334 Phil. 671

FIRST DIVISION

[A.M. No. RTJ-93-1031, January 28, 1997]

RODRIGO B. SUPENA, PETITIONER, VS. JUDGE ROSALIO G. DE LA ROSA, RESPONDENT.
D E C I S I O N

HERMOSISIMA, JR., J.:

In his verified complaint dated June 16, 1993, Mr. Rodrigo B. Supena, President of Mortgagee BPI Agricultural Development Bank (BAID, for short), charges respondent Judge Rosalio G. de la Rosa with gross ignorance of the law for issuing an unlawful Order, dated May 25, 1993, in Foreclosure Case No. 93-822, entitled, "BPI Agricultural Development Bank v. PQL Realty Incorporated." The Order in effect held in abeyance the public auction sale set on May 26, 1993, per Notice of Extrajudicial Sale of one (1) parcel of land, together with the building and all the improvements existing thereon, described and covered by TCT No. 112644 of the Registry of Deeds of Manila, on the basis of a mere Ex-Parte Motion to Hold Auction Sale in Abeyance filed by Mortgagor, PQL Realty Incorporated (PQL, for short).

The antecedent facts are as follows:

On April 1, 1993, mortgagee BAID decided to extrajudicially foreclose the Real Estate Mortgage[1] executed by mortgagor PQL in the former's favor. Accordingly, BAID petitioned the Ex-Officio Sheriff of Manila to take the necessary steps for the foreclosure of the mortgaged property and its sale to the highest bidder.

On April 21, 1993, Jesusa P. Maningas, the Clerk of Court and Ex-Officio Sheriff of Manila, issued a Notice of Extrajudicial Sale, scheduling the public auction sale on May 26, 1993 at 10:00 o'clock a.m. in front of the City Hall Building, Manila. Said notice was subsequently published in the People's Journal Tonight on May 4, 11 and 19, 1993.

However, on May 25, 1993, or one day before the scheduled sale, the Hon. Rosalio G. de la Rosa, in his capacity as Executive Judge of the Regional Trial Court of Manila, issued an Order holding in abeyance the scheduled public auction sale, on the basis of a mere ex-parte motion filed by PQL, a copy of which was received by mortgagee-complainant only on May 31, 1993. Complainant avers that, said order is, for all practical intents and purposes, a restraining order for an indefinite period, issued without the proper case being filed and without the benefit of notice and hearing, or even an injunction bond from which the mortgagee may seek compensation and restitution for the damages it may suffer by reason of the improper cancellation of the auction sale.

The only ground relied upon by the ex-parte Motion, "that the parties have agreed to hold the foreclosure proceedings in Makati and not in Manila," is patently without merit, according to the complainant, as the venue of foreclosure proceedings is fixed

by law and cannot be subject of stipulation. In sum, complainant submits that the actuations of respondent judge in granting the ex-parte motion of mortgagor were without basis and highly suspicious.

Respondent, in his comment, maintains that he held in abeyance the extrajudicial foreclosure and sale of the property mortgaged supposed to be held on May 26, 1993 and instead scheduled the same for hearing on June 16, 1993 (which however did not transpire), to determine two issues: first, whether the venue in Foreclosure Proceeding No. 93-822 was improperly laid in light of the stipulation in the "Loan Agreement" duly entered into by both parties and acknowledged before a Notary Public which provides:

> "14) VENUE OF ACTIONS — Any action or suit brought under this Agreement or any other documents related hereto shall be instituted in the proper Courts of Makati, Metro Manila, Republic of the Philippines."[2]
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> and, secondly, in order to determine the veracity of the mortgagor's allegation that the Five Hundred Thousand Pesos (P500,000.00) paid to BPI Agri-Bank last January, 1993 does not reflect and does not appear to have been credited or deducted from the accounts of mortgagor. It was, allegedly, under the principle of fair play, equity and substantial justice which compelled him to issue the Order dated May 25, 1993.[3]

We find the respondent judge culpable as charged.

Any judge, worthy of the robe he dons, or any lawyer, for that matter, worth his salt, ought to know that different laws apply to different kinds of sales under our jurisdiction. We have three different types of sales, namely: an ordinary execution sale, a judicial foreclosure sale, and an extrajudicial foreclosure sale. An ordinary execution sale is governed by the pertinent provisions of Rule 39 of the Rules of Court on Execution, Satisfaction and Effect of Judgments. Rule 68 of the Rules, captioned Foreclosure of Mortgage, governs judicial foreclosure sales. On the other hand, Act No. 3135, as amended by Act No. 4118, otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," applies in cases of extrajudicial foreclosure sales of real estate mortgages.[4]

The case at bench involves an extrajudicial foreclosure sale of a real estate mortgage executed by mortgagor PQL in favor of mortgagee BAID. If the main concern of respondent judge in holding in abeyance the auction sale in Manila scheduled on May 26, 1993 was to determine whether or not venue of the execution sale was improperly laid, he would have easily been enlightened by referring to the correct law, definitely not the Rules of Court, which is Act No. 3135, as amended particularly Sections 1 and 2, viz:

> "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 in 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."

