

## THIRD DIVISION

[ G.R. No. 139437, December 08, 2000 ]

**LANGKAAN REALTY DEVELOPMENT, INC., PETITIONER, VS.  
UNITED COCONUT PLANTERS BANK, AND HON. COURT OF  
APPEALS, RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

This is a Petition for Review on Certiorari under Rule 45 seeking to set aside the decision of the Court of Appeals in CA-G.R. No. CV 53514 which affirmed the decision of the Regional Trial Court of Imus, Cavite, Branch 20, in Civil Case No. 360-89, and the Resolution of the Court of Appeals denying the petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

Petitioner Langkaan Realty Development Corporation (LANGKAAN, for brevity) was the registered owner of a 631,693 square meter parcel of land covered by Transfer Certificate of Title No. 111322, and located at Langkaan, Dasmarinas, Cavite.

On April 8, 1983, petitioner LANGKAAN executed a Real Estate Mortgage over the above-mentioned property in favor of private respondent United Coconut Planter's Bank (UCPB) as a security for a loan obtained from the bank by Guimaras Agricultural Development, Inc. (GUIMARAS) in the amount of P3,000,000.00.<sup>[1]</sup> LANGKAAN and GUIMARAS agreed to share in the total loan proceeds that the latter may obtain from UCPB.<sup>[2]</sup> Subsequently, another loan of P2,000,000.00 was obtained by GUIMARAS, totaling its obligation to the bank to P5,000,000.00. The loan was fully secured by the real estate mortgage which covered all obligations obtained from UCPB by either GUIMARAS or LANGKAAN "before, during or after the constitution" of the mortgage.<sup>[3]</sup> Also provided in the mortgage agreement is an acceleration clause stating that any default in payment of the secured obligations will render all such obligations due and payable, and that UCPB may immediately foreclose the mortgage.<sup>[4]</sup>

GUIMARAS defaulted in the payment of its loan obligation.<sup>[5]</sup> On July 28, 1986, private respondent UCPB filed a "Petition for Sale under Act No. 3135<sup>[6]</sup>, as amended", with the Office of the Clerk of Court and Ex-officio Sheriff of RTC of Imus, Cavite. The "petition" was given due course, and a Notice of Extra-judicial Sale of LANGKAAN's property was issued by Acting Clerk of Court II and Ex-officio Sheriff Regalado Eusebio on August 4, 1986, setting the sale on August 29, 1986 at the main entrance of the Office of the Clerk of Court of RTC of Imus.<sup>[7]</sup> The Notice of Extra-judicial Sale was published in the "Record Newsweekly",<sup>[8]</sup> and was certified by Court Deputy Sheriff Nonilon A. Caniya to have been duly posted.<sup>[9]</sup>

On August 29, 1986, the mortgaged property was sold for P3,095,000.00 at public auction to private respondent UCPB as the highest bidder, and a corresponding Certificate of Sale was issued in favor of the bank.

As petitioner LANGKAAN failed to redeem the foreclosed property within the redemption period, the title of the property was consolidated in the name of UCPB on December 21, 1987, and a new Transfer Certificate of Title with no. T-232040 was issued in the latter's favor.

On March 31, 1989, LANGKAAN, through counsel, Atty. Franco L. Loyola wrote UCPB a letter offering to buy back the foreclosed property for P4,000,000.00.<sup>[10]</sup> This offer was rejected by the bank in a letter dated May 22, 1989, stating that the current selling price for the property was already P6,500,000.00.<sup>[11]</sup>

On May 30, 1989, petitioner LANGKAAN filed a Complaint for Annulment of Extra-judicial Foreclosure and Sale, and of TCT No. 232040 with Damages, with the RTC of Imus, Cavite, docketed as Civil Case No. 360-89.

After trial, the RTC of Imus ruled in favor of private respondent UCPB, and dismissed the petition of LANGKAAN for lack of merit. On appeal, the Court of Appeals affirmed *en toto* the decision of the RTC of Imus. The petitioner filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated July 28, 1999. Hence this petition.

The sole issue in this case, as stated by the petitioner in its Memorandum, is whether or not the extra-judicial foreclosure sale is valid and legal on account of the alleged non-compliance with the provisions of Act No. 3135 on venue, posting and publication of the Notice of Sale, and of the alleged defects in such Notice.<sup>[12]</sup>

At the outset, it must be stated that only questions of law may be raised before this Court in a Petition for Review under Rule 45 of the Revised Rules of Civil Procedure.<sup>[13]</sup> This Court is not a trier of facts, and it is not the function of this Court to re-examine the evidences submitted by the parties.<sup>[14]</sup>

After a careful analysis of the issue set forth by the petitioner, we find the same not to involve a pure question of law.<sup>[15]</sup> It has been our consistent ruling that the question of compliance or non-compliance with notice and publication requirements of an extra-judicial foreclosure sale is a factual issue binding on this Court.<sup>[16]</sup> In the case of *Reyes vs. Court of Appeals*, we declined to entertain the petitioner's argument as to lack of compliance with the requirements of notice and publication prescribed in Act No. 3135, for being factual.<sup>[17]</sup> Hence, the matter of sufficiency of posting and publication of a notice of foreclosure sale need not be resolved by this Court, especially since the findings of the Regional Trial Court thereon were sustained by the Court of Appeals. Well-established is the rule that "factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court."<sup>[18]</sup>

The RTC found the posting of the Notice of Sale to have been duly complied with,

thus:

