

## SECOND DIVISION

[ G.R. NO. 143768, March 28, 2005 ]

**ZOSIMO PEREZ, PEDRITO PEREZ, SOCORRO PEREZ AND PASTORA PEREZ-VIGO, WHO IS JOINED BY HER HUSBAND EPIFANIO VIGO, PETITIONERS, VS. DEMOCRITO PEREZ, SUBSTITUTED BY ERLINDA M. PEREZ AND MARIA CECILIA M. PEREZ, DEVELOPMENT BANK OF THE PHILIPPINES BATAAN BRANCH, THE PROVINCIAL SHERIFF OF BATAAN AND THE REGISTER OF DEEDS OF BATAAN, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before the Court is a petition for review on *certiorari*, assailing the Decision<sup>[1]</sup> of the Court of Appeals, dated 30 July 1999, which affirmed the ruling of the trial court, and declared valid the Sheriff's auction sale, subject of the instant case, for having complied with the requirements of Act No. 3135,<sup>[2]</sup> as amended by Act No. 4118,<sup>[3]</sup> and its Resolution<sup>[4]</sup> dated 15 June 2000, denying the Motion for Reconsideration.

#### THE FACTS

The antecedents, as found by the Court of Appeals, are undisputed, *viz*:

The controlling facts are, by and large, not in dispute especially considering that the factual recitals hereunder are subject of stipulation of facts among the parties, to wit:

On May 25, 1973, the plaintiffs-appellants executed a deed of real estate mortgage in favor of the Development Bank of the Philippines (DBP, for brevity) over the property covered by Transfer Certificate of Title No. T-44603 of the Registry of Deeds of Bataan as security for an agricultural loan of P6,500.00. On May 28, 1973, the mortgage contract was registered in the Registry of Deeds of Bataan. Subsequently, plaintiffs-appellants defaulted in their loan obligations without even paying a single amortization. On November 14, 1978, the DBP, as mortgagee and duly constituted attorney-in-fact of appellants, instituted extra-judicial foreclosure proceedings under Act No. 3135, as amended, by filing an application with the Office of the Provincial Sheriff of Bataan. The necessary notice of Sheriff's sale was issued and posted by the deputy sheriff at three (3) public places in Morong, Bataan, where the mortgaged property is located and duly published for three (3) consecutive weeks in the Olongapo News. On December 19, 1978 at 10:00 o'clock in the morning, the public auction sale was conducted at the municipal building in Morong, Bataan, wherein the defendant-appellee Democrito Perez emerged as the winning bidder for the bid price

of P11,000.00. A corresponding certificate of sale was issued in favor of said appellee Democrito Perez by the Deputy Sheriff and was registered with the Register of Deeds on February 22, 1979. Since plaintiffs-appellants failed to exercise their right to redeem the foreclosed property, original defendant Democrito Perez executed an affidavit of consolidation which resulted in the issuance of a new TCT No. T-82438 in his favor on February 22, 1980.<sup>[5]</sup>

On 03 June 1985, a civil case for Annulment of Public Auction Sale with Damages coupled with Preliminary Injunction and Prayer for Restraining Order<sup>[6]</sup> was filed by herein petitioners against the respondents before the Regional Trial Court (RTC), Balanga, Bataan. It was originally assigned to Branch 3, but was later re-raffled to Branch 1, presided over by Judge Benjamin T. Vianzon.

After trial, a decision was eventually promulgated by the RTC on 11 August 1993.<sup>[7]</sup> Finding no merit in the complaint, it dismissed the case.

Not satisfied with the RTC's ruling, the petitioners filed an appeal with the Court of Appeals. They alleged that the RTC erred in holding that the public auction sale of the subject mortgaged property was valid despite the lack of notice to them, thus, depriving them of their right to property without due process of law. They further alleged that the notice of public auction sale was not validly published in a newspaper of general circulation, as required by law.<sup>[8]</sup>

The Court of Appeals, in its Decision dated 30 July 1999, denied the appeal, the decretal portion of which reads:

WHEREFORE, the Decision of the court *a quo* is **AFFIRMED** *in toto* with costs against plaintiffs-appellants.<sup>[9]</sup>

A Motion for Reconsideration was filed by herein petitioners dated 26 August 1999. They averred that the Olongapo News, the newspaper where the notice of auction sale was published, was not a newspaper of general circulation in the Province of Bataan,<sup>[10]</sup> and that the notices for the foreclosure of the subject property were not properly posted.<sup>[11]</sup>

In a Resolution dated 15 June 2000,<sup>[12]</sup> the Court of Appeals denied the motion for reconsideration on the ground that the matters embodied therein had already been passed upon and resolved in its Decision.

