

## THIRD DIVISION

[ G.R. No. L-41621, February 18, 1999 ]

**PASTORA VALMONTE, JOSE DE LEON, AND JOAQUIN VALMONTE,  
PETITIONERS, VS. THE HON. COURT OF APPEALS, PHILIPPINE  
NATIONAL BANK, ARTEMIO VALENTON, AND AREOPAGITA J.  
JOSON, RESPONDENTS.**

### D E C I S I O N

**PURISIMA, J.:**

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking a review of the Decision<sup>[1]</sup> of the Court of Appeals which affirmed the decision of the then Court of First Instance of Cabanatuan City, Branch III<sup>[2]</sup> in Civil Case No. 2950, entitled "*Pastora Valmonte, Jose de Leon and Joaquin Valmonte versus Philippine National Bank, Artemio Valenton and Areopagita J. Joson*", dismissing plaintiffs' complaint as well as defendants' counterclaim.

As culled in the Decision of the Court of Appeals sought for review, the facts of the case that matter are, as follows:

"xxx On November 5, 1951, plaintiff-appellant Joaquin Valmonte sold to his daughter co-appellant **Pastora**, three (3) parcels of land, situated in the Municipality of Jaen, Province of Nueva Ecija, containing a total area of 70.6 hectares (Exhs. 31-Bank, 1-Valenton). A few days later, or on Nov. 12, 1951, plaintiff-appellant Pastora obtained a crop loan of P16,000.00 from defendant-appellee **Philippine National Bank** and as security for payment thereof, she executed a Real Estate Mortgage, dated November 12, 1951, in favor of appellee bank involving the same parcels of land (Exh. J.) as covered by Transfer Certificate of Title No. NT-10423 in the name of said appellant Pastora (Exh. Q-1).

On September 19, 1952, appellant Pastora, then single, executed a Special Power of Attorney in favor of one Virginia V. del Castelo for the purpose of borrowing money in the amount of P5,000.00 from appellee bank with authority to mortgage the same parcels of land herein abovementioned (Exh. A). As a result thereof, a loan of P5,000.00 payable on demand was granted by appellee bank and Virginia Castelo executed a Real Estate Mortgage in its favor (Exhs. 6 and 7-Bank, and B).

On June 14, 1954, appellee bank sent a "Notice of Extra-Judicial Sale of Mortgaged Properties" to the Provincial Sheriff of Nueva Ecija for publication (Exh. 39-Bank).

On June 20, 1954, appellant Pastora executed a Deed of Sale in favor of

her father co-appellant Joaquin Valmonte selling unto the latter the same three (3) parcels of land covered by TCT No. NT-10423 with the following condition:

"These lands are at present mortgaged to the Philippine National Bank, and this obligation shall be the subject of future arrangement between the vendor and vendee herein on the one hand and the Philippine National Bank on the other before this deed of Sale shall be operative." (Exh. 2-Valenton)

On July 19, 26 and August 2, 1954, the notice of extrajudicial sale on August 19, 1954 to be held in the City Hall of Cabanatuan City, for the satisfaction of appellant Pastora's debt of P5,000.00 plus interest due thereon, was published in a newspaper called Nueva Era (Exh. 56-Bank). The same notice was posted in three (3) public and conspicuous places in the City of Cabanatuan where the schedule auction sale will take place and in three (3) public and conspicuous places in the Municipality of Jaen, Nueva Ecija where the properties are located (Exh. 38-Bank).

On August 19, 1954, the auction sale was conducted and appellee bank was the sole and only bidder for P5,524.40. On the same date, the Provincial Sheriff Ex-Officio issued the corresponding Minutes of Auction Sale and Certificate of Sale (Exh. C, 55 and 54-Bank).

The period of redemption expired on August 19, 1955 (Exh. 65-Bank). Appellee bank received a letter-offer, dated August 31, 1955 from a certain Jose Talens to purchase the properties in question for P27,000.00, P4,000.00 down and the balance payable in five (5) yearly amortizations (Exh. 40- Bank). In a letter dated September 28, 1955, appellee Artemio Valenton offered to purchase said properties for P35,000.00 payable upon execution of the contract in his favor and deposited P1,000.00 as earnest money therefor (Exh. 41-Bank, 7-Valenton). On October 10, 1955, appellant Joaquin Valmonte sent a letter-request to appellee bank for additional time within which he may repurchase the properties in question for P35,000.00 (Exh 33-Bank; 8-Valenton). In view thereof and by reason of the request of Congressman Celestino C. Juan, appellants were given up to December 31, 1955 to purchase in cash the properties concerned in the amount of the bank's total claim. As of September 7, 1955, the Bank's total claims amounted to P26,926.38, including the P16,000.00 loan obtained by appellant Pastora in 1951 (Exhs. 66-Bank and 9-Valenton; J; 43-Bank and 58-Valenton).