"As regards the posting of the notices of sale, Deputy Sheriff Nonilon Caniya has categorically declared that he posted the same in three conspicuous places, to wit: (1) Municipal Hall of Dasmarinas, Cavite, (2) Barangay Hall of Langkaan, and (3) in the place where the property is located (Exh. "6"). He added gratuitously that he even posted it at the Dasmarinas Public Market. Such being the case, the negative testimony of Virgilio Mangubat, a retired sheriff of Trece Martires City, to the effect that he did not see any notice posted in the Bulletin Board of Dasmarinas, Cavite cannot prevail over the positive testimony of Deputy Sheriff Caniya. In like manner, the general denial advanced by Barangay Captain Benjamin Sangco of Langkaan that no notice was posted at the bulletin board of said barangay in August, 1986 cannot take precedence over the positive declaration of Deputy Sheriff Caniya who is presumed to have performed his duties as such. Credence is generally accorded the testimonies of (sic) sheriff who is presumed to have performed their (sic) duties in regular manner. xxx

xxx      xxx      xxx

"xxx In another case, *Bonnevie vs. Court of Appeals*, 125 SCRA 122, it was even ruled that `a single act of posting satisfies the requirement of law'."<sup>[19]</sup>

Due publication was likewise found by the RTC to have been effected.

"It is beyond dispute that notice of Sheriff's Sale was published in "Record Newsweekly", a newspaper of general circulation in the Province of Cavite after a raffle among the accredited newspaper thereat. No evidence was adduced by plaintiff to disprove this fact. Its claim that said newspaper has no subscribers in Cavite is without merit and belied by the Affidavit of Publication executed by the Publisher of Records Newsweekly (Exh. "5") and by the Clerk of Court and Ex-Oficio Sheriff of the Multiple Sala of Imus, Cavite. As held in the case of *Olizon vs. Court of Appeals*, 236 SCRA 148, `personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary. Sec. 3 of Act No. 3135 governing extra-judicial foreclosure of real estate mortgages, as amended by Act No. 4118, requires only posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. Hence, the lack of personal notice to the mortgagors is not a ground to set aside the foreclosure sale.' It was further held thereat (ibid) that `publication of the notice alone in the newspaper of general circulation is more than sufficient compliance with the notice-posting requirement of the law.'"<sup>[20]</sup>

On appeal, the findings of the RTC were sustained by the Court of Appeals, to wit:

"Next, appellant contends that the notice of sale was posted, at the very least, at only one [1] public place - the Municipal Building of Dasmarinas, Cavite - contrary to and in violation of the requirement in Act No. 3135, as amended, that said notice shall be posted in at least three [3] public places. Deputy Sheriff Nonilon Caniya, however, has categorically declared that he had posted Notices of Sale in four public places; namely: (1) Municipal Hall of Dasmarinas, Cavite, (2) Barangay Hall of Langkaan, (3) in the place where the property is located and (4) at the Dasmarinas Public Market (t.s.n., January 12, 1994, pp. 6-11). We give credence to said Sheriff's testimony and accord his actions with the presumption of regularity of performance, having come from a public officer to whom no improper motive to testify has been attributed.

"At any rate, even if it were true that the Notice of Sale was not posted in three public places as required, this would not invalidate the foreclosure conducted. As explained in *Olizon vs. Court of Appeals*, 238 SCRA 148, 155-156 -

` Furthermore, unlike the situation in previous cases where the foreclosure sales were annulled by reason of failure to comply with the notice requirement under Section 3 of Act 3135, as amended, what is allegedly lacking here is the posting of the notice in three public places, and not the publication thereof in a newspaper of general circulation.

` We take judicial notice of the fact that newspaper publications have more far-reaching effects than posting on bulletin boards in public places. There is a greater probability that an announcement or notice published in a newspaper of general circulation which is distributed nationwide, shall have a readership of more people than that posted in a public bulletin board, no matter how strategic its location may be, which caters only to a limited few. Hence the publication of the notice of sale in the newspaper of general circulation alone is more than sufficient compliance with the notice-posting requirement of the law. By such publication, a reasonably wide publicity had been effected such that those interested might attend the public sale, and the purpose of the law had been thereby subserved.

` The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.'

"In the case at bench, this objective was attained considering that there was sufficient publicity of the sale through the Record Newsweekly.

"Appellant next charges that the certificate of posting executed by Deputy Sheriff Caniya is a falsified document resulting from the unlawful intercalations made thereon, calculated to change the import and meaning of said certificate; and contains untruthful statements of facts. A certificate of posting is however not a statutory requirement and as such, is not considered indispensable for the validity of a foreclosure sale under Act 3135 (see Bohanan vs. Court of Appeals, 256 SCRA 355)

"Again, We accord a presumption of regularity in the conduct of the raffle whereby publication of the Notice of Sale was awarded to the Record Newsweekly.

"As to the erroneous designation of Guimaras Agricultural Development, Inc. as a mortgagor as well as the mistakes in the technical description of the subject property, both appearing in the Notice of Sale, We find these immaterial errors and mistakes which do not affect the sufficiency of the Notice (Olizon vs. Court of Appeals, *supra.*) xxx "[21]

We refuse to disturb the factual findings of the lower courts. The notice of the extra-judicial foreclosure sale was duly published and posted, and clerical errors therein are not sufficient to invalidate the notice and nullify the sale.

We are left with the issue on the legal propriety of the venue of the extra-judicial foreclosure sale which we deem proper for determination.

In ascertaining whether or not the venue of the extra-judicial foreclosure sale was improperly laid, it is imperative to consult Act No. 3135, as amended, the law applicable to such a sale.<sup>[22]</sup> Act 3135 provides, insofar as pertinent, as follows:

"SECTION 1. When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

SEC. 2. Said sale cannot be made legally outside of the province which the property sold is situated; and in case the place within said province in which the sale is to be made is the subject of stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated."

Thus, the extra-judicial foreclosure sale cannot be held outside the province where the property is situated. Should a place within the province be a subject of stipulation, the sale shall be held at the stipulated place or in the municipal building