Still not satisfied, the petitioners filed the instant petition before the Court, under Rule 45 of the 1997 Rules on Civil Procedure.

On 18 October 2000, the Court issued a Temporary Restraining Order, a portion of which reads:

**NOW, THEREFORE,** you (respondents), your officers, agents, representatives, and/or persons acting upon your orders or, in your place or stead, are hereby ENJOINED from implementing the decision and resolution dated July 30, 1999 and June 15, 2000, respectively, of the

### ASSIGNMENT OF ERRORS

The petitioners assigned as errors the following:

#### I

THE FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GROSSLY CONTRARY TO THE UNDISPUTED FACTS ON RECORD.

#### II

THERE WAS NON-COMPLIANCE WITH THE REQUIREMENTS ON POSTINGS.

#### III

THERE WAS NO PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION WHERE THE REAL PROPERTY IS SITUATED.<sup>[13]</sup>

### THE ISSUE

Based on the foregoing assignment of errors, the lone issue to be resolved is whether or not the essential requirements for the validity of the sheriff's auction sale under Act No. 3135, as amended by Act No. 4118, governing the extra-judicial foreclosure of real estate mortgage, have been observed in the instant case.

### THE COURT'S RULING

As to the first assignment of error, petitioners claim that the factual findings of the Court of Appeals are grossly contrary to the undisputed facts on record.

Through the ages, we have persistently stressed that this Court is not a trier of facts.<sup>[14]</sup> The factual findings of the appellate court are generally binding on us especially when in complete accord with the findings of the trial court.<sup>[15]</sup> This rule, however, is not absolute, as it admits of certain exceptions, to wit: (a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioners are not disputed by the respondents, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.<sup>[16]</sup>

The exceptions cited above do not apply in the instant case. The factual findings of the Court of Appeals are fully supported by the records as will be shown by the following elucidation. Indeed, the findings of fact of the trial court and the Court of Appeals are in complete unison.

As to the second assignment of error, we find the same bereft of merit as there was compliance with the requirement on posting of notices.

The requirement on the posting of notices is found in Section 3 of Act No. 3135, as amended by Act No. 4118, viz:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

The petitioners advance the argument that the requirement on posting of notices was not complied with because, as they put it:

. . . while the deputy sheriff testified that he posted the notices at the puericulture center, he also stated that this place was just beside the municipal hall where he also posted a copy of the notice. In effect, he posted two notices at one and the same place. Considering the close proximity of the two buildings, it cannot be said that they were located at two different places. So that, by his own admission, the deputy sheriff posted the notices at only two public places, namely, the place where the public market was located and the place where the puericulture center and the municipal building were both located.<sup>[17]</sup>

This argument of the petitioners does not convince. Their position that the puericulture center and the municipal building should be considered one and the same place is pure fallacy and totally unacceptable for being contrary to the actual state of things.

The petitioners further contend that even after the sheriff had posted the notice, he may not have posted it anymore for the remaining nineteen (19) days, as required by Act No. 3135. It could also be, according to petitioners, that after the notice was posted, the same may have been removed from where it was posted either by an act of man or by an act of nature.<sup>[18]</sup>

Paradoxically, the petitioners have not adduced any evidence to support this theory. In fact, there was no attempt at all towards that end. The supposition must, therefore, fall flat on its face. As correctly held by the trial court and the appellate court, the deputy sheriff has in his favor the presumption that his official duty was regularly performed.<sup>[19]</sup> The petitioners herein were unable to topple this presumption in the trial court, the Court of Appeals, and now in this Court.

On the third assignment of error (lack of publication in a newspaper of general circulation in the place where the property is located), petitioners argue that the Olongapo News, the newspaper where the notice of public auction was published