On December 7, 1955, appellant Pastora designated her father, co-appellant Joaquin Valmonte as her attorney-in-fact for the purpose of repurchasing the land from the appellee bank (Exh. H). Appellants failed to purchase the properties on or before December 31, 1955. Hence, on January 3, 1956, appellee Valenton deposited the balance of P34,000.00 which the bank accepted [Exhs 47-B (Bank) and 62-B (Valenton)]. On Jan. 4, 1956, appellee bank executed the Deed of Absolute Sale in favor of appellee Valenton (Exhs. 47-Bank, 11 - Valenton and 47-C (Bank) as well as an Affidavit of Consolidation of Ownership (Exh. D-1).

To enable the registration of the properties in the name of appellee Valenton, appellee Bank, as attorney-in-fact of the mortgagor under the Real Estate Mortgagor, dated September 30, 1952 (Exh. B), had to execute a Deed of Sale in its favor on January 5, 1956 (Exh. E). On January 6, 1956, a "Deed of Confirmation of Sale" was executed by appellee bank for the main purpose of asserting that the existing certificate of title covering the parcels of land in question at that time was TCT No. - NT 18899 of the land registry of Nueva Ecija in the name of appellee bank (Exh. F). Appellee Valenton obtained the cancellation of TCT No. NT 18899 and the issuance of the Registry of Deeds of Nueva Ecija of TCT No. NT-18901 in his name (Exhs. S and S-1).

xxx xxx xxx

xxx The present complaint was filed on August 1, 1958; and, after joining the issues and trial on the merits, the complaint was dismissed on January 27, 1968."<sup>[3]</sup>

The Trial court of origin, as earlier alluded to, dismissed the entire case, disposing, thus:

**"PREMISES CONSIDERED**, judgment is hereby rendered in favor of the defendants against the plaintiffs, dismissing the complaint with costs against the said plaintiffs.

The counterclaims of the defendants are hereby dismissed.

SO ORDERED.<sup>[4]</sup>

Therefrom, plaintiffs Pastora Valmonte, Jose de Leon and Joaquin Valmonte appealed to the Court of Appeals, which came out with a judgment of affirmance promulgated on March 24, 1975.

Undaunted, the said plaintiffs found their way to this court via the present Petition, theorizing that:

A

THIS IS A CLEAR A CASE AS ANY WHERE PERSONS HAVE BEEN DEPRIVED OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

B

THE RESPONDENT COURT OF APPEALS, COMMITTED A GRAVE ERROR WHEN IT HELD, AS DID THE TRIAL COURT, THAT THE TWO MORTGAGES (P16,000.00 AND P5,000.00) WERE SEPARATE AND DISTINCT FROM ONE ANOTHER; WORSE STILL, THAT ONE WAS "JUNIOR" AND THE OTHER WAS "SENIOR"; THAT THE "MERGER" CAME ABOUT AFTER THE FORECLOSURE OF THE P5,000.00 PORTION OF THE MORTGAGE SUCH THAT THE PNB BECAME CREDITOR AND DEBTOR AT THE SAME TIME.

C.

THE RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT DID NOT HOLD THAT, FROM THE VERY EXPRESS PROVISIONS OF THE TWO DOCUMENTS - THE P16,000.00 MORTGAGE, EXH. "J" AND THE P5,000.00 MORTGAGE, EXH. "B" - THE TWO MORTGAGES MUTUALLY AND IMMEDIATELY MERGED INTO EACH OTHER AS SECURITY FOR THE SAME TOTALITY OF ALL PETITIONERS' OBLIGATIONS TO RESPONDENTS PNB AT THE MOMENT THE LATER DOCUMENT WAS EXECUTED ON SEPTEMBER 30, 1952, SO THAT THE RESULT WAS AN INDIVISIBLE, INSEPARABLE, SINGLE MORTGAGE WHICH CANNOT BE FORCLOSED PARTIALLY; HENCE FORECLOSURE OF THE P5,000.00 MORTGAGE ALONE DID NOT VEST TITLE OVER THE PROPERTY IN THE PNB.

D

THE RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT GAVE ITS IMPRIMATUR TO THE TRANSFER FROM RESPONDENT PNB TO RESPONDENTS VALENTON OF PASTORA'S PROPERTY WHICH HAD NOT BEEN VALIDLY FORECLOSED.

