

FIRST DIVISION

[G.R. No. 129644, March 07, 2000]

CHINA BANKING CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, PAULINO ROXAS CHUA AND KIANG MING CHU CHUA, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us is a petition for review on certiorari assailing the decision rendered by the Court of Appeals on June 26, 1997 which affirmed the decision of the Regional Trial Court of Pasig, Metro Manila, Branch 163 in Civil Case No. 63199 entitled "*Paulino Roxas Chua and Kiang Ming Chu Chua, Plaintiffs versus China Banking Corporation, the Sheriff of Manila and the Register of Deeds of Pasig, Defendants.*"

The facts of the case are not in dispute:

Alfonso Roxas Chua and his wife Kiang Ming Chu Chua were the owners of a residential land in San Juan, Metro Manila, covered by Transfer Certificate of Title No. 410603. On February 2, 1984, a notice of levy affecting the property was issued in connection with Civil Case No. 82-14134 entitled, "*Metropolitan Bank and Trust Company, Plaintiff versus Pacific Multi Commercial Corporation and Alfonso Roxas Chua, Defendants,*" before the Regional Trial Court, Branch XLVI of Manila. The notice of levy was inscribed and annotated at the back of TCT 410603. Subsequently, Kiang Ming Chu Chua filed a complaint against the City Sheriff of Manila and Metropolitan Bank and Trust Company, questioning the levy of the abovementioned property. She alleged that the judgment of the court in Civil Case No. 82-14134 against Alfonso Roxas Chua could not be enforced against TCT 410603 inasmuch as the land subject thereof was the conjugal property of the spouses.

The parties thereafter entered into a compromise agreement to the effect that the levy on TCT 410603 was valid and enforceable only to the extent of the ½ undivided portion of the property pertaining to the conjugal share of Alfonso Roxas Chua.

Meanwhile, on June 19, 1985, petitioner China Bank filed with the Regional Trial Court of Manila, Branch 29, an action for collection of sum of money against Pacific Multi Agro-Industrial Corporation and Alfonso Roxas Chua which was docketed as Civil Case No. 85-31257. The complaint was anchored on three (3) promissory notes with an aggregate amount of P2,500,000.00 plus stipulated interest.

On November 7, 1985, the trial court promulgated its decision in Civil Case No. 85-31257 in favor of China Banking Corporation, the dispositive portion of which reads as follows:

PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff and against the defendants; ordering the latter to pay, jointly and severally, the former, under the first cause of action, the sum of P1,800,000.00, representing the unpaid of the promissory note, plus 21% interest per annum and an additional amount equivalent to 1/10 of 1% per day of the total amount due, as penalty both from and after October 4, 1983, until fully paid; under the second cause of action, to pay the plaintiff the amount of P350,000.00 representing the unpaid principal of the promissory note, plus 12% interest per annum and an additional amount equivalent to 1/10 of 1% per day of the total amount due, as penalty both from and after September 14, 1983, until fully paid; under the third cause of action, to pay the plaintiff the further sum of P350,000.00, representing the unpaid principal of the promissory note, plus 12% interest per annum and an additional amount equivalent to 1/10 % of 1% per day of the total amount due as penalty both from and after September 14, 1983, until fully paid; and to pay the same plaintiff the amount equivalent to 10% of the foregoing sums, as and for attorney's fees, such amount to bear the same rate of interest as the principal obligation under each promissory note, compounded monthly, until fully paid; and to pay the costs of suit.

SO ORDERED.^[1]

On September 8, 1986, an alias notice of levy on execution on the one-half (½) undivided portion of TCT 410603 belonging to Alfonso Chua was issued in connection with Civil Case 82-14134. The notice was inscribed and annotated at the back of TCT 410603 on September 15, 1986 and a certificate of sale covering the one-half undivided portion of the property was executed in favor of Metropolitan Bank and Trust Company. The certificate of sale was inscribed at the back of said TCT on December 22, 1987.

