

FIRST DIVISION

[G.R. No. 141855, February 06, 2001]

ZACARIAS COMETA AND HERCO REALTY & AGRICULTURAL CORPORATION, PETITIONERS, VS. COURT OF APPEALS AND JOSE FRANCO, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Challenged in this petition for review under Rule 45 of the Rules of Court is the Decision of the Court of Appeals dated January 25, 1999^[1] in CA-G.R. SP No. 48277, entitled "*Zacarias Cometa, et al. v. Hon. Perfecto Laggui, et al.*," and the Resolution dated January 27, 2000^[2] denying petitioner's motion for reconsideration.

The pertinent factual antecedents are matters of record or are otherwise uncontroverted.

On July 2, 1976, the quondam Court of First Instance (CFI) of Rizal, Branch 15^[3] at Makati rendered a Decision in Civil Case No. 17585 for Damages, entitled "*Jose Franco v. Zacarias Cometa*," awarding to herein private respondent Jose Franco, the sum of P57,396.85.^[4]

The judgment became final on March 9, 1978. Subsequently, a writ of execution was issued. Pursuant thereto, the sheriff levied on execution three (3) commercial lots of petitioner Zacarias Cometa^[5] located at Guadalupe, Makati.

On October 17, 1978, two (2) of the lots were sold to respondent Franco at public auction for the amount of P57,396.85. The sheriff's return was made on March 12, 1981.^[6]

On November 17, 1981, petitioner Herco Realty & Agricultural Development Corporation (Herco) filed Civil Case No. 43846 with the same CFI Rizal, Branch 15, to annul the levy on execution and sale at public auction of the real properties.^[7] The complaint alleged that the ownership of the lots had been transferred by Cometa to Herco before the execution sale. It assailed the validity of the levy and sale on the ground that the sheriff, in disregard of the proper procedural practice, immediately proceeded against Cometa's real properties without first exhausting his personal properties; that the lots were sold *en masse* and not by parcel; and that the said properties which are commercial lots situated in Guadalupe, Makati, and are conservatively valued at P500,000.00, were sold only for P57,396.85, the amount of the judgment.^[8]

Meanwhile, on March 22, 1982, the same court, now designated as Regional Trial

Court, Branch 60, issued an order in Civil Case No. 17585 directing the Register of Deeds of Rizal to cancel petitioner Cometa's certificates of title to the lots and to issue new ones in favor of respondent Franco. Cometa, who died during the pendency of the proceedings, was substituted by his heirs, who filed before this Court a petition for certiorari questioning the said order. The petition was, however, dismissed on February 28, 1983.^[9]

On May 13, 1983, Franco filed with the Regional Trial Court of Makati, Branch 140, a motion for issuance of writ of possession. Cometa opposed the motion on the ground that there was pending before another Regional Trial Court an action for annulment of levy and sale of the properties in question.^[10]

On August 12, 1983, the trial court issued an order granting the motion; but the same was reconsidered and set aside on November 18, 1983 on the ground that the issuance of the writ of possession was premature,^[11] considering that the RTC of Makati, Branch 60, had not yet decided the case filed by Herco and Cometa for the annulment of the levy and sale of the properties.

Franco then instituted a special civil action for certiorari with this Court on June 27, 1984, but the case was referred to the Intermediate Appellate Court, which subsequently reversed the ruling of the RTC, Branch 140, on October 4, 1984, and granted the issuance of the writ of possession in Franco's favor.^[12]

Cometa and Herco elevated their cause to this Court, where the same was docketed as G.R. No. L-69294 and entitled, "*Zacarias Cometa and Herco Realty and Agricultural Development Corporation v. IAC and Jose Franco*." In a Decision dated June 30, 1987,^[13] this Court reversed the appellate court and withheld the granting of the writ of possession pending the promulgation of the resolution of the RTC, Branch 60, on the issue of whether or not the levy and sale of Cometa's properties are valid. In the said judgment, this Court said:

In the case at bar, the validity of the levy and sale of the properties is directly put in issue in another case by the petitioners. This Court finds it an issue which requires pre-emptive resolution. For if the respondent acquired no interest in the property by virtue of the levy and sale, then, he is not entitled to its possession.