E

THE RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT FAILED TO HOLD THAT THE EXTRA-JUDICIAL FORECLOSURE OF THE P5,000.00 PORTION OF THE MORTGAGE WAS NULL AND VOID BECAUSE OF FATAL DEFECTS IN THE PUBLICATION OF THE NOTICE OF FORECLOSURE, THE DAY OF THE FORECLOSURE, THE PLACE OF THE FORECLOSURE, THE AUTHORITY OF THE PERSON CONDUCTING FORECLOSURE, AND THE REALITY OF THE FORECLOSURE SALE

F

THE RESPONDENT COURT OF APPEALS ERRED IN UPHOLDING THE TRIAL COURT'S DENIAL OF THE PETITIONERS MOTION FOR LEAVE TO AMEND COMPLAINT TO CONFORM TO THE EVIDENCE AND FOR ADMISSION OF THIRD AMENDED COMPLAINT.

The petition is not impressed with merit.

To begin with, succinct and unmistakable is the consistent pronouncement that the Supreme Court is not a trier of facts. And well entrenched is the doctrine that pure questions of fact may not be the proper subject of appeal by *certiorari* under Rule 45 of the Revised Rules of Court, as this mode of appeal is generally confined to questions of law.<sup>[5]</sup>

Anent the first error, petitioners theorize: (1) That there was insufficient publication of the notice of sale; (2) That the posting of the notice was not in accordance with law; (3) That the price obtained during the auction sale was unconscionably low; (4) That the Sheriff who conducted the sale had no authority to do so; and (5) That the auction sale was void as it was conducted on a declared holiday.

It is well-settled that non-compliance with the notice and publication requirements

of an extrajudicial foreclosure sale is a factual issue. Compliance with the statutory requirements is a proven fact and not a matter of presumption. A mortgagor who alleges absence any of such requisites has the burden of establishing the *factum probandum*.<sup>[6]</sup>

Following the ruling in *Sadang vs. GSIS*<sup>[7]</sup>, the Court of Appeals upheld the validity of the publication of the notice of extrajudicial foreclosure, holding that the customary affidavit of the editor of a newspaper, duly introduced in evidence, is a *prima facie* proof of said fact. The party alleging non-compliance with the requisite publication has the *onus probandi*. Absent any proof to the contrary, lack of publication has not been substantiated. What is more, the affidavit of the editor of Nueva Era, to the effect that the notice of sale had been published in said newspaper of general circulation once a week for three (3) consecutive weeks, and what Basilio Castro (*letter carrier in the province of Nueva Ecija*) and Eugenio de Guzman (*former Justice of the Peace and Mayor of Jaen*) testified and attested to constitute enough evidence of publication.<sup>[8]</sup>

Petitioners' reliance on the cases of *Tan Ten Koc vs. Republic*<sup>[9]</sup>; *Tan Sen vs. Republic*<sup>[10]</sup> and *Tan Khe Shing vs. Republic*<sup>[11]</sup> is misplaced. In the said cases, in ruling that Nueva Era was not shown to be a newspaper of general circulation, the Court considered the failure of the applicants to come forward with positive evidence other than the editor's affidavit. As they were naturalization cases, the purpose of the publication requirement was to inform the officers concerned and the public in general of the filing of subject petitions, to the end that the Solicitor General or the Provincial Fiscal (*now provincial prosecutor*) could be furnished whatever derogatory information and evidence there may be against the applicants or petitioners. There is no such objective in the publication requirement for extrajudicial foreclosures. Consequently, the petitioners here cannot rely on the aforecited cases of different nature to buttress their stance.

The alleged failure to comply with the posting requirement in that: (1) it was not posted in three (3) public conspicuous places, and (2) the posting was not in the municipality where the properties involved or part thereof are located, was negated by the certificate of posting, dated July 15, 1954, and the testimony of Deputy Sheriff Jose N. Mendoza. (Exh. 38 - Bank; pp. 561-563, t.s.n., Feb. 22, 1963)<sup>[12]</sup>

On the issue of unconscionably low price paid by the bank for the mortgaged properties, the purchase price of P5,524.40 was found by the respondent court to suffice. It is well settled that when there is a right to redeem, inadequacy of price is of no moment for the reason that the judgment debtor has always the chance to redeem and reacquire the property. Infact, the property may be sold for less than its fair market value precisely because the lesser the price the easier for the owner to effect a redemption.<sup>[13]</sup>

Petitioners further theorized that the foreclosure sale in question should be invalidated since it was conducted on a holiday. They rely on Section 31 of the Revised Administrative Code, which provides that where the act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day. In the case under scrutiny, the auction sale was made on August 19, 1954, which was declared a holiday by the late Pres. Ramon Magsaysay. In