

## SECOND DIVISION

[ G.R. No. 178031, August 28, 2013 ]

**VIRGINIA M. VENZON, PETITIONER, VS. RURAL BANK OF  
BUENAVISTA (AGUSAN DEL NORTE), INC., REPRESENTED BY  
LOURDESITA E. PARAJES, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Before us is a Petition for Review on *Certiorari*<sup>[1]</sup> questioning the December 14, 2006 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 01341-MIN which dismissed the Petition in said case, as well as its May 7, 2007 Resolution<sup>[3]</sup> denying reconsideration thereof.

#### ***Factual Antecedents***

On January 28, 2005, petitioner Virginia M. Venzon filed a Petition<sup>[4]</sup> to nullify foreclosure proceedings and Tax Declaration Nos. 96-GR-06-003-7002-R and 96-GR-06-003-7003-R issued in the name of respondent Rural Bank of Buenavista (Agusan del Norte), Inc. The case<sup>[5]</sup> was docketed as Civil Case No. 5535 and raffled to Branch 5 of the Regional Trial Court (RTC) of Butuan City. Petitioner alleged that in 1983 she and her late spouse, George F. Venzon, Sr., obtained a P5,000.00 loan from respondent against a mortgage on their house and lot in Libertad, Butuan City, covered by Tax Declaration Nos. 28289 and 42710 issued in their names, which were later on replaced with Tax Declaration Nos. 96 GR-06-003-2884-R and 96 GR-06-003-2885-R; that she was able to pay P2,300.00, thus leaving an outstanding balance of only P2,370.00; that sometime in March 1987, she offered to pay the said balance in full, but the latter refused to accept payment, and instead shoved petitioner away from the bank premises; that in March 1987, respondent foreclosed on the mortgage, and the property was sold at auction for P6,472.76 to respondent, being the highest bidder; that the foreclosure proceedings are null and void for lack of notice and publication of the sale, lack of sheriff's final deed of sale and notice of redemption period; and that she paid respondent P6,000.00 on October 9, 1995, as evidenced by respondent's Official Receipt No. 410848<sup>[6]</sup> issued on October 9, 1995.

In its Answer with Counterclaims,<sup>[7]</sup> respondent claimed that petitioner did not make any payment on the loan; that petitioner never went to the bank in March 1987 to settle her obligations in full; that petitioner was not shoved and driven away from its premises; that the foreclosure proceedings were regularly done and all requirements were complied with; that a certificate of sale was issued by the sheriff and duly recorded in the Registry of Deeds; that petitioner's claim that she paid P6,000.00 on October 9, 1995 is utterly false; that petitioner's cause of action has long prescribed as the case was filed only in 2005 or 18 years after the foreclosure sale; and that petitioner is guilty of laches. Respondent interposed its counterclaim

for damages and attorney's fees as well.

In her Reply,<sup>[8]</sup> petitioner insisted that the foreclosure proceedings were irregular and that prescription and laches do not apply as the foreclosure proceedings are null and void to begin with.

### ***Ruling of the Regional Trial Court***

On July 13, 2006, the trial court issued a Resolution<sup>[9]</sup> dismissing Civil Case No. 5535. It held that –

The plaintiff, however, may have erroneously relied the [sic] mandatorily [sic] requirement of the aforestated provision of law upon failure to consider that the other party is a Rural Bank. Under the R.A. No. 720 as amended, (Rural Bank Act) property worth exceeding P100,000.00 [sic] is exempt from the requirement of publication. This may have been the reason why the foreclosure prosper [sic] without the observance of the required publication. Moreover, neither in the said applicable laws provide [sic] for the impairment of the extrajudicial foreclosure and the subsequent sale to the public. The Court ruled in *Bonnevie, et al. vs. CA, et al.* that Act [N]o. 3135 as amended does not require personal notice to the mortgagor. In the same view, lack of final demand or notice of redemption are [sic] not considered indispensable requirements and failure to observe the same does not render the extrajudicial foreclosure sale a nullity.<sup>[10]</sup>

In other words, the trial court meant that under the Rural Banks Act, the foreclosure of mortgages covering loans granted by rural banks and executions of judgments thereon involving real properties levied upon by a sheriff shall be exempt from publication where the total amount of the loan, including interests due and unpaid, does not exceed P10,000.00.<sup>[11]</sup> Since petitioner's outstanding obligation amounted to just over P6,000.00 publication was not necessary.

Petitioner moved for reconsideration,<sup>[12]</sup> but in the September 6, 2006 Resolution,<sup>[13]</sup> the trial court denied the same.

### ***Ruling of the Court of Appeals***

Petitioner went up to the CA via an original Petition for *Certiorari*.<sup>[14]</sup> On December 14, 2006, the CA issued the first assailed Resolution<sup>[15]</sup> dismissing the Petition. It held that petitioner's remedy should have been an appeal under Rule 41 of the Rules of Court since the July 13, 2006 Resolution is a final order of dismissal. Petitioner received the Resolution denying her Motion for Reconsideration on September 18, 2006;<sup>[16]</sup> but she filed the Petition for *Certiorari* on October 25, 2006 when she should have interposed an appeal on or before October 3, 2006. Having done so, her Petition may not even be treated as an appeal for the same was belatedly filed.

