the improvements are to be considered so incorporated only if so owned by the mortgagor is a rule that can hardly be debated since a contract of security, whether real or personal, needs as an indispensable element thereof the ownership by the pledgor or mortgagor of the property pledged or mortgaged.[13] The rationale should be clear enough - in the event of default on the secured obligation, the foreclosure sale of the property would naturally be the next step that can expectedly follow. A sale would result in the transmission of title to the buyer which is feasible only if the seller can be in a position to convey ownership of the thing sold (Article 1458, Civil Code). It is to say, in the instant case, that a foreclosure would be ineffective unless the mortgagor has title to the property to be foreclosed.[14]

It may not be amiss to state, in passing, that in respect of the lease on the foreclosed property, the buyer at the foreclosure sale merely succeeds to the rights and obligations of the pledgor-mortgagor subject, however, to the provisions of Article 1676 of the Civil Code on its possible termination.[15]

WHEREFORE, the decision of the Court of Appeals is REVERSED and SET ASIDE, and a new one is entered declaring the residential house owned by petitioners to have been improperly included in the writ of possession issued by the court a quo. No costs.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Panganiban, JJ., concur.

[1] Penned by Associate Justice Luis A. Javellana and concurred in by Associate Justices Celso L. Magsino and Filemon H. Mendoza.

[2] G.L.R.O. Cad. Rec. 79.

[3] Presided by Judge Quirino R. Sadang.

[4] Record, p. 116.

[5] Ibid., p. 137.

[6] Ibid., p. 146.

[7] Rollo, p. 56.

[8] The Decision also ruled on the private respondent's motion to cite Atty. Luis Castro, Sr. and Luis Castro, Jr. in contempt of court for concealing from the Court of Appeals the fact that the Castros had filed an ejectment case against the private respondent in the Municipal Trial Court of Cabanatuan City where the Castros were able to secure a writ of preliminary injunction restoring Luis Castro, Jr. to the possession of the residential building. In denying the petition for contempt, the Court of Appeals held that the petition should be addressed to the cadastral court which issued the writ of possession because the issuance of the writ of preliminary injunction constituted interference with the former court's proceedings.

[9] E.g., the dacion en pago executed in favor of the Central Bank by Bancom that cannot necessarily conclude the basic issues brought up in the petition at bench.

[10] "ART. 440. The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially."

[11] Taken from Article 1877 of the old Civil Code.

[12] 12 Phil. 691. See also *Cea vs. Villanueva*, 18 Phil. 538; *Cu Unjieng vs. Mabalacat Sugar Co.*, 58 Phil. 439; *Berkenkotter vs. Cu Unjieng*, 61 Phil. 663.

[13] "ART. 2085. The following requisites are essential to the contracts of pledge and mortgage:

"1. That they be constituted to secure the fulfillment of a principal obligation;

"2. That the pledgor or mortgagor be the absolute owner of the thing pledge or mortgaged;

"3. That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

"Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property." (*Italics supplied.*)

[14] Section 35, Rule 39, in relation to Section 6 of Act No. 3135, only allows the possession of a mortgaged property to be awarded to the purchaser in extrajudicial foreclosures if there is no third party actually holding the property adversely to the judgment debtor. See also *IFC Service Leasing and Acceptance Corp. vs. Nera*, 19 SCRA 181; *Roxas vs. Buan*, 167 SCRA 43.

[15] "Art. 1676. The purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease.

"If the buyer makes use of this right, the lessee may demand that he be allowed to gather the fruits of the harvest which corresponds to the current agricultural year and that the vendor indemnify him for damages suffered.

"If the sale is fictitious, for the purpose of extinguishing the lease, the supposed vendee cannot make use of the right granted in the first paragraph of this article. The sale is presumed to be fictitious if at the time the supposed vendee demands the termination of the lease, the sale is not recorded in the Registry of Property."

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