The respondent appellate court's emphasis on the failure of the petitioner to redeem the properties within the period required by law is misplaced because redemption, in this case, is inconsistent with petitioner's claim of invalidity of levy and sale. Redemption is an implied admission of the regularity of the sale and would estop the petitioner from later impugning its validity on that ground.^[14]

Moreover, equitable considerations constrain us to reverse the decision of respondent court. The fact is undisputed that the properties in question were sold at an unusually lower price than their true value. Properties worth at least P500,000.00 were sold for only P57,396.85. We do not comment on the consequences of the inadequacy because that is the very issue which confronts the court below in the pending case. It appearing, however, that the issuance of the writ of possession would

and might work injustice because the petitioner might not be entitled thereto, we rule that it be withheld.

Thereafter, in Civil Case No. 43846, Branch 60 of the Makati RTC issued an order dated July 21, 1993 dismissing the case on the ground of "lack of interest in the prosecution of the complaint" for failure of the representatives of Cometa and Herco to appear.

The order of dismissal was affirmed by the Court of Appeals on July 16, 1996 and by this Court on January 20, 1997 in G.R. No. 126760. On February 26, 1997, this Court's Resolution which, in effect, upheld the validity of the assailed levy and sale, became final and executory.

On May 2, 1997, Franco again filed, this time with Branch 60 of the RTC of Makati City, a motion for issuance of writ of possession and cancellation of *lis pendens*. The heirs of Cometa opposed the motion claiming that they intended to redeem the properties.

On December 4, 1997, Cometa's heirs consigned with the Office of the Clerk of Court, RTC, Makati City, the sum of P38,761.05 as purchase price for the lots, plus interest of P78,762.69 and P1,175.25 as realty tax.

On June 8, 1998, Branch 60 of the Makati City RTC issued an order^[15] which reads in part as follows:

6.2. With the dismissal of Civil Case No. 43846, did HERCO and the HEIRS still have the right to redeem?

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11. What may be inferred from the aforesaid decisions (except *Sumerariz v. DBP*) is that the running of the period of redemption is suspended if the validity of the sale is questioned at any time within the said period of redemption.

12. When the validity of the sale is questioned after the period of redemption has expired, the rule that the filing of the action questioning such validity suspends the running of the period for redemption no longer applies. This is only logical - for there would no longer be any period to be suspended - it has already expired. Where the sale is declared void in such action, there would be no right of redemption to speak of thereafter, for legally speaking, there was no sale at all. A void sale would be inconsistent with a right of redemption. For in such case, the buyer has not acquired any right over the property sold to him. Hence, there is nothing that could be redeemed by the owner of the property.

13. The certificate of sale of the two (2) lots was registered and annotated in the corresponding certificates of title on January 25, 1980. The period of redemption expired twelve (12) months thereafter (Section 30, Rule 39, Rules of Court) - or on January 20, 1981. Civil Case No. 43846 was filed on November 27, 1981 - or more than ten (10) months after the period of redemption expired. Hence, when Civil Case No.

43846 was filed, there was no longer any period of redemption that could be suspended.

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23.3 Accordingly:

23.3.1. The Officer-in-Charge [is ordered] to issue the corresponding writ of possession over the lots covered by Transfer Certificates of Title Nos. 113114 and 113115 in favor of JOSE FRANCO.

Dissatisfied, Cometa's heirs and Herco filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 48227, asserting that -

I

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DISREGARDING NO LESS THAN THE SUPREME COURT'S DECLARATION IN *COMETA v. INTERMEDIATE APPELLATE COURT* THAT COMETA STILL HAS A RIGHT TO REDEEM.

