

THIRD DIVISION

[G.R. No. 119184, July 21, 1997]

THE HEIRS OF FELICIDAD CANQUE NAMELY: SURVIVING SPOUSE MARCELINO AND CHILDREN MARIANO, LEONILO, PERFECTA, MEXIQUELA, EMILIO, MARCELINO JR., ALEJANDRO, THE HEIRS OF JESUS AND ADRIANO, ALL SURNAMED CANQUE, PETITIONERS, VS. COURT OF APPEALS, THE RURAL BANK OF MATANAO (DAVAO DEL SUR), INC, AND/OR CONRADO ANTONIO, RESPONDENTS.

DECISION

PANGANIBAN, J.:

In deciding this appeal, this Court reiterates the dictum that the mortgagor of titled real estate acquired under the Public Land Act but foreclosed by a rural bank, may redeem said property within two (2) years from the registration of the sheriff's certificate of sale; and if the said mortgagor fails to exercise such right, he or his heirs may still repurchase the land within five years from the expiration of the two-year redemption period. It also finds occasion to remind lower courts to keep abreast of decisions of this Court and apply them in resolving identical cases before them.

Statement of the Case

This is a petition for review under Rule 45 seeking annulment of the Decision^[1] of the Court of Appeals^[2] promulgated on August 25, 1994 in CA-G.R. CV No. 39807, reversing the trial court's^[3] decision.^[4] The latter tribunal disposed:

"WHEREFORE, in the light of the foregoing, the court hereby decrees:
amending in part the partial judgment:

- 1.) Allowing the plaintiff to redeem the mortgaged properties by paying the amount of the purchase price with interest thereon at the rate of one per centum per month up to the date of her deposit of the redemption price and ordering the defendant to accept payment from the plaintiff;
- 2.) Dismissing^[5] all the claims and counterclaims that the parties may have against each other in connection with this case.

SO ORDERED."

The Antecedent Facts

The facts as found by the Respondent Court of Appeals appear undisputed. They are as follows:

"Spouses Marcelino Canque and Felicidad Canque were the registered owners of a parcel of land under Original Certificate of Title No. P-(20559)-3409, of the Register of Deeds of Davao del Sur issued by virtue of Free Patent No. 40336, with an area of 2 hectares, 43 ares, and 58 centares. On May 21, 1976, said spouses sold a portion of the parcel of land to the Iglesia ni Kristo Church to the extent of 750 square meters. A new Transfer of Title No. T-8730 was issued to said spouses by the Register of Deeds of Davao del Sur. On October 12, 1977, said spouses obtained a loan of Fifteen Thousand (P15,000.00) from defendant bank secured by a real estate mortgage over the parcel of land under Transfer Certificate of Title No. T-8730 with an area of 23, 608 square meters.

The spouses' loan of P15,000.00 with the defendant bank was duly paid.

On February 2, 1980, Felicidad Canque passed away. More than a month later, on March 7, 1980, widower Marcelino Canque obtained by himself, another loan with defendant bank in the amount of P25,000.00 with the same conjugal property under Transfer Certificate of Title No. T-8730 as collateral. The defendant bank allegedly considered this second loan as an extension of the first loan as the real estate mortgage of the first loan had remained uncanceled, despite the earlier payment of the first loan by the said spouses.

For failure of Marcelino Canque to pay the second loan, defendant bank extrajudicially foreclosed the real estate mortgage and sold the property to itself as the highest bidder in a public sale.

On September 9, 1983, the Sheriff's Certificate of Sale was registered. On October 18, 1985, defendants executed an affidavit of consolidation of ownership and deed of absolute sale. On December 23, 1985, Transfer Certificate of Title No. T-18357 was issued in the name of defendant bank by the Register of Deeds of Davao del Sur.

After seven years from the registration of the Sheriff's Certificate of Sale, plaintiffs Marcelino Canque and his children offered to redeem the property in question but defendant bank refused. Hence, the complaint filed before the lower court on September 7, 1990.

After hearing on the merits, the lower court first issued a partial judgment on January 8, 1992, the decretal portion of which reads:

'WHEREFORE, partial judgment is hereby rendered:

1. Declaring the real estate mortgage between the plaintiffs and defendants valid; and
2. Allowing the plaintiffs to exercise their right of redemption and/or repurchase pursuant to the provisions of Sec. 119, of Commonwealth Act 141, otherwise known as the Public Land Act.'

(p. 5, Partial Dec.;p. 74, Orig. Rec.)

On August 24, 1992, the lower court issued the earlier stated amended decision.

Dissatisfied with the verdict of the lower court plaintiffs appealed to the Court [of Appeals].

The principal issue posed in this appeal is whether or not the lower court erred in ruling that plaintiff Mario Canque's right of redemption as well as that of the other plaintiffs-appellees, heirs of Felicidad Canque, has not prescribed.

