

THIRD DIVISION

[G.R. No. 137792, August 12, 2003]

**SPOUSES RICARDO ROSALES AND ERLINDA SIBUG,
PETITIONERS, VS. SPOUSES ALFONSO AND LOURDES SUBA, THE
CITY SHERIFF OF MANILA, RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Challenged in the instant petition for review on *certiorari* are the Resolutions^[1] dated November 25, 1998 and February 26, 1999 of the Court of Appeals dismissing the petition for *certiorari* in CA G.R. SP No. 49634, "Spouses Ricardo Rosales and Erlinda Sibug vs. Alfonso and Lourdes Suba."

On June 13, 1997, the Regional Trial Court, Branch 13, Manila rendered a Decision^[2] in Civil Cases Nos. 94-72303 and 94-72379, the dispositive portion of which reads:

"WHEREFORE, judgment is rendered:

(1) Declaring the Deed of Sale of Exhibit D, G and I, affecting the property in question, as an equitable mortgage;

(2) Declaring the parties Erlinda Sibug and Ricardo Rosales, within 90 days from finality of this Decision, to deposit with the Clerk of Court, for payment to the parties Felicisimo Macaspac and Elena Jiao, the sum of P65,000.00, with interest at nine (9) percent per annum from September 30, 1982 until payment is made, plus the sum of P219.76 as reimbursement for real estate taxes;

(3) Directing the parties Felicisimo Macaspac and Elena Jiao, upon the deposit on their behalf of the amounts specified in the foregoing paragraph, to execute a deed of reconveyance of the property in question to Erlinda Sibug, married to Ricardo Rosales, and the Register of Deeds of Manila shall cancel Transfer Certificate of Title No. 150540 in the name of the Macaspacs (Exh. E) and issue new title in the name of Sibug;

(4) For non-compliance by Sibug and Rosales of the directive in paragraph (2) of this dispositive portion, let the property be sold in accordance with the Rules of Court for the release of the mortgage debt and the issuance of title to the purchaser.

"SO ORDERED."^[3]

The decision became final and executory. Spouses Ricardo and Erlinda Rosales, judgment debtors and herein petitioners, failed to comply with paragraph 2 quoted above, i.e., to deposit with the Clerk of Court, within 90 days from finality of the Decision, P65,000.00, etc., to be paid to Felicisimo Macaspac and Elena Jiao. This prompted Macaspac, as judgment creditor, to file with the trial court a motion for execution.

Petitioners opposed the motion for being premature, asserting that the decision has not yet attained finality. On March 5, 1998, they filed a manifestation and motion informing the court of their difficulty in paying Macaspac as there is no correct computation of the judgment debt.

On February 23, 1998, Macaspac filed a supplemental motion for execution stating that the amount due him is P243,864.08.

Petitioners failed to pay the amount. On March 25, 1998, the trial court issued a writ of execution ordering the sale of the property subject of litigation for the satisfaction of the judgment.

On May 15, 1998, an auction sale of the property was held wherein petitioners participated. However, the property was sold for P285,000.00 to spouses Alfonso and Lourdes Suba, herein respondents, being the highest bidders. On July 15, 1998, the trial court issued an order confirming the sale of the property and directing the sheriff to issue a final deed of sale in their favor.

On July 28, 1998, Macaspac filed a motion praying for the release to him of the amount of P176,176.06 from the proceeds of the auction sale, prompting petitioners to file a motion praying that an independent certified public accountant be appointed to settle the exact amount due to movant Macaspac.

Meanwhile, on August 3, 1998, the Register of Deeds of Manila issued a new Transfer Certificate of Title over the subject property in the names of respondents.

On August 18, 1998, respondents filed with the trial court a motion for a writ of possession, contending that the confirmation of the sale "effectively cut off petitioners' equity of redemption." Petitioners on the other hand, filed a motion for reconsideration of the order dated July 15, 1998 confirming the sale of the property to respondents.

On October 19, 1998, the trial court, acting upon both motions, issued an order (1) granting respondents' prayer for a writ of possession and (2) denying petitioners' motion for reconsideration. The trial court ruled that petitioners have no right to redeem the property since the case is for judicial foreclosure of mortgage under Rule 68 of the 1997 Rules of Civil Procedure, as amended. Hence, respondents, as purchasers of the property, are entitled to its possession as a matter of right.

Forthwith, petitioners filed with the Court of Appeals a petition for *certiorari*, docketed as CA-G.R. SP No. 49634, alleging that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing a writ of possession to respondents and in denying their motion for reconsideration of the order dated July 15, 1998 confirming the sale of the property to said respondents.

On November 25, 1998, the CA dismissed outright the petition for lack of merit, holding that **there is no right of redemption in case of judicial foreclosure of mortgage**. Petitioners' motion for reconsideration was also denied.

Hence this petition.

In the main, petitioners fault the Appellate Court in applying the rules on judicial foreclosure of mortgage. They contend that their loan with Macaspac is unsecured, hence, its payment entails an execution of judgment for money under Section 9 in relation to Section 25, Rule 39 of the 1997 Rules of Civil Procedure, as amended,^[4] **allowing the judgment debtor one (1) year from the date of registration of the certificate of sale within which to redeem the foreclosed property.**

Respondents, upon the other hand, insist that petitioners are actually questioning the decision of the trial court dated June 13, 1997 which has long become final and executory; and that the latter have no right to redeem a mortgaged property which has been judicially foreclosed.

Petitioners' contention lacks merit. The decision of the trial court, which is final and executory, declared the transaction between petitioners and Macaspac an equitable mortgage. In *Matanguihan vs. Court of Appeals*,^[5] this Court defined an equitable mortgage as "one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law." An equitable mortgage is not different from a real estate mortgage, and the lien created thereby ought not to be defeated by requiring compliance with the formalities necessary to the validity of a voluntary real estate mortgage.^[6] Since the parties' transaction is an equitable mortgage and that the trial court ordered its foreclosure, execution of judgment is governed by Sections 2 and 3, Rule 68 of the 1997 Rules of Civil Procedure, as amended, quoted as follows:

SEC. 2. Judgment on foreclosure for payment or sale. - If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and **shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.**

SEC. 3. Sale of mortgaged property, effect. - **When the defendant,** after being directed to do so as provided in the next preceding section, **fails to pay the amount of the judgment within the period specified therein, the court, upon motion, shall order the property to be sold** in the manner and under the provisions of Rule 39 and other regulations governing sales of real estate under execution. Such sale shall not effect the rights of persons holding prior encumbrances upon the property or a part thereof, and when confirmed by an order of the court, also upon motion, **it shall operate to divest the rights in the**