

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. RUSTICO DE LOS REYES, AMANDO ARANA AND JULIA REYES, RESPONDENTS.*G.R. Nos. 46898-99. November 28, 1989*

Ponente: REGALADO, J.

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Assailed in this petition for review on certiorari are (1) the decision[1] of the then Court of First Instance of Sorsogon, Branch I, dated May 11, 1976 in Civil Case No. 2677, entitled "Amando Arana, et al. vs. Philippine National Bank," and Special Proceeding No. 2679, entitled "Philippine National Bank, Petitioner-Appellant, Re: Properties of Spouses Amando Arana and Julia Reyes;" and (2) the resolution[2] of the same court, dated January 17, 1977, denying petitioner's motion for reconsideration of said decision.

The records show that on August 30, 1966, respondent spouses mortgaged six (6) parcels of land located at Cantilla, Sorsogon to petitioner bank (PNB) to secure the payment of a loan of P10,000.00. Two (2) of the six (6) parcels of land are covered by free patent titles while the other four (4) are untitled and covered only by tax declarations.

For failure of respondent spouses to pay the loan after its maturity, petitioner bank, pursuant to a special power of attorney in the mortgage deed, effected the extrajudicial foreclosure of the mortgage under Act No. 3135, as amended, and purchased the same at public auction for P12,735.30 which amount included the expenses of sale, interest and attorney's fees. The certificate of sale, dated July 1, 1969, was duly registered with the Register of Deeds on July 8, 1970.[3]

After the one-year redemption period provided in said law expired without respondent spouses having exercised their right of redemption, petitioner executed and registered an affidavit of consolidation of ownership over the six (6) parcels of land on July 9, 1970 and new titles were issued in its name for the two (2) parcels covered by free patent titles and the corresponding tax declarations for the four (4) parcels were placed in its name.[4]

On May 12, 1971, Jose Barrameda, then the manager of petitioner's Sorsogon Branch, sent a letter to respondent spouses informing them of the consolidation of title and inviting them to repurchase the lands not later than June 15, 1971. Respondent spouses replied on October 28, 1971 through a letter written and signed by Alejandro Liadones, Municipal Mayor of Castilla, Sorsogon, requesting petitioner to extend the period of repurchase to November 5, 1971. On December 19, 1971, petitioner sent another letter to respondent spouses reminding them of the projected repurchase and informing them that petitioner would take actual possession of the lands unless the repurchase would be effected on or before November 30, 1971.[5]

On May 9, 1972, petitioner entered into a contract to sell the six (6) parcels of land to one Gerardo Badong for P27,000.00, with P5,400.00 as down payment upon the execution of the contract. Petitioner informed respondent spouses of the transaction in a letter dated May 31, 1972.[6]

On July 12, 1972, respondent spouses instituted Civil Case No. 2677 for legal redemption of the six (6) parcels of

land, invoking Section 119 of the Public Land Act, with damages.[7] Petitioner filed its answer on August 15, 1972, conceding to respondent spouses the right to repurchase the two (2) parcels of land covered by free patent titles, but refused the redemption of the other four (4) lots covered by tax declarations.[8]

Gerardo Badong, on the other hand, could not take possession of the two lots covered by Tax Declarations Nos. 7245 and 7246 (formerly Tax Declarations Nos. 5824 and 5825) as respondent spouses refused to surrender possession of the premises, and he forthwith informed petitioner of such fact in a letter dated July 3, 1972. On July 24, 1972, petitioner filed an ex parte petition in Special Proceeding No. 2679 for the issuance of a writ of possession over the aforesaid two (2) lots, which writ was granted by the court in its order of July 27, 1972.[9]

The trial court noted in its decision in Civil Case No. 2677 that when the aforesaid order was issued, said case had already been filed on July 12, 1972 by Amando Arana and his wife, Julia Reyes.