II

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING COMETA'S REDEMPTION IN THAT EVEN ABSENT THE SUPREME COURT'S PRONOUNCEMENT IN *COMETA v. INTERMEDIATE APPELLATE COURT*, COMETA WOULD STILL HAVE THE RIGHT TO REDEEM UNDER SETTLED JURISPRUDENCE.

III

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING COMETA'S REDEMPTION IN THAT AT THE VERY LEAST THE LAW RESOLVES ALL DOUBTS IN FAVOR OF THE RIGHT TO REDEEM.

The appellate court's 10th Division thereafter promulgated a Decision dated January 25, 1999, ^[16] affirming the order of respondent presiding Judge of Branch 60, Makati City RTC, and denying due course to the petition.

A motion for reconsideration of the said decision was likewise denied by a Special Division of Five Justices.

Hence, this petition for review on the following grounds:

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE DECIDED BY THIS HONORABLE COURT OR HAS DECIDED IT NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT IN THAT:

A. *COMETA v. INTERMEDIATE APPELLATE COURT* HAS ALREADY DETERMINED THAT COMETA STILL HAS A RIGHT TO REDEEM

B. EVEN ABSENT THE PRONOUNCEMENT IN *COMETA v. INTERMEDIATE APPELLATE COURT*, COMETA WOULD STILL HAVE THE RIGHT TO REDEEM UNDER SETTLED JURISPRUDENCE

C. AT THE VERY LEAST, THE LAW RESOLVES ALL DOUBTS IN FAVOR OF THE RIGHT TO REDEEM.

Considering the pleadings filed by the parties, this Court resolved to dispense with the filing of memoranda, give due course to the petition and decide the same.

The questions raised by petitioners can be reduced to the primordial issue of whether or not petitioners can still redeem the properties subject of this litigation.

In ruling in the negative, the appellate court opined, among others, that -

Section 30, Rule 39 of the Revised Rules of Court is very explicit: "(t)he judgment debtor or redemptioner may redeem the property from the purchaser at any time *within twelve (12) months after the sale*, xxx." (italics ours) In the case at bar, the sale took place on October 17, 1978. The Certificate of Sale was registered and annotated on the TCT Nos. S-79894 and 79895 on January 25, 1980. The Officer's Final Deed of Sale was executed in favor of Franco on March 2, 1981. Petitioners questioned the validity of the sale only on November 27, 1981 or more than three (3) years after the said sale. We agree with respondent judge that "(w)hen the validity of the sale is questioned after the period of redemption has expired, the rule that the finding of the action questioning such validity suspends the running of the redemption period, no longer applies. This is only logical - for there would no longer be any period to be suspended - it has already expired." We likewise agree that to still allow redemption "counted from February 26, 1997, when the Resolution in G.R. L-126760 became final and executory xxx would give rise to mischievous legal consequences. For this would be a device to revive a lost right of redemption. Under this theory, a party who lost the right of redemption could just file an action to set aside the sale on the ground that it was a nullity confident that if the action does not prosper, he would still be entitled to redeem thereafter. This could not be validly done." xxx The failure of petitioners to redeem the properties after the expiration of the redemption period vests title over the property to private respondent.^[17] The Supreme Court has uniformly ruled that redemption from execution sales under ordinary judgments pursuant to Section 30, Rule 39 of the Rules of Court should be made within twelve (12) months^[18] from the registration of the same xxx."^[19] In *Juan Mateo vs. The Court of Appeals and Severino Alberto*, 99 Phil. 1042 (unreported), the High Court categorically said that "(t)he right of redemption in execution sales being statutory, it must, to make it effective, be exercised in the mode prescribed by the statute." We therefore find petitioners' invocation of the liberal ruling of the Supreme Court on the exercise of the right to redemption to have neither factual nor legal basis. The Court has no alternative but to apply Section 35 of Rule 39 of the Rules of Court to the letter.^[20]