



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ANGELINA A. BAYAN* and
JAIME A. BAYAN herein rep. by
their Attorney-in-Fact **MARIA**
FLORA A. FALCON,
Petitioners,

G.R. No. 220741

Present:

CARPIO, J., Chairperson,**
CAGUIOA,***
REYES, J. JR.,
LAZARO-JAVIER, and
ZALAMEDA, JJ.

- versus -

CELIA A. BAYAN (deceased),
EDWARD DY, MA. LUISA B.
TANGHAL, and the **REGISTER**
OF DEEDS OF QUEZON CITY,
Respondents.

Promulgated:

14 AUG 2019

X ----- *Maria Flora Falcon* ----- X

DECISION

REYES, J. JR., J.:

Before us is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court which seeks to reverse and set aside the January 5, 2015 Decision² and the September 22, 2015 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 96204.

The case arose from a Complaint for Annulment of Mortgage with Damages filed by petitioners Angelina A. Bayan (Angelina) and Jaime A.

* Now deceased, as per Notice of Death dated September 20, 2018, *rollo*, pp. 227-229.

** On official leave.

*** Acting Chairperson.

¹ *Rollo*, pp. 3-19.

² Penned by then CA Associate Justice Noel G. Tijam (now retired SC Justice), with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring; *id.* at 48-63.

³ *Id.* at 27-30.

✓

Bayan (Jaime), as represented by their Attorney-in-Fact Lolita T. Alcaraz against respondents Celia A. Bayan (Celia, now deceased), Edward Dy (Dy) and Ma. Luisa Tanghal (Tanghal) and defendant Register of Deeds of Quezon City.

Petitioners, together with respondent Celia, are the registered co-owners of three parcels of residential and commercial land located in Cubao, Quezon City with Transfer Certificate of Title (TCT) Nos. N-140606, N-140607 and N-140608.

In 2005, Celia, acting for herself and as alleged Attorney-in-Fact of Angelina and Jaime, was able to obtain loans on three different occasions from her co-respondents Tanghal and Dy in the total amount of ₱4,500,000.00 plus interest and penalties in the event of default or delay in payment.

To secure the payment of her loans, Celia executed a fraudulent Special Powers of Attorney (SPAs) which supposedly embodied her authority to act on behalf of her frail mother Angelina and her brother, Jaime, who was permanently living in the United States. With such spurious authority, Celia executed in favor of Dy and Tanghal a Deed of Real Estate Mortgage dated February 23, 2005 covering the three parcels of land which she co-owned with Angelina and Jaime. Celia executed another Deed of Real Estate Mortgage dated August 24, 2005 to secure her second loan which she obtained from Dy and Tanghal. And thereafter, she executed an Amendment of the Deed of Real Estate Mortgage dated September 9, 2005, also covering the same properties.

Angelina and Jaime insisted that all the transactions made by Celia were without their knowledge and consent and their signatures embodied in the SPA were forged. This prompted them to file the instant action. However, during the pendency of the case, Dy and Tanghal proceeded to foreclose the mortgage.

After trial, the Regional Trial Court (RTC), Branch 81, Quezon City, in a Decision⁴ dated September 15, 2010 ruled in favor of the petitioners declaring as null and void the following documents, to wit: (a) the two SPAs; (b) the Deed of Real Estate Mortgage Contract dated February 23, 2005; (c) the Deed of Real Estate Mortgage dated August 24, 2005; (d) and the Amendment of the Deed of Real Estate Mortgage dated September 9, 2005, and declaring as inefficacious and of no legal force and effect the following: (a) the extra-judicial foreclosure proceedings; (b) the public auction sale; (c) and the Sheriff's Sale. Accordingly, the RTC ordered the Register of Deeds of Quezon City to cancel all the Deeds of Real Estate Mortgage annotated on TCT Nos. N-140606, N-140607 and N-140608 and the Certificates of Sale inscribed on the said TCTs. It also ordered respondents to pay petitioners moral damages, attorney's fees and

⁴ Id. at 31-46.

appearance fees per hearing. Respondents' cross-claim against Celia was likewise dismissed.

Respondents filed an appeal with the CA. Meanwhile, Celia died.

On January 5, 2015, the CA issued the now appealed Decision partially granting the appeal. The dispositive portion of the Decision reads:

WHEREFORE, the Appeal is **partially granted**. The Decision dated September 15, 2010 rendered by the Regional Trial Court of Quezon City, Branch 81 in Civil Case No. Q-06-57416 is hereby **AFFIRMED with MODIFICATIONS**, as follows:

