

**TEODORO YBANEZ, CRESCENCIO YBANEZ, ROMEO YBANEZ AND
ELPIDIO YBANEZ, PETITIONERS, VS. COURT OF APPEALS AND
IGNACIO GO, DOING BUSINESS UNDER THE NAME AND STYLE OF
“GOKEE MARKETING...**

G.R. Nos. 82170 & 82372. December 21, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

We uphold the assailed judgment of respondent Court of Appeals[1] ruling that, under the factual milieu, the subsequent filing by respondent, Ignacio Go, of the case for reconveyance of the seized property before the Regional Trial Court of Cebu (CC No. R-22573) did not constitute a legal basis for the dismissal of the action for annulment of the Sheriff's sale he had earlier filed before it (Civil Case No. R-21705).

The relevant facts may be capsulized as follows:

In a suit for ejectment filed on 6 February 1978 before the City Court of Cebu (Civil Case No. R-20041) for non-payment of rentals and expiration of the lease contract, brought by petitioners, the Ybanez brothers, as lessors, against respondent Ignacio Go, doing business under the name and style of Globe Marketing Co., judgment was rendered in petitioners' favor ordering respondent Go to vacate the leased premises and to pay P156,000.00 representing unpaid rentals, attorney's fees, and costs.

A Writ of Execution was issued on 24 April 1981 and respondent Go's two (2) lots and two (2) warehouses at the reclamation area, Cebu City, were levied upon. A Certificate of Sale in favor of petitioners-lessors was eventually executed by the Sheriff on 31 July 1981 and thereafter registered with the Register of Deeds of the City on 4 August 1981.

On 26 April 1982, unsuccessful in an Injunction suit he had earlier availed of, respondent Go filed a Complaint for annulment of the Sheriff's sale (Civil Case No. R-21705), before the Regional Trial Court of Cebu, Branch XIII (hereinafter referred to simply as the Annulment Suit), alleging irregularities in the conduct of the auction sale and praying for an award of actual and moral damages.

On 17 June 1982, in the Annulment Suit, respondent Go filed a "Motion for Leave to Deposit in Court Redemption Money," "including lawful interests and legal charges due thereon on or before August 3, 1982," which was denied on 24 September 1982. By virtue thereof, the City Sheriff of Cebu executed the Final Certificate of Sale on 5 October 1982 (Annex "7", Petition) and placed petitioners in possession of the seized properties.

On 12 October 1982, respondent Go tendered payment of P255,000.00, as redemption money, to the Sheriff and asked for a deed of redemption in his favor (Annex "3", Comment of Go in G.R. No. 82372), but was met with refusal. He then allegedly paid petitioner, Cresencio, on 13 October 1982, the sum total of P300,350.00, in cash, as shown by the latter's receipt (Annex "4", *ibid.*), but which payment Cresencio has denied. However, the NBI

certified Cresencio's signature on the receipt as genuine (Annex "5", *ibid.*). Respondent Go hied back to the Sheriff asking for a deed of reconveyance but the same again proved futile.

Thus it was that on 18 November 1982, respondent Go instituted another Complaint (Civil Case No. R-22573) before the same Court, Branch III, wherein he prayed for a judicial declaration that he had validly redeemed the properties sold at public auction from one of the petitioners, and for an Order requiring the Sheriff to execute a deed of reconveyance in his favor (briefly, the Reconveyance Case).

On 2 December 1982, the Cebu Court, upon Go's plea for reconsideration, granted the Motion for Leave to Deposit (Annex "6", *ibid.*) at which point in time, however, respondent Go maintained that he could no longer make the deposit because of the payment he had allegedly made to Cresencio.

On 2 September 1983, the two (2) cases were ordered consolidated before the Cebu Regional Trial Court, Branch XIII (hereinafter, the Cebu Court).

Petitioners, on 6 July 1984, resorted to a "Motion to Dismiss the Annulment Case" raising the issue of inconsistency in the causes of action in the two (2) cases. They alleged that the filing of the Reconveyance Case constituted an abandonment of the Annulment Suit because, in alleging in the Reconveyance Case, as respondent Go did, that he had redeemed the property he had, in fact, recognized the regularity and validity of the Sheriff's sale.

The Cebu Court upheld that contention and dismissed the Annulment Suit on 10 December 1984 on the main grounds of *litis pendentia*, abandonment of claim or demand, and cessation of the existence of a cause of action. It opined:

"A study of the allegations in the two (2) complaints can easily reveal that the positions taken by the plaintiff Ignacio Go in the two cases are contradictory to one another. In R-21705 he claims that the sheriff did not comply with certain mandatory legal procedures in the auction sale and so the sale was void while under R-22573 he alleges that he has subsequently validly redeemed the properties subject matter of the auction sale and by such redemption he has recognized the validity of the sheriff's sale.

"In fact as can be drawn from the allegations in the complaint in Case No. R-22573 the redemption was absolute and unconditional. Payment of redemption was not made under protest neither was it made subject to the result of Case No. R-21705.

"By his very act of unconditionally redeeming the property Ignacio Go recognized and acknowledged the regularity and validity of the public auction sale conducted by the sheriff on July 31, 1981." (Record, pp. 207-208)

Upon respondent Go's appeal in CA-G.R. No. CV-06107, respondent Appellate Court, in its Decision of 20 January 1988, set aside the Cebu Court's dismissal of the Annulment Suit for having been improper.