In the case of *Achuelo v. IAC*, 147 SCRA 434, the Supreme Court reiterated the express provision of law as follows:

Section 119 of Commonwealth Act 141 states:

'Every reconveyance of land acquired under the free patent homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of conveyance.'

In the case of *Eastman Chemical Industries, Inc. v. C.A.*, 174 SCRA 619, the Supreme Court made the following pronouncement:

'In the case of *Reyes vs. Noblejas and Santos* (G.R. No. L-23691, November 25, 1967, 21 SCRA 1027 at pp. 1029-1030) the Supreme Court upheld the contention of the Land Registration Commission, as follows:

'x x x Section 6 of Act 3135 should be applied to the present case together with: (1) Sections 30 to 35 of Rule 39 of the Revised Rules of Court with regard to redemption; (2) Section 27, Rule 39 of the said Rules and Section 71 of Act 496 with regard to the filing (registration) of the sheriff's certificate of sale; and (3) Section 50 of Act 496, with regard to the registration of the certificate of sale so as to consider the land conveyed and affected under the Land Registration Act.

and that:

'x x x. Section 27, Rule 39 of the Revised Rules of Court provides that the certificate of sale executed by the sheriff in a public auction sale must be filed (registered) in the Office of the Register of Deeds of the province where the land is situated. This is mandatory requirement. Failure to register the certificate of sale violates the said provision of law and, construed in relation with Section 50 of the Land Registration Law (Act 496), shall not take effect as a conveyance or bind the land covered by a torrens title because 'the act of registration is the operative act to convey and effect the land.' So the redemption period, for purposes of determining the time when a final deed of sale may be executed or issued and the ownership of the registered land consolidated in the purchaser at an extrajudicial foreclosure sale under Act 3135, should be reckoned from the date of registration of the certificate of sale in the office of the register of deeds concerned and not from the date of the public auction sale. x x x.' (Emphasis Supplied)"^[6]

The respondent appellate court disagreed with the trial court's decision, viz.:

"Clearly, the lower court erred in ruling that plaintiffs-appellees' redemption period commenced on October 18, 1985, date of defendants-appellants execution of an affidavit of consolidation of ownership and deed of absolute sale. The correct date to reckon with the start of the plaintiffs-appellees' prescriptive period of five years is September 9, 1983, the date of the registration of the Sheriff's Certificate of Sale. Plaintiffs-appellees' instant suit to compel defendants-appellees to allow them to redeem the property was only filed on September 7, 1990, or almost seven (7) years from the registration of the Sheriff's certificate of sale, or beyond the five-year prescriptive period as provided under Sec. 119 of Commonwealth Act 141. Thus, plaintiffs-appellees' right of redemption had already prescribed.

All is not lost, however for the plaintiffs-appellees as heirs of Felicidad Canque for the lost right of redemption of the parcel of land in question only applies to the conjugal share of 50% of plaintiff Marcelino Canque considering that at the time the second loan of P25,000.00 was entered by said plaintiff with defendant bank, his spouse Felicidad Canque, who had a share of the other 50% of the conjugal property, had already passed away (Art. 185, New Civil Code). Thus, when plaintiff Mario Canque entered into the said loan agreement with defendant bank giving the parcel of land in question as security in the form of real estate mortgage, it was only valid insofar as his 50% of the conjugal property share from the said parcel of land is concerned. Defendant-appellant bank had acquired, therefore, no right over the other 50% of the conjugal property pertaining to the late Felicidad Canque which share of 50% automatically passed to her heirs, herein plaintiffs-appellees from the moment of her (Felicidad Canque) death (Art. 777, New Civil Code)."

[7]

Hence, the Court of Appeals rendered judgment, the decretal portion of which reads:

"WHEREFORE, the appealed decision of the lower court in Civil Case No. 2688 is hereby REVERSED AND SET ASIDE. A new judgment is hereby entered by the Court as follows:

1. Plaintiff-appellee Mario Canque's right of redemption insofar as 50% of the property in question has already prescribed, and defendant-appellant bank's title and ownership of the said 50% of the property are declared incontrovertible by the Court (of Appeals).
2. Declaring the second deed of real estate mortgage over the parcel of land in question insofar as 50% of it is concerned as void as it pertained to the conjugal share of the late Felicidad Canque which share of 50% should rightfully pass to her heirs, herein plaintiffs-appellees.
3. Ordering the Register of Deeds of the province of Davao Del Sur to cancel Transfer Certificate of Title No. T-18357 and to issue two new Transfer Certificates of Title, one to plaintiffs-appellees under the name 'Heirs of Felicidad Canque, and another one to the Rural Bank of Matanao, Inc. at 50% each of the property in question covered by Transfer Certificate of Title No. T-18357.