

**NIMFA G. RAMIREZ AND FELITO S. RAMIREZ, PETITIONERS, VS.
COURT OF APPEALS, HON. INOCENCIO D. MAILIAMAN, IN HIS
CAPACITY AS PRESIDING JUDGE OF BRANCH 14 OF THE REGIONAL
TRIAL COU...**

G.R. No. 98147. March 05, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioners seek to annul the decision of the Court of Appeals dated 7 August 1991 in CA-G.R. SP No. 21003 which dismissed their petition for certiorari which in turn sought to annul several orders of the Regional Trial Court, Branch 14 of Manila, in Civil Case No. 89-50013, dated 20 December 1989, 12 March 1990 and 22 May 1990.

The antecedent facts of the case, as found by the Court of Appeals, are as follows:

On 16 February 1976, the Philippine National Bank (PNB for brevity) granted a loan/credit accommodation in favor of Ronnie Garcia in the amount of Thirty Thousand Pesos (P30,000.00), secured by a first mortgage over a parcel of land covered by TCT No. 120745, Register of Deeds of Manila. The loan was increased to Forty Thousand Pesos (P40,000.00) on 1 April 1976. The deed of real estate mortgage and amendment to the same were duly registered with the Register of Deeds of Manila and annotated on TCT No. 120745 on 17 February 1976 and 12 April 1976 respectively.

PNB extra-judicially foreclosed the mortgage upon failure of Ronnie Garcia to comply with the conditions of the mortgage. A Certificate of Sale was issued to PNB on 8 November 1977 having been the sole and highest bidder. The sale was annotated on TCT No. 120745 on 12 February 1979.

Prior to the foreclosure by PNB, Ronnie Garcia executed a Deed of Second Mortgage over the same property on 18 August 1977 in favor of Teodoro Marmeto herein private respondent, for and in consideration of One Hundred Thousand Pesos (P100,000.00) payable within three (3) months from date of execution. The encumbrance was recorded on the title on 20 April 1978.

The second mortgage was also extra-judicially foreclosed, and in a public auction sale on 27 June 1978, Teodoro Marmeto was issued a Certificate of Sale for the property being the highest bidder at One Hundred and Twenty-Five Thousand Pesos (P125,000.00). The sale was annotated on 28 June 1978.

On 1 February 1980, Ronnie Garcia executed a "Waiver and Renunciation of Rights," with respect to the first mortgage, particularly his right of redemption of the property, in favor of his father, Jesus Garcia, who in turn later assigned his right to Nimfa Garcia Ramirez, herein petitioner. Neither of the two (2) assignments was registered with the Register of Deeds.

On 9 August 1980, Nimfa Ramirez paid the total redemption price to PNB which accepted it.

Since no redemption had been made vis-a-vis the second mortgage, Teodoro Marmeto filed on 9 August 1989 with the Regional Trial Court of Manila, a Petition for Consolidation of Ownership against Ronnie Garcia and PNB. On 19 October 1989, PNB filed a Motion to Dismiss on the ground that Nimfa Ramirez had paid to PNB the redemption price in the first mortgage, and since PNB had no more interest or lien on the property, the plaintiff Teodoro Marmeto had no cause of action against PNB. On 6 November 1989, the trial court dismissed the case against PNB. Ronnie Garcia was later declared in default and on 20 December 1989, the trial court directed the consolidation of ownership of the property covered by TCT No. 120745 in favor of Teodoro Marmeto and ordered the Register of Deeds to register the consolidated ownership. On 12 March 1990, a writ of execution of the 20 December 1989 order was issued directing the defendant Ronnie Garcia to surrender TCT No. 120745 to Teodoro Marmeto. On 22 May 1990, the trial court directed the Register of Deeds of Manila to cancel TCT No. 120745 in the possession of Ronnie Garcia and to issue another one, covering the same property, in the name of Teodoro Marmeto and further ordered Ronnie Garcia and all other persons claiming rights under him to surrender possession of the property to Marmeto.

On 29 May 1990, petitioner Nimfa G. Ramirez filed a Third-Party/Adverse Claim over the property covered by TCT No. 120745 alleging that she became the legal owner of the same when she paid the redemption price of the first mortgage to PNB. On 6 June 1990, petitioner filed an Urgent Motion to Hear Third-Party/Adverse Claim and to Suspend Execution, contending that she was an indispensable party to the case, that the trial court had jurisdiction to hear her claim and that the trial court should have made her a party defendant since it had been formally notified of her interest in the property through PNB's Motion to Dismiss. After hearing of the Urgent Motion but before the same could be resolved, herein petitioner filed a petition for certiorari in the Court of Appeals docketed as CA-G.R. Sp. No. 21003, alleging that the questioned orders of the trial court were issued "in excess of jurisdiction, if not with grave abuse of authority." [1] The Court of Appeals dismissed the petition for lack of merit on 7 August 1990. A Motion For Reconsideration was denied on 22 April 1991.