From the aforesaid judgment, two (2) Petitions for Review were successively filed by petitioners before this Court. One, on 9 February 1988, by petitioner Elpidio Ybanez (docketed as G.R. No. 82170), assigned to the Second Division, and the other, on 12 February 1988, by his brothers, petitioners Teodoro, Cresencio and Romeo (numbered G.R. No. 82372) originally raffled to the First Division, both Petitions directed against respondent Go. Involving as they did the same parties and an inter-related subject matter, the two cases were consolidated before this Second Division, which had the lower-numbered case, upon- *ex-parte* Motion of petitioners, dated 19 April 1988, and the Resolution of the First Division on 25 May 1988. On 3 August 1988, the First Division granted due course to the Petition in G.R. No. 82372 and required the submittal of Memoranda. The Second Division did likewise in respect of G.R. No. 82170 on 7 December 1988. Respondent Go's Supplemental Memorandum was

submitted on 26 July 1989.

On 28 August 1989 respondent Go filed before us an "Urgent Motion for Issuance of an Order to Maintain the Status Quo and to Respect his Possession as of the Filing of the Complaint on April 26, 1982," which petitioners opposed. Being of the opinion, however, that a decision on the merits was preferable, this Court merely Noted said Urgent Motion in its Resolution of 4 October 1989.

As stated at the outset, we affirm respondent Court's Decision.

In alleging in the Reconveyance Case that he had validly redeemed the properties, subject matter of the auction sale, respondent Go had not thereby "recognized and acknowledged the validity" of that sale. In fact, in his "Motion for Leave to Allow Plaintiff to Deposit in Court Redemption Money" filed in the Annulment Suit on 17 June 1982, but which said Court initially denied, Go had indicated that as he was afraid of losing his properties the deposit was intended to assure their redemption in the event that the Annulment Suit was denied "without prejudice to the final determination of the instant case involving as it does the issue of validity and legality of said certificate of sale and related matters" (Motion, p. 2, Rollo of G.R. No. 82372, p. 110). For him, the payment was a means of staying the one-year period of redemption, "as there was no Judge in the sala where the case was assigned" (Comment, p. 3). The circumstance that said alleged payment of the redemption money was not unconditionally made, i.e., neither under protest nor subject to the outcome of the Annulment Suit, cannot be construed as an abandonment of the latter case. Go's main objective was for annulment of the public auction sale. The Reconveyance Case, which followed in the wake of his alleged payment, was in the nature of a cautionary remedy specially considering that the Cebu Court had initially denied his Motion to Deposit and that the properties foreclosed are allegedly worth P5M compared to the judgment in Civil Case No. R-20041 of the Cebu City Court against respondent Go for P156,000.00.

Nor are the causes of action in the two (2) cases inconsistent with one another. As aptly pointed out by respondent Appellate Court, there are issues in the Reconveyance Case that are set apart from the question of the validity of the auction sale, which is the subject of inquiry in the Annulment Suit. The latter case alleged irregularities in the conduct of the public auction sale in that the Sheriff without a valid levy and with the use of an expired Writ of Execution had violated rules on execution as prescribed in Sections 11 and 15 of Rule 39 of the Rules of Court. In addition, Go prayed for actual and moral damages for the illegal padlocking of and damage to the building as well as loss of spare parts and machineries.

On the other hand, the issues raised in the Reconveyance Case call for a separate determination of such questions as whether respondent Go had, in fact, delivered the redemption money to one of the petitioners; whether or not such delivery, if there had been one, had been made on time, and whether or not another money judgment against respondent Go had already been satisfied. In effect, the Reconveyance Case presented an alternative cause of action.

Indeed, given the factual situation, the two (2) cases were aptly consolidated by the Cebu Court to avoid unnecessary costs and delay (Section 1, Rule 31, Rules of Court).[2] But rather than having dismissed the Annulment Case it should have proceeded to the trial thereof on the merits so that the validity of the auction sale could have been fully and decisively determined. If untainted by irregularities then the sale would be valid and the question of redemption, particularly the factual questions raised in connection therewith, may then be addressed in a full-blown trial. But if the foreclosure proceedings were fatally flawed, then the auction sale would have to be voided in which case the matter of redemption would ordinarily lose relevance.

It is obvious then that the determination of the basic issue raised in the Annulment Suit is crucial. Upon its resolution will hinge the question of redemption of the properties sold at public auction. Deferment of the

proceedings in the Reconveyance case is, in fact, called for as the Appellate Court had observed, until after the issues in the Annulment Suit shall have been decisively resolved. Thereafter, the Trial Court may address itself to the controversy in the Reconveyance Case and render a consolidated judgment disposing of the related suits.

WHEREFORE, the judgment of respondent Court of Appeals is AFFIRMED in toto; Civil Case No. R-21705 of the Regional Trial Court of Cebu, Branch XIII, is ordered REINSTATED; and said Court hereby DIRECTED to proceed with that case and Civil Case No. R-22573 before it in accordance with the above directives.

No costs.

SO ORDERED.

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

[1] Penned by Justice Serafin E. Camilon and concurred in by Justices Pedro A. Ramirez and Minerva G. Reyes.

[2] SEC. 1. Consolidation. - When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

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