Due to the refusal of respondent spouses to relinquish possession of the two (2) lots in defiance of the writ of possession issued by the court, petitioner filed in Special Proceeding No. 2679 a motion to have respondent spouses cited for contempt of court.[10]

Civil Case No. 2677 and the motion to cite respondent spouses for contempt of court in Special Proceeding No. 2679 were heard jointly by agreement of the parties. At the pre-trial thereof on December 27, 1973, the parties stipulated as follows:

"1. That parcels 1 and 2 in the complaint are titled lands and bear Free Patent Titles P-123 and P-130;

"2. That parcels 3, 4, 5, and 6 are not titled but plaintiffs have filed the proper application for the issuance of free patent titles to the lands;

"3. That the Philippine National Bank instituted extrajudicial foreclosure proceedings against the lands upon failure of the plaintiffs to redeem the original mortgage in the sum of P10,000.00 and that at the time of foreclosure the claim of the bank was P12,735.30;

"4. That there was no judicial confirmation of the consolidation of title in favor of the bank;

"5. That the plaintiffs deposited the sum of P12,500.00 on account of the redemption with the Legaspi Branch of the Philippine National Bank which deposit is intended for the Sorsogon Branch;

"6. That the Philippine National Bank is willing to have the two parcels of titled land redeemed but not the untitled parcels. Plaintiff's counsel advanced the view that the mortgage is indivisible and therefore the plaintiffs have the right to redeem all the parcels, the titled as well as the untitled." [11]

It further appears that during the pendency of the suit, private respondents deposited the sum of P12,500.00 with the clerk of court of the trial court.[12]

After trial on the merits, the lower court rendered its aforesaid decision of May 11, 1976 holding that respondent spouses are entitled to redeem the six (6) parcels of land on the theory of "indivisibility of mortgage" and dismissing the petition in Special Proceeding No. 2679 to declare the respondent spouses in contempt of court. The dispositive portion of said decision reads as follows:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

"a- In CIVIL CASE NO. 2677 the Court finds that the plaintiff (sic) have the right to redeem the six (6) parcels of land which are the subject of the original contract of mortgage for the sum of TWELVE THOUSAND SEVEN HUNDRED THIRTY FIVE PESOS AND THIRTY CENTAVOS (P12,735.30). The plaintiffs having already deposited the sum of TWELVE THOUSAND FIVE HUNDRED PESOS (P12,500.00) with the Legaspi Branch of the Bank on account of the redemption, the deficiency shall be paid and upon receipt of

payment, the Bank is directed to execute a release of mortgage in favor of the plaintiffs;

"b- The contract of promise to sell executed between the Bank and Gerardo Badong is rescinded and cancelled and the Bank is directed to return the amount paid by Badong on the contract without interest. Both defendants are also ordered to turn over the possession of the parcels of land of about four (4) hectares now in their possession to the plaintiffs;

"c- In SPECIAL PROCEEDING NO. 2679, the petition to declare the respondents in contempt of court is dismissed;

"d- Without pronouncement as to costs in both instances."[13]

Acting on petitioner's motion of May 27, 1976 for the reconsideration of said decision, the lower court issued its challenged resolution of January 17, 1977 modifying the ratio decidendi of its decision by ruling that the applicability of the doctrine of "indivisibility of mortgage" was deemed to have been waived by petitioner when it agreed to the redemption of the two (2) titled lots, and holding that the period of redemption for the four (4) untitled parcels of land is one (1) year, not five (5) years. However, it allowed the redemption of said four (4) lots for reasons of equity.[14]

Considering that the disputed issues raised by the parties involve only questions of law, a direct appeal by certiorari was made to this Court. Thereafter, in a resolution dated March 24, 1980, the Court considered the case submitted for decision without respondents' brief for failure of the latter to file the same within the required period.[15]

On its part, petitioner's assignment of errors faults the court a quo for holding that respondent spouses are entitled to redeem the four (4) parcels of land not covered by free patent upon a so-called "equitable ground," that in the foreclosure of mortgage under Act No. 3135, as amended, judicial confirmation of the sale is necessary to vest in the purchaser absolute ownership and the corollary right to take actual possession of the foreclosed property; and that the issuance of a writ of possession ex parte is null and void as violative of due process.[16]

