

THIRD DIVISION

[G.R. NO. 133079, August 09, 2005]

**SPS. MAXIMO LANDRITO, JR. AND PACITA EDGALANI,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS; SPS.
BENJAMIN SAN DIEGO AND CARMENCITA SAN DIEGO; THE EX-
OFFICIO SHERIFF AND CLERK OF COURT OF THE REGIONAL
TRIAL COURT, MAKATI CITY; AND THE REGISTER OF DEEDS,
MAKATI CITY, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Herein petitioners, the spouses Maximo Landrito, Jr. and Pacita Landrito, have come to this Court *via* this petition for review on *certiorari* under Rule 45 of the Rules of Court to seek the reversal and setting aside of the decision dated 12 December 1997^[1] and resolution dated 10 March 1998^[2] of the Court of Appeals in CA-G.R. CV No. 48896, affirming an earlier order of the Regional Trial Court at Makati City which granted the motion to dismiss filed by the herein private respondents, the spouses Benjamin San Diego and Carmencita San Diego, in its Civil Case No. 94-2950, a complaint for annulment of extrajudicial foreclosure and auction sale, thereat commenced by them against the San Diegos, the *ex-officio* sheriff and the Register of Deeds of Makati City.

The facts:

In July 1990, petitioners obtained a loan of P350,000.00 from respondent Carmencita San Diego. To secure payment thereof, petitioners executed on 02 August 1990 in favor of the same respondent a deed of real estate mortgage over their parcel of land located at Bayanan, Muntinlupa, Rizal and registered in their names under Transfer Certificate of Title No. (432281) S-21000.

After making substantial payments, petitioners again obtained and were granted by Carmencita San Diego an additional loan of One Million Pesos (P1,000,000.00). To secure this additional loan, the parties executed on 13 September 1991 an "*Amendment of Real Estate Mortgage*", whereunder they stipulated that the loan shall be paid within six (6) months from 16 September 1991, and if not paid within said period, the mortgagee shall have the right to declare the mortgage due and may immediately foreclose the same judicially or extrajudicially, in accordance with law.

It appears that petitioners defaulted in paying their loan and continuously refused to comply with their obligation despite repeated demands therefor, prompting respondent Carmencita San Diego to send them on 27 April 1993, a final notice of demand requiring them to settle their financial obligation which, by then, already amounted to P1,950,000.00.

On 30 June 1993, after her efforts to collect proved futile, respondent Carmencita San Diego filed with the Office of the Clerk of Court and Ex-Officio Sheriff of RTC-Makati, a petition for the extrajudicial foreclosure of the mortgage.

On 06 July 1993, said office sent to the parties a Notice of Sheriff's Sale, therein announcing that petitioners' mortgaged property will be sold in a public auction to be conducted on 11 August 1993 at 10:00 o'clock in the morning, copies of which notice were posted in several conspicuous places within the sheriff's territorial jurisdiction.

As announced, on 11 August 1993, at 10:00 o'clock in the morning, the public auction sale was held and the mortgaged property sold to respondent Carmencita San Diego as the highest bidder for P2,000,000.00, as evidenced by the Sheriff's Certificate of Sale issued in her favor on 07 October 1993.

On 29 October 1993, respondent San Diego caused the registration of the same sheriff's certificate of sale with the Office of the Register of Deeds, Makati City, and duly inscribed on the same date at the dorsal side of the petitioners' TCT No. (432281) S-21000.

With the petitioners having failed to redeem their property within the 1-year redemption period from the date of inscription of the sheriff's certificate of sale, as provided for in Act No. 3135, as amended, the San Diegos caused the consolidation of title over the foreclosed property in their names.

Then, on 09 November 1994, before the Regional Trial Court at Makati City, petitioners filed their complaint for annulment of the extrajudicial foreclosure and auction sale, with damages. In their complaint, thereat docketed as Civil Case No. 94-2950, petitioners alleged that (1) said foreclosure and auction sale were null and void for failure to comply with the requirements of notice and publication, as mandated by Act 3135, as amended; (2) the mortgaged property was illegally foreclosed in the light of the settled rule that an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage document, in this case, P1,000,000.00, which amount was allegedly bloated by respondent Carmencita San Diego to P1,950,000.00; and (3) the San Diegos' application for consolidation of title was premature because the husband, Benjamin San Diego, allegedly granted them an extension of the period of redemption up to 11 November 1994.

To the complaint, respondents interposed a *Motion to Dismiss*, therein alleging that said complaint failed to state a cause of action as no primary right of the petitioners had been violated since they actually failed to exercise their right of redemption within the one-year redemption period, adding that petitioners never took any action which may stall the running of the same period, thereby leaving them no further right or interest in the property in question.

In an order dated 13 January 1995, the trial court granted respondents' motion to dismiss and accordingly dismissed petitioners' complaint, saying that the latter's cause of action, if any, is already barred by laches on account of their failure or neglect for an unreasonable length of time to do that which, by exercising due diligence, could or should have been done earlier. Further, the trial court ruled that petitioners' inaction constituted a waiver on their part.

Therefrom, petitioners went on appeal to the Court of Appeals in CA-G.R. CV No. 48896.

As stated at the outset hereof, the appellate court, in its decision of 12 December 1997, dismissed petitioners' appeal and affirmed *in toto* the trial court's order of dismissal. With their motion for reconsideration having been denied by the same court in its resolution of 10 March 1998,^[3] petitioners are now with us via the present recourse, faulting the Court of Appeals, as follows:

1. The Court of Appeals gravely erred in avoiding to resolve in the assailed Decision and in the questioned Resolution the basic issue as to whether or not the extra-judicial foreclosure and public auction sale of the subject parcel of land are valid and lawful when the amount stated in letter-request or the petition for extra-judicial foreclosure and in the notice of sheriff sale doubled the amount stipulated in the Amendment of Real Estate Mortgage;
2. The Court of Appeals has similarly committed serious error in considering that the complaint of the petitioner is a complaint for redemption when in the caption; in the body; and in the prayer of the complaint, petitioner spouses have sought the nullity as void ab initio the extra-judicial foreclosure and auction sale of the subject property;
3. The respondent Appellate Court likewise incredulously erred to have resolved the admissibility and probative value of the statement of account attached as Annex "E" of the complaint when it was not yet presented in evidence; because the stage of the case at the time the assailed dismissal order was issued, was yet in the period of pleadings;
4. The Court of Appeals has grievously erred in affirming the assailed dismissal order by declaring petitioner spouses to have been guilty of laches in failing to redeem during the legal period of redemption the foreclosed parcel of land; when the cause of the failure to redeem was the illegal increase by 100% of the original obligation, stated in the Amendment of Real Estate Mortgage and bloating of the redemption price from Two Million Pesos (P2,000,000.00) to Three Million Four Hundred Ninety One Thousand Two Hundred Twenty Five & 98/100 Pesos (P3,491,225.98).

We DENY.

The records indubitably show that at the time of the foreclosure sale on 11 August 1993, petitioners were already in default in their loan obligation to respondent Carmencita San Diego.

Much earlier, or on 27 April 1993, a final notice of demand for payment had been sent to them, despite which they still failed to pay. Hence, respondent Carmencita San Diego's resort to extrajudicial foreclosure, provided no less in the parties' *"Amendment of Real Estate Mortgage"*.

The rule has been, and still is, that in real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage and to have the mortgaged property seized and sold with the view of