Petitioners now seek the review and reversal of the said Court of Appeals decision as well as the questioned orders and writs of the trial court, on the following grounds:

"I. RESPONDENT COURT OF APPEALS HAS DECIDED IN CA-G.R. SP NO. 21003 IN A WAY THAT IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT; and

II. RESPONDENT COURT OF APPEALS IN RENDERING THE DECISION DATED AUGUST 7, 1990 HAS ACTED WITHOUT JURISDICTION." [2]

Respondent Court of Appeals was correct when it stated, "Whether petitioner Ramirez is an indispensable party in the case is of no moment. The real issue here is whether she had acquired any right by virtue of her having redeemed the property in question." [3] Whatever right Nimfa Ramirez can have over the property would be determined by the effect of her payment to PNB of the redemption price. Respondent Court of Appeals after holding that the unrecorded assignments of the right of redemption cannot prejudice private respondent Marmeto, [4] further held:

"Assuming, however, that the assignment vested in petitioner the right to redeem the property, did she exercise such right? x x x petitioner (assuming her right to redeem) failed to exercise that right within the period granted by law when she redeemed the property only on August 19, 1980." [5]

The Court of Appeals unfortunately was not entirely correct since the PNB accepted the redemption price from the petitioner after the one (1) year period had expired. By accepting the redemption price after the statutory period for redemption had expired, PNB is considered to have waived the one (1) year period within which Ramirez could redeem the property. There is nothing in the law which prevents such a waiver. Allowing a

redemption after the lapse of the statutory period, when the buyer at the foreclosure does not object but even consents to the redemption, will uphold the policy of the law recognized in such cases as *Javellana v. Mirasol and Nunez*[6] and in the more recent case of *Tibajia, et al. v. Honorable Court of Appeals, et al.*[7] which is to aid rather than defeat the right of redemption. Thus, there is no doubt that the redemption made by petitioner Ramirez is valid. The next question to be answered is, what will be the effect of the redemption by Ramirez on private respondent Marmeto?

The rule is well settled that a second mortgagee merely takes what is called an equity of redemption and thus a second mortgagee has to wait until after the debtor's obligation to the first mortgagee has been fully settled.[8] The rights of a second mortgagee are strictly subordinate to the superior lien of the first mortgagee.[9] In the case at bar, the proper foreclosure of the first mortgage gave, not only the first mortgagor, but also subsequent lien holders like Marmeto, the right to redeem the property within the statutory period.[10] Marmeto failed to make the redemption but instead it was the petitioner who made such redemption.

The recording of the deeds of assignment of the right to redeem in the first mortgage, would be immaterial since it cannot be denied that the foreclosure was recorded and thus private respondent Marmeto is charged with knowledge of his right to redeem. Having failed to redeem the property from PNB, he cannot now allege that title to the property would be consolidated in his name on the ground that the first mortgagor failed to redeem the property within the one (1) year statutory period. As earlier discussed, PNB validly waived the period by accepting the redemption money from petitioner Nimfa Ramirez. Nothing in the records shows that private respondent tried to make the redemption by paying the debt secured by the first mortgage. The trial court clearly erred in consolidating the title in the name of Marmeto and allowing him to assume the first mortgage obligation. Such a conclusion is clearly without basis in law or jurisprudence and would be contrary to the basic principle that a subsequent mortgage over the same property is subordinate to a prior one.[11]

From the foregoing, it is clear that petitioner Nimfa Ramirez validly acquired title to the subject property by virtue of the redemption from PNB. This however is without prejudice to private respondent's right to payment from his debtor-obligor of the debt secured by the second mortgage.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 21003 dated 7 August 1990 and the questioned orders and writs of the trial court are SET ASIDE. Petitioner Nimfa Ramirez is hereby declared the legal owner of the property covered by TCT No. 120745. The Register of Deeds of Manila is hereby ordered to issue a new certificate of title over the said property in the name of Nimfa Ramirez, after cancelling said TCT No. 120745. The temporary restraining order issued on 29 April 1991 is hereby made permanent.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Campos, Jr., JJ., concur.

[1] Rollo, p. 47

[2] Rollo, p. 23

[3] Rollo, p. 48

[4] Rollo, p. 48

[5] Rollo, p. 49

[6] No. 14881, 5 February 1920, 40 Phil. 761

[7] G.R. No. 82193, 6 February 1991, 193 SCRA 581

[8] Alpha Insurance and Surety Co., Inc. v. Reyes, G.R. No. L-26274, 31 July 1991, 106 SCRA 274

[9] Sun Life Assurance Company of Canada v. Diez, No. 29027, 25 October 1928, 52 Phil. 271

[10] Sec. 29, Rule 39, Rules of Court

[11] Sun Life Assurance Company of Canada v. Diez, *supra*

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