1. The Deed of Real Estate Mortgage Contract dated February 23, 2005, Deed of Real Estate Mortgage dated August 24, 2005, and the Amendment of the Deed of Real Estate Mortgage dated September 9, 2005 are declared null and void only in so far as the interests of Plaintiffs-Appellees Angelina Bayan and Jaime Bayan are concerned;
2. The extra-judicial foreclosure proceedings, public auction sale and Sheriff's Sale conducted by Assisting Deputy Sheriff Rolando G. Acal of the office of the Clerk of Court, Regional Trial Court, Quezon City, are hereby inefficacious and have no legal force and effect only in so far as the interests of Plaintiffs-Appellees Angelina Bayan and Jaime Bayan are concerned;
3. The case is remanded to the Regional Trial Court of Quezon City: (a) determine the exact extent of the respective rights, interests, shares, and participation of Defendants-Appellants Tanghal and Dy and the Plaintiffs-Appellees over the subject properties, and (b) thereafter, to effect a final division, adjudication, and partition in accordance with law.
4. The Register of Deeds of Quezon City is hereby ordered to cancel the Certificates of Sale inscribed on Transfer Certificate of Title Nos. N-140606, N-140607 and N-140608 in favor of defendants Ma. Luisa Tanghal and Edward Dy and issue new ones in accordance with the determination of the RTC.

The RTC's pronouncements on moral damages and attorney's fees are affirmed *in toto*.

SO ORDERED.⁵

From the above Decision of the CA, all the parties (Dy, Tanghal and Petitioners) filed their respective Motions for Partial Reconsideration/Partial Motions for Reconsideration.⁶ Notable is the Motion⁷ filed by petitioners

⁵ Id. at 61-62.

⁶ Id. at 64-83.

⁷ Id. at 76-83.

wherein they prayed that the CA partially reconsider its Decision by granting their right of legal redemption over the one-third (1/3) share of Celia through the payment of one-third of the mortgage debt, without interest, to be exercised within a reasonable period to be set by the trial court.

On September 22, 2015, the CA issued a Resolution denying all the parties' Motions for Partial Reconsideration for lack of merit. As to petitioners' relief being prayed for, the CA specifically ruled as follows:

Considering Plaintiffs-Appellees Angelina and Jaime Bayan are raising the issue of their right of legal redemption only now in their motion for reconsideration, We are constrained to deny their Motion for Partial Reconsideration. The right of redemption was not prayed for much less alleged in the Complaint, hence, We cannot now include a determination of the same in Our resolution.⁸ (Citations omitted)

Dissatisfied with the resolution of the CA, petitioners filed the instant Petition with this Court, anchored on the following issues:

I.

Whether or not the Honorable Court of Appeals erred in ruling that the petitioners cannot raise their right of legal redemption for the first time on appeal even though it was not relevant to raise the same before the trial court's level.

II.

Whether or not the Honorable Court of Appeals erred in not considering the fact that the mortgagees are not mortgagees-in-good-faith in denying petitioners the right of legal redemption.⁹

In their Motions for Partial Reconsideration/Partial Motions for Reconsideration, petitioners as co-owners of mortgagor Celia in the subject parcel of land, intended to exercise their right to legal redemption pursuant to Article 1620 of the Civil Code. The issue of right of legal redemption was neither raised in the RTC nor was even mentioned in the proceedings before the CA. As mentioned, it was raised for the very first time only in petitioners' Motion for Partial Reconsideration with the CA. We agree with the CA that this is not allowed. No question will be considered on appeal much more in the motion for reconsideration with the appellate court, when it was not raised in the court below. Otherwise, the court will be forced to make a judgment that goes beyond the issues and will adjudicate something in which the court did not hear the parties. As held by this Court:

The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this

⁸ Id. at 30.

⁹ Id. at 8.

case, because this would be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.¹⁰ (Citation omitted; underlining supplied)

Petitioners argued that they belatedly raised the issue of their right of legal redemption because it was only on appeal that the partial validity of the mortgage was entertained by the CA and that the latter had ruled that Celia had the right to sell or even mortgage her undivided interest in the property pursuant to Article 493¹¹ of the Civil Code.

We do not subscribe to petitioners' argument.

Petitioners' right of redemption accrued the moment they have written notice of the foreclosure sale. In legal pre-emption or redemption under the Civil Code of the Philippines, written notice of the sale to all possible redemptioners is indispensable.¹² Article 1623 of the Civil Code provides:

Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case maybe. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners.

Thus, in the old case of *Butte vs. Manuel Uy and Sons, Inc.*,¹³ the Court ruled that Art. 1623 of the Civil Code clearly and expressly prescribes that the 30 days for making the pre-emption or redemption are to be counted from notice in writing by the vendor. The reason for this is because the vendor of an undivided interest is in the best position to know who are his co-owners, who under the law must be notified of the sale.¹⁴ As held in one case:

It is likewise the notification from the seller, not from anyone else, which can remove all doubts as to the fact of the sale, its perfection, and its validity, for in a contract of sale, the seller is in the best position to confirm whether consent to the essential obligation of selling the property and transferring ownership thereof to the vendee has been given.¹⁵

¹⁰ *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, G.R. No. 168498 (Resolution), 550 Phil. 316, 326 (2007).

¹¹ Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

¹² *De Conejero v. Court of Appeals*, 123 Phil. 605, 610 (1966).

¹³ 114 Phil. 443, 451 (1962).

¹⁴ *Id.* at 452.