Here, the real property subject of the sale is situated in Felix Huertas Street, Sta. Cruz, Manila.[5] Thus, by express provision of Section 2, the sale cannot be made outside of Manila. Moreover, were the intention of the parties be considered with respect to venue in case the properties mortgaged be extrajudicially foreclosed, they even unequivocably stipulated in the Deed of Real Estate Mortgage itself under paragraph 15 that:

> It is hereby agreed that in case of foreclosure of this mortgage under Act 3135, as amended by Act 4118, the auction sale, in case of properties situated in the province, shall be held at the capital thereof."[6]

Respondent judge, therefore, had no valid reason to entertain any doubt as to the propriety of the venue of the auction sale in Manila. The law as well as the intention of the parties cannot be more emphatic in this regard.

Respondent judge, however, refers to the venue stipulation in the Loan Agreement signed by the parties to the effect that, "Any action or suit brought under this Agreement or any other documents related hereto shall be instituted in the proper courts of Makati x x x."[7] And under the pertinent provisions of Rule 4 of the Rules of Court on Venue of Actions, which provide:

> "Sec. 2. *Venue in Courts of First Instance* — (a) Real actions. — Actions affecting title to, or for recovery of possession, or partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies.
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> Sec. 3. *Venue by agreement.* — By written agreement of the parties the venue of an action may be changed or transferred from one province to another."

venue of the auction sale should have been laid in Makati as mutually agreed upon by the parties.

Again, in this regard, we reiterate that the law in point here is Act No. 3135, as amended, which is a special law, dealing particularly on extrajudicial foreclosure sales of real estate mortgages, and not the general provisions of the Rules of Court on Venue of Actions. In fact, even Section 5, Rule 4, is quite explicit in stating that:

"When rule not applicable. — This rule shall not apply in those cases where a specific rule or law provides otherwise."

The failure of respondent to recognize this is an utter display of ignorance of the law to which he swore to maintain professional competence.[8] Furthermore, provisions

quoted by respondent under Rule 4 pertains to the venue of actions, which an extrajudicial foreclosure is not. Section 1, Rule 2 defines an action in this wise:

> "Action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong."

Hagans v. Wislizenus[9] does not depart from this definition when it states that " [A]n action is a formal demand of one's legal rights in a court of justice in the manner prescribed by the court or by the law. x x x." It is clear that the determinative or operative fact which converts a claim into an "action or suit" is the filing of the same with a "court of justice." Filed elsewhere, as with some other body or office not a court of justice, the claim may not be categorized under either term. [10] Unlike an action, an extrajudicial foreclosure of real estate mortgage is initiated by filing a petition not with any court of justice but with the office of the sheriff[11] of the province where the sale is to be made. By no stretch of the imagination can the office of the sheriff come under the category of a court of justice. And as aptly observed by the complainant, if ever the executive judge comes into the picture, it is only because he exercises administrative supervision over the sheriff. But this administrative supervision, however, does not change the fact that extrajudicial foreclosures are not judicial proceedings, actions or suits.

Granting arguendo that an extrajudicial foreclosure sale can be classified as an "action or suit" (which it is not) and that the venue stipulation in the Loan Agreement would gain relevance, respondent judge still committed a grievous error in holding the auction sale in abeyance due to improper laying of venue. We again quote the subject stipulation for easy reference, to wit:

> "14) VENUE OF ACTIONS — Any action or suit brought under this Agreement or any other documents related hereto shall be instituted in the proper Courts of Makati, Metro Manila, Republic of the Philippines."

Written stipulations as to venue are either mandatory or permissive. In interpreting stipulations, inquiry must be made as to whether or not the agreement is restrictive in the sense that the suit may be filed only in the place agreed upon or merely permissive in that the parties may file their suits not only in the place agreed upon but also in the places fixed by the rules.[12]

In Polytrade Corporation v. Blanco,[13] the stipulation on venue there involved read:

"The parties agree to sue and be sued in the Courts of Manila."

The Court, in ruling that venue had been properly laid in the then Court of First Instance of Bulacan (the place of defendant's residence), said:

> "x x x. An accurate reading, however, of the stipulation, 'The parties agree to sue and be sued in the Courts of Manila,' does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. We cannot read into that clause that