Meanwhile, Pacific Multi Agro-Industrial Corporation and Alfonso Roxas Chua's appeal was dismissed by the Court of Appeals on September 29, 1988 for failure to file brief.^[2]

On November 21, 1988, Alfonso Roxas Chua executed a public instrument denominated as "Assignment of Rights to Redeem," whereby he assigned his rights to redeem the one-half undivided portion of the property to his son, private respondent Paulino Roxas Chua.^[3] Paulino redeemed said one-half share on the very same day. The instrument was inscribed at the back of TCT 410603 as Entry No. 7629, and the redemption of the property by Paulino was inscribed as Entry No. 7630, both dated March 14, 1989.^[4]

On the other hand, in connection with Civil Case No. 85-31257, another notice of levy on execution was issued on February 4, 1991 by the Deputy Sheriff of Manila against the right and interest of Alfonso Roxas Chua in TCT 410603. Thereafter, a certificate of sale on execution dated April 13, 1992 was issued by the Sheriff of Branch 39, RTC Manila in Civil Case No. 85-31257, in favor of China Bank and inscribed at the back of TCT 410603 as Entry No. 01896 on May 4, 1992.^[5]

On May 20, 1993, Paulino Roxas Chua and Kiang Ming Chu Chua instituted Civil

Case No. 63199 before the RTC of Pasig, Metro Manila against China Bank, averring that Paulino has a prior and better right over the rights, title, interest and participation of China Banking Corporation in TCT 410603; that Alfonso Roxas Chua sold his right to redeem one-half (1/2) of the aforesaid conjugal property in his favor on November 21, 1988 while China Banking Corporation acquired its right from the notice of levy of execution dated January 30, 1991; that the assignment of rights in his favor was annotated at the back of TCT 410603 on March 14, 1989 and inscribed as Entry No. 7629, and his redemption of the property was effected in an instrument dated January 11, 1989 and inscribed and annotated at the back of TCT 410603 on March 14, 1989, two years before the annotation of the rights of China Banking Corporation on TCT 410603 on February 4, 1991.

The trial court rendered a decision on July 15, 1994 in favor of private respondent Paulino Roxas Chua and against China Banking Corporation, the decretal portion of which reads:

WHEREFORE, foregoing premises considered, this Court finds sufficient preponderance of evidence against defendants in favor of plaintiffs and therefore render (sic) judgment ordering defendant to pay plaintiffs:

- a) P100,000.00 as moral damages and P50,000.00 as exemplary damages plus 12% interest per annum to start from the date of this decision until fully paid;*
- b) P100,000.00 attorney's fee; and*
- c) the cost of the suit.*

The writ of preliminary injunction issued by this Court on 30 June 1993 enjoining China Banking Corporation, the Sheriff of Manila and the Register of Deeds of San Juan, their officers, representatives, agents or persons acting on their behalf from causing the transfer of possession, ownership and certificate of title or otherwise disposing of the property covered by TCT No. 410603 in favor of defendant bank or to any other person is hereby made permanent. The Register of Deeds of San Juan, Metro Manila is also hereby ordered to cancel all annotations in TCT No. 410603 in favor of defendant China Banking Corporation adverse to the rights and interest of plaintiffs.

SO ORDERED.^[6]

The trial court ruled that the assignment was made for a valuable consideration and was executed two years before petitioner China Bank levied the conjugal share of Alfonso Roxas Chua on TCT 410603. The trial court found that Paulino redeemed the one-half portion of the property, using therefor the amount of P100,000.00 which he withdrew from his savings account as evidenced by his bankbook and the receipts of Metrobank for his payment of the redemption price. The court noted that Paulino at that time was already of age and had his own source of income.

On appeal, the Court of Appeals affirmed the ruling of the trial court. It held that petitioner China Bank had been remiss in the exercise of its rights as creditor; and that it should have exercised its right of redemption under Sections 29 and 30, Rule 39 of the Rules of Court.