

THIRD DIVISION

[G.R. No. 141853, February 07, 2001]

TERESITA V. IDOLOR, PETITIONER, VS. HON. COURT OF APPEALS, SPS. GUMERSINDO DE GUZMAN AND ILUMINADA DE GUZMAN AND HON. PRUDENCIO CASTILLO, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, BRANCH 220, QUEZON CITY, RESPONDENTS.

DECISION

GONZAGA-REYES, J.:

This is a petition for review on certiorari filed by petitioner Teresita Idolor which seeks to set aside the decision^[1] of the respondent Court of Appeals which reversed the Order^[2] of the Regional Trial Court of Quezon City^[3] granting Idolor's prayer for the issuance of a writ of preliminary injunction and the resolution denying petitioner's motion for reconsideration.^[4]

On March 21, 1994, to secure a loan of P520,000.00, petitioner Teresita Idolor executed in favor of private respondent Gumersindo De Guzman a Deed of Real Estate Mortgage with right of extra-judicial foreclosure upon failure to redeem the mortgage on or before September 20, 1994. The object of said mortgage is a 200-square meter property with improvements located at 66 Ilocos Sur Street, Barangay Ramon Magsaysay, Quezon City covered by TCT No. 25659.

On September 21, 1996, private respondent Iluminada de Guzman, wife of Gumersindo de Guzman, filed a complaint against petitioner Idolor before the Office of the Barangay Captain of Barangay Ramon Magsaysay, Quezon City, which resulted in a "Kasunduang Pag-aayos" which agreement is quoted in full^[5]:

"Kami, ang (mga) may sumbong at (mga) ipinagsusumbong sa usaping binabanggit sa itaas, ay nagkakasundo sa pamamagitan nito na ayusin ang aming alitan gaya ng sumusunod:

Na ako si Teresita V. Idolor of legal age ay nakahiram ng halagang P520,000.00 noong September 20, 1994.

Na ang nasabing halaga ay may nakasanlang titulo ng lupa (TCT No. 25659) under Registry receipt 3420 dated July 15, 1996.

Na ako si Teresita V. Idolor ay humihingi ng 90 days palugit (grace period) to settle the said amount.

Failure to settle the above account on or before December 21, 1996, I agree to execute a deed of sale with the agreement to repurchase without interest within one year.

Total amount of P1,233,288.23 inclusive of interest earned.

At nangangako kami na tutupad na tunay at matapat sa mga katakdaan ng pag-aayos na inilahad sa itaas."

Petitioner failed to comply with her undertaking; thus private respondent Gumersindo filed a motion for execution before the Office of the Barangay captain who subsequently issued a certification to file action.

On March 21, 1997, respondent Gumersindo De Guzman filed an extra judicial foreclosure of the real estate mortgage pursuant to the parties agreement set forth in the real estate mortgage dated March 21, 1994.

On May 23, 1997, the mortgaged property was sold in a public auction to respondent Gumersindo, as the highest bidder and consequently, the Sheriff's Certificate of Sale was registered with the Registry of Deeds of Quezon City on June 23, 1997.

On June 25, 1998, petitioner filed with the Regional Trial Court of Quezon City, Branch 220, a complaint for annulment of Sheriff's Certificate of Sale with prayer for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction against private respondents, Deputy Sheriffs Marino Cachero and Rodolfo Lescano and the Registry of Deeds of Quezon City alleging among others alleged irregularity and lack of notice in the extra-judicial foreclosure proceedings subject of the real estate mortgage. In the meantime, a temporary restraining order was issued by the trial court.

On July 28, 1998, the trial court issued a writ of preliminary injunction enjoining private respondents, the Deputy Sheriffs and the Registry of Deeds of Quezon City from causing the issuance of a final deed of sale and consolidation of ownership of the subject property in favor of the De Guzman spouses. The trial court denied the motion for reconsideration filed by the de Guzman spouses.

Spouses de Guzman filed with the respondent Court of Appeals a petition for certiorari seeking annulment of the trial court's order dated July 28, 1998 which granted the issuance of a preliminary injunction.

On September 28, 1999, the respondent court granted the petition and annulled the assailed writ of preliminary injunction. Teresita Idolor filed her motion for reconsideration which was denied in a resolution dated February 4, 2000.

Hence this petition for review on certiorari filed by petitioner Teresita V. Idolor. The issues raised by petitioner are: whether or not the respondent Court of Appeals erred in ruling (1) that petitioner has no more proprietary right to the issuance of the writ of injunction, (2) that the "Kasunduang Pag-aayos" did not *ipso facto* result in novation of the real estate mortgage, (3) that the "Kasunduang Pag-aayos" is merely a promissory note of petitioner to private respondent spouses; and (4) that the questioned writ of preliminary injunction was issued with grave abuse of discretion.

The core issue in this petition is whether or not the respondent Court erred in

finding that the trial court committed grave abuse of discretion in enjoining the private and public respondents from causing the issuance of a final deed of sale and consolidation of ownership of the subject parcel of land in favor of private respondents.

Petitioner claims that her proprietary right over the subject parcel of land was not yet lost since her right to redeem the subject land for a period of one year had neither lapsed nor run as the sheriff's certificate of sale was null and void; that petitioner and the general public have not been validly notified of the auction sale conducted by respondent sheriffs; that the newspaper utilized in the publication of the notice of sale was not a newspaper of general circulation.

We do not agree.

Injunction is a preservative remedy aimed at protecting substantive rights and interests.^[6] Before an injunction can be issued, it is essential that the following requisites be present: 1) there must be a right in esse or the existence of a right to be protected; 2) the act against which the injunction is to be directed is a violation of such right.^[7] Hence the existence of a right violated, is a prerequisite to the granting of an injunction. Injunction is not designed to protect contingent or future rights. Failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction or that the defendant has committed or has attempted to commit any act which has endangered or tends to endanger the existence of said right, is a sufficient ground for denying the injunction.^[8] The controlling reason for the existence of the judicial power to issue the writ is that the court may thereby prevent a threatened or continuous irreparable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated.^[9] It is to be resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation.^[10]

In the instant case, we agree with the respondent Court that petitioner has no more proprietary right to speak of over the foreclosed property to entitle her to the issuance of a writ of injunction. It appears that the mortgaged property was sold in a public auction to private respondent Gumersindo on May 23, 1997 and the sheriff's certificate of sale was registered with the Registry of Deeds of Quezon City on June 23, 1997. Petitioner had one year from the registration of the sheriff's sale to redeem the property but she failed to exercise her right on or before June 23, 1998, thus spouses de Guzman are now entitled to a conveyance and possession of the foreclosed property. When petitioner filed her complaint for annulment of sheriff's sale against private respondents with prayer for the issuance of a writ of preliminary injunction on June 25, 1998, she failed to show sufficient interest or title in the property sought to be protected as her right of redemption had already expired on June 23, 1998, i.e. two (2) days before the filing of the complaint. It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought - in other words, that she shows no equity.^[11] The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.^[12]

Petitioner's allegation regarding the invalidity of the sheriff's sale dwells on the