¹⁵ *Francisco v. Boiser*, 388 Phil. 596, 605 (2000).

Keeping in mind the rationale behind the written notice of sale by the vendor/s (co-owner/mortgagor) to the redemptioners, the Court in the case of *Etcuban v. Court of Appeals*¹⁶ has clarified that even if it was not sent by the vendor as long as the redemptioners were notified in writing, the same is sufficient for their right to redeem to accrue, thus:

While it is true that written notice is required by the law (Art. 1623), it is equally true that the same Art. 1623 does not prescribe any particular form of notice, nor any distinctive method for notifying the redemptioner. So long, therefore, as the latter is informed in writing of the sale and the particulars thereof, the 30 days for redemption start running, and the redemptioner has no real cause to complain. In the *Conejero* case, we ruled that the furnishing of a copy of the disputed deed of sale to the redemptioner was equivalent to the giving of written notice required by law in "a more authentic manner than any other writing could have done," and that We cannot adopt a stand of having to sacrifice substance to technicality.¹⁷ x x x (Citations omitted)

In the case of *Francisco v. Boiser*,¹⁸ the Court has adopted the rule that any written notice is sufficient such that it ruled that the receipt by petitioner of summons in a civil case amounted to actual knowledge of the sale on the basis of which petitioner may now exercise his right of redemption. Justifying its ruling, the Court cited an instance where a vendor can delay or even effectively prevent the meaningful exercise of the right of redemption by not immediately notifying the co-owner of the sale, thereby causing serious prejudice to a redemptioner's right of legal redemption.¹⁹ To avoid this, the Court ruled that any written notice of sale (even if not sent by the vendor) is sufficient in order for the right of legal redemption of a co-owner to accrue.

In the instant case, the fact that petitioners alleged in their complaint about the foreclosure sale of the mortgage, the Sheriff's Certificate of Sale and their annotation/inscription on TCT. Nos. N-140606, N-140607 and N-140608 conclusively shows that petitioners were notified of the sale and were furnished said documents, and is tantamount to an actual knowledge of such fact of sale. No other notice is needed because the Sheriff's Certificate of Sale itself confirms the fact of sale, its perfection and its due execution.

The bottomline is that petitioners need not wait for the Court to make a definitive ruling on the validity or invalidity of the mortgage made by their co-owner. They should have known that any co-owner can mortgage their undivided share in the co-owned property in accordance with Article 493²⁰ of the Civil Code. Upon notice of the foreclosure sale or receipt of any written notice of the fact of sale, petitioners' right of legal redemption had already accrued such that they should have included said issue at the very

¹⁶ 232 Phil. 471 (1987).

¹⁷ Id. at 475.

¹⁸ Supra note 15.

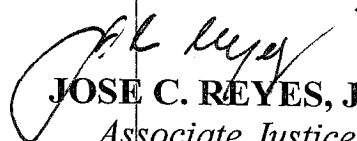
¹⁹ Id. at 606.

²⁰ Supra note 11.

onset in their complaint. Not having raised the same with the lower court, it cannot be entertained for the first time in the Motion for Reconsideration with the appellate court.

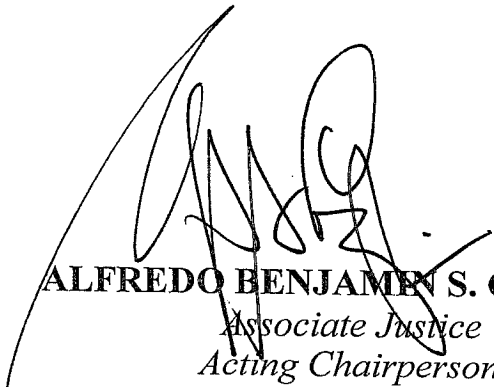
WHEREFORE, the instant Petition is **DENIED**. The appealed Decision dated January 5, 2015 and the Resolution dated September 22, 2015 of the Court of Appeals in CA-G.R. CV No. 96204 are **AFFIRMED**.

SO ORDERED.

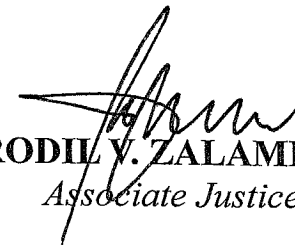

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

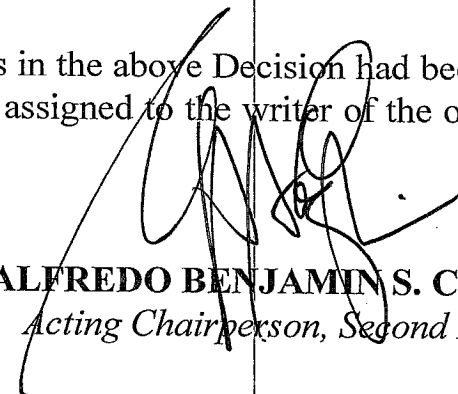

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson


AMY C. LAZARO-JAVIER
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALFREDO BENJAMIN S. CAGUIOA
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice

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