Petitioner accedes to the redemption by respondents of the two (2) parcels covered by free patent titles, pursuant to the provisions of the Public Land Act, the period of five (5) years after the grant of the patents not having expired. This is correct since pursuant to Section 119 of Commonwealth Act No. 141, the Public Land Act which is the applicable law in this case, the mortgagor had five (5) years from the date of conveyance within which to redeem the property.[17] It is not even necessary for the preservation of such right to repurchase to make an offer to redeem, or tender payment of the purchase price within said period of five (5) years. The filing of an action to redeem within that period is equivalent to a formal offer to redeem. There is not even a need for the consignation of the redemption price.[18]

Petitioner, however, denies such right to redeem in the case of the four (4) untitled parcels due to the failure of private respondents to effect the redemption within the period of one (1) year after the auction sale. This contention is premised on the theory that private respondents had only one (1) year from the foreclosure sale to redeem the untitled properties, pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118, and Section 20 of the PNB charter, Republic Act No. 4300, as amended.

Upon the other hand, the theory of private respondents is that the mortgage is indivisible, hence the right to redeem the titled parcels necessarily includes the untitled ones. They further contend that having applied for the issuance of free patents on the four (4) untitled parcels of land which applications were then pending consideration in the Bureau of Lands, the five-year period in the Public Land Act also applies to these particular parcels.

The parties were accordingly embroiled in a hermeneutic disparity on their aforesaid contending positions. Yet, the rule on the indivisibility of mortgage finds no application to the case at bar. The particular provision of the Civil Code referred to provides:

"Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

"Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

"Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

"From these provisions is excepted the case in which, there being several things given in mortgage or pledge, each one of these guarantees only a determinate portion of the credit.

"The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied."

From the foregoing, it is apparent that what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where before foreclosure proceedings partial payment was made by the debtor on his total outstanding loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been a partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied.[19]

That the situation obtaining in the case at bar is not within the purview of the aforesaid rule on indivisibility is obvious since the aggregate number of the lots which comprise the collaterals for the mortgage had already been foreclosed and sold at public auction. There is no partial payment nor partial extinguishment of the obligation to speak of. The aforesaid doctrine, which is actually intended for the protection of the mortgagee, specifically refers to the release of the mortgage which secures the satisfaction of the indebtedness and naturally presupposes that the mortgage is existing. Once the mortgage is extinguished by a complete foreclosure thereof, said doctrine of indivisibility ceases to apply since, with the full payment of the debt, there is nothing more to secure.

Neither does the instant case fall within the exception contemplated in the last two paragraphs of Article 2089 in which, there being several things given in mortgage, each of them guarantees only a determinate portion of the account. There is no proof or any averment to that effect.

Noteworthy, however, is an overriding consideration that should not be overlooked in the solution of this dispute. It is admitted that applications for free patent covering the four (4) unregistered parcels of land had been filed by respondent spouses, and were then still pending action, which thus gives rise to the admission that said properties involved in the aforesaid cases were public lands.[20] This presumption was never rebutted by petitioner. Hence, the right of petitioner to foreclose its mortgage on the subject properties virtually depends on whether the deed of mortgage is at all valid and enforceable since the four (4) lots mortgaged apparently still formed part of the public domain when the mortgage thereon was constituted.

It is an essential requisite to the validity of a mortgage that the mortgagor be the absolute owner of the property mortgaged.[21] Consequently, private respondents, not being owners as yet of the subject lots when the same were supposedly mortgaged, they could not have validly made any disposition of or created an encumbrance on

said four (4) lots to which they had neither title nor any vested right. At most, what they had was a mere right of expectancy dependent on the continuance of the circumstances then existing or a contingent right dependent on the performance of some conditions,[22] but which could not be the proper object of a valid mortgage contract. Since the mortgage is absolutely null and void and ineffective from its inception, petitioner, as mortgagee, acquires no better rights, the registration of the mortgage notwithstanding.[23] Nor would the subsequent acquisition by the mortgagor of title over said properties through the issuance of free patents thereover validate and legalize the mortgage thereon under the doctrine of estoppel,[24] since upon the issuance of said patents, the lots in question are thereby brought under the operation of the Public Land Act which prohibits the taking of said properties for the satisfaction of debts contracted prior to the expiration of five (5) years from the date of the issuance of the patents.[25]