The CA added that the Petition does not provide a sufficient factual background of the case as it merely alleges a chronology of the legal remedies she took before the trial court which does not comply with the requirement under Section 3 of Rule 46.<sup>[17]</sup>

Petitioner moved for reconsideration<sup>[18]</sup> by submitting a rewritten Petition. However, in a Resolution dated May 7, 2007, the CA denied the same, hence the present Petition.

### **Issues**

Petitioner submits the following assignment of errors:

#### **I**

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS REVERSIBLY ERRED IN DISMISSING THE PETITION FOR CERTIORARI THEREBY PREVENTING THE COURT FROM FINDING OUT THAT ACTUALLY NO EXTRAJUDICIAL FORECLOSURE WAS CONDUCTED BY THE OFFICE OF THE PROVINCIAL SHERIFF ON PETITIONER'S PROPERTY AT THE INSTANCE OF THE PRIVATE RESPONDENT.

#### **II**

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS REVERSIBLY ERRED IN NOT DISREGARDING TECHNICALITIES IN ORDER TO ADMINISTER SUBSTANTIAL JUSTICE TO THE PETITIONER.<sup>[19]</sup>

### ***Petitioner's Arguments***

Petitioner claims that no extrajudicial foreclosure proceedings ever took place, citing a February 2, 2005 Certification issued by the Office of the Clerk of Court of Butuan City stating that the record pertaining to the foreclosure proceedings covering her property "could not be found [in spite] of diligent efforts to find the same."<sup>[20]</sup> And because no foreclosure proceedings took place, there could not have been notice and publication of the sale, and no sheriff's certificate of sale. For this reason, she claims that the CA erred in dismissing her case.

Petitioner adds that, technicalities aside, a Petition for *Certiorari* is available to her in order to prevent the denial of her substantial rights. She also argues that her payment to respondent of the amount of P6,000.00 in 1995 should be considered as a valid redemption of her property.

### ***Respondent's Arguments***

For its part, respondent merely validates the pronouncements of the CA by citing and echoing the same, and holding petitioner to a strict observance of the rules for perfecting an appeal within the reglementary period, as it claims they are necessary for the orderly administration of justice,<sup>[21]</sup> as well as that which requires that only questions of law may be raised in a Petition for Review on *Certiorari*.

### **Our Ruling**

The Court denies the Petition.

The Court finds no error in the CA's treatment of the Petition for *Certiorari*. The trial

court's July 13, 2006 Resolution dismissing the case was indeed to be treated as a final order, disposing of the issue of publication and notice of the foreclosure sale – which is the very core of petitioner's cause of action in Civil Case No. 5535 – and declaring the same to be unnecessary pursuant to the Rural Banks Act, as petitioner's outstanding obligation did not exceed P10,000.00, and thus leaving petitioner without basis to maintain her case. This constitutes a dismissal with the character of finality. As such, petitioner should have availed of the remedy under Rule 41, and not Rule 65.

The Court is not prepared to be lenient in petitioner's case, either. Civil Case No. 5535 was instituted only in 2005, while the questioned foreclosure proceedings took place way back in 1987. Petitioner's long inaction and commission of a procedural *faux pas* certainly cannot earn the sympathy of the Court.

Nor can the Court grant the Petition on the mere allegation that no foreclosure proceedings ever took place. The February 2, 2005 Certification issued by the Office of the Clerk of Court of Butuan City to the effect that the record of the foreclosure proceedings could not be found is not sufficient ground to invalidate the proceedings taken. Petitioner herself attached the Sheriff's Certificate of Sale<sup>[22]</sup> as Annex "A" of her Petition in Civil Case No. 5535; this should belie the claim that no record exists covering the foreclosure proceedings. Besides, if petitioner insists that no foreclosure proceedings took place, then she should not have filed an action to annul the same since there was no foreclosure to begin with. She should have filed a different action.

However, petitioner is entitled to a return of the P6,000.00 she paid to respondent in 1995. While this may not be validly considered as a redemption of her property as the payment was made long after the redemption period expired, respondent had no right to receive the amount. In its Answer with Counterclaims in Civil Case No. 5535, respondent simply alleged therein that –

**10. Defendant DENIES the allegations under paragraph 10 of the petition for being utterly false, highly self-serving and patently speculative, the truth being ---**

- Assumption cannot be had that there was an alleged foreclosure of the then property of the petitioner for the truth of the matter is that a foreclosure proceeding was duly conducted, which fact remains undisputable for so many years now.
- **Without necessarily admitting that payment of P6,000.00 was made,** the same however could hardly and could never be considered as redemption price for the following reasons ---

The redemption period had long lapsed when the payment of P6,000.00 was allegedly made. Thus, there is no point talking about redemption price when the redemption period had long been gone at the time the alleged payment was made.

Even x x x granting, without conceding, that the amount of P6,000.00 was a redemption price, said amount, however, could not constitute as a legal redemption price since the same was not enough to cover the entire redemption price as mandated by the rules and laws.<sup>[23]</sup> (Emphases supplied)