

## FIRST DIVISION

**[ G.R. No. 164104, September 11, 2009 ]**

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. GREGORIO B. MARAYA, JR. AND WENEFRIDA MARAYA, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review on certiorari<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated 4 March 2004 and the Resolution<sup>[3]</sup> dated 7 June 2004 of the Court of Appeals (appellate court) in CA-G.R. CV No. 59109. The appellate court affirmed the trial court's decision<sup>[4]</sup> in Civil Case No. R-2804 dated 12 August 1997 and declared void the extrajudicial foreclosure sale of the land of Gregorio B. Maraya, Jr. and Wenefrida Maraya (the spouses Maraya) in favor of petitioner Philippine National Bank (PNB) and the corresponding certificate of sale issued by the sheriff for failure to publish the notice of sale as required by Section 3 of Act No. 3135. The subsequent sale of the subject land by PNB to Jesus and Diosdada Cerro (the spouses Cerro) was likewise declared void.

#### The Facts

The appellate court stated the facts of the case as follows:

[The spouses Maraya] are the owners of a parcel of land located at Combado, Maasin, Southern Leyte covered by a Transfer Certificate of Title No. T-381 registered in the Register of Deeds of Southern Leyte in the name of Atty. Gregorio B. Maraya, Jr.

On or about June 22, 1977, [the spouses Maraya] secured a loan for P6,000.00 from [PNB] and constituted a real estate mortgage of their aforesaid property.

For one reason or another, [the spouses Maraya] defaulted in the payment of their loan obligation. Upon their failure to pay their obligation, defendant-appellant PNB initiated an extrajudicial foreclosure of the mortgaged property without having the intended foreclosure sale published in the newspaper of general circulation. PNB emerged as the highest bidder and was awarded the Sheriff's certificate of sale on November 27, 1990.

For failure of [the spouses Maraya] to redeem the property and their failure to buy back the same despite several periods granted by PNB after one year allowed by law, PNB decided to sell the property. On May 11, 1993, a public bidding was conducted for the said purpose with defendant appellant Jesus Cerro as the successful bidder.

On or about July 15, 1993, PNB through its Branch Manager Francisco Bangi, executed a Deed of Absolute Sale over the aforementioned land in favor of Jesus Cerro. [The spouses Maraya] were notified by PNB of the sale in favor of Jesus Cerro and were advised to vacate the premises. As they refused to vacate, Jesus Cerro was constrained to file a complaint for unlawful detainer against them on August 1993 before the Municipal Trial Court of Maasin, Southern Leyte which rendered a decision in favor of Jesus Cerro. [The spouses Maraya] appealed the said decision and it was during the pendency of the appeal that [the Spouses Maraya] filed the complaint for Annulment of Sale and Quieting of Title against [PNB and the spouses Cerro] before the Regional Trial Court of Maasin, Southern Leyte.

Issues having been joined, pre-trial ensued. Thereafter, trial proceeded. On August 12, 1997, the court *a quo* rendered its herein appealed Decision.<sup>[5]</sup>

### **The Ruling of the Trial Court**

The trial court ruled in favor of the spouses Maraya. The trial court ruled that there was no valid extrajudicial foreclosure sale of real property because of PNB's failure to comply with the substantive requirement of Section 3, Act No. 3135 as to publication of the notice of sale once a week for at least three consecutive weeks in a newspaper of general circulation.

The dispositive portion of the trial court's decision reads:

WHEREFORE, [the spouses Maraya's] prayers are heard by the Court which are:

(a) declaring the nullity and setting aside the extrajudicial foreclosure sale and the corresponding certificate issued by the sheriff, being null and void;

(b) declaring the Deed of Absolute Sale by defendant [PNB] to defendant Jesus Cerro as null and void;

(c) removing any cloud from being cast upon the title or ownership of [the spouses Maraya] on the land and building in litigation and declaring [the spouses Maraya] as true and lawful owners and possessors of the said properties;

(d) ordering the Ex-Officio Provincial Sheriff of the Court to conduct

properly the extrajudicial foreclosure proceedings of the property of [the Spouses Maraya] this time complete with the requirements of posting, affidavit and notice, and publication as required by substantive law, Act 3135 whose compliance for being in derogation of property rights must be strictly and mandatorily enforced;

(e) ordering defendants to proportionately pay the costs.

For insufficiency of evidence and lacking in merit, both defendants' Counterclaims are DISMISSED.

SO ORDERED.<sup>[6]</sup>

The spouses Maraya filed an Urgent Motion for Execution Pending Appeal before the trial court. Before the motion could be heard, PNB and the spouses Cerro filed their respective Notices of Appeal. PNB and the spouses Cerro likewise filed their respective Oppositions to the motion filed by the spouses Maraya. The trial court approved the Notices of Appeal and directed the transmittal of the records of the present case to the appellate court. Subsequently, the trial court denied the spouses Maraya's motion for execution for lack of jurisdiction to resolve the same.

### **The Ruling of the Appellate Court**

The spouses Maraya filed before the appellate court on 29 October 1997 an Urgent Motion for Execution of Judgment Pending Appeal. The appellate court denied this motion in a Resolution promulgated on 21 April 1998.

In its Decision<sup>[7]</sup> dated 4 March 2004, the appellate court affirmed the decision of the trial court. The pertinent portions of the appellate court's decision read as follows:

The purpose of the publication of the Notice of Sheriff's Sale is to inform all interested parties of the date, time and place of the foreclosure sale of the real property subject thereof. Failure to comply with the statutory requirement as to publication of notice, invalidates the sale. Consequently, the sale by the PNB to appellants Cerro is likewise void and the latter do not acquire valid title to the properties. We, therefore, cannot but concur with the decision of the court *a quo*.

WHEREFORE, *premises considered*, the appeal is DENIED and the Decision of the trial court is hereby AFFIRMED *in toto*.

SO ORDERED.<sup>[8]</sup>

The appellate court denied PNB's motion for reconsideration in a resolution promulgated on 7 June 2004.<sup>[9]</sup>

### **The Issue**