Consequently, there was no need for private respondents to repurchase the four (4) parcels from petitioner. That aspect of the case actually calls for mutual restitution as an equitable remedy, especially since the records before us are barren of the factual background, or the mode of acquisition by petitioners, of their possession of said lots and the circumstances under which the mortgage in question was arranged between the parties. Therefore, incident to the nullity ab initio of the mortgage,[26] mutual restitution by the parties of what they had respectively received from each other under the contract in connection with the four (4) lots must be made and is hereby ordered to be effected by them.

While the law bars recovery in a case where the object of the contract is contrary to law and one or both parties acted in bad faith, we cannot here apply the doctrine of *in pari delicto*[27] which admits of an exception, namely, that when the contract is merely prohibited by law, not illegal per se, and the prohibition is designed for the protection of the party seeking to recover, he is entitled to the relief prayed for whenever public policy is enhanced thereby.[28] Under the Public Land Act, the prohibition to alienate is predicated on the fundamental policy of the State to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him,[29] and recovery is allowed even where the land acquired under the Public Land Act was sold and not merely encumbered, within the prohibited period.[30] This is without prejudice to such appropriate action as the Government may take should it find that violations of the public land laws were committed or involved in said transaction and sanctions are in order.

WHEREFORE, under the considerations as amplified above and with the modification with respect to the four (4) parcels of land not covered by free patent titles, the proper disposition whereof we have hereinbefore directed, the judgment appealed from is AFFIRMED.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

[1] Penned by Judge Feliciano S. Gonzales; Annex E, Petition; Rollo, 83.

[2] Penned by Judge Rustico de los Reyes; Annex G, id.; *ibid.*, 103.

[3] Rollo, 51-52.

[4] *Ibid.*, 84.

[5] *Ibid.*, 84-85.

[6] *Ibid.*, id.

- [7] Annex A, Petition; Rollo, 71.
- [8] Annex B, id.; ibid., 76.
- [9] Rollo, 85.
- [10] Annex C, Petition; Rollo, 79.
- [11] Rollo, 85-86.
- [12] Ibid., 90.
- [13] Ibid., 91-92.
- [14] Annex F, Petition; Rollo 93-102.
- [15] Rollo, 173.
- [16] Brief for Petitioner, 1-2.
- [17] Cassion, et al. vs. Banco Nacional Filipino, et al., 89 Phil. 560 (1951); Manuel vs. Philippine National Bank, et al., 101 Phil. 968 (1957).
- [18] Rosales vs. Reyes, et al., 25 Phil. 495 (1913); Gonzaga vs. Go, 69 Phil. 678 (1940); Torio vs. Rosario, 93 Phil. 801 (1953).
- [19] See Gonzales, et al. vs. Government Service Insurance Systems, et al., 107 SCRA 492 (1981); Philippine National Bank vs. Amores, et al., 155 SCRA 445 (1987).
- [20] Arnido vs. Francisco, 95 Phil. 371 (1954).
- [21] Art. 2085 (2), Civil Code.
- [22] Balboa vs. Farrales, 51 Phil. 498 (1928).
- [23] Parqui vs. Philippine National Bank, 96 Phil. 157 (1954).
- [24] Art. 1434, Civil Code.
- [25] Sec. 118, Commonwealth Act No. 141.
- [26] Vda. de Bautista vs. Marcos, et al., 3 SCRA 434 (1961).
- [27] Art. 1412, Civil Code.
- [28] Art. 1416, id.
- [29] Pascua vs. Talens, 80 Phil. 792 (1949).
- [30] De los Santos vs. Roman Catholic Church of Midsayap, et al., 94 Phil. 405 (1954); Ras vs. Sua, et al., 25 SCRA 153 (1968).

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