

FIRST DIVISION

[G.R. No. 138141, November 15, 2000]

AMELIA MARINO, PETITIONER, VS. SPOUSES FRANCISCO AND GLORIA SALCEDO, RESPONDENTS.

DECISION

PUNO, J.:

This is a petition for review assailing the decision and resolution^[1] of the Court of Appeals^[2] which ordered the recovery of possession by the respondent spouses Francisco and Gloria Salcedo of a land mortgaged to petitioner Amelia Marino.

The relevant facts are as stated in the decision of the Court of Appeals, viz:

"On October 3, 1990, [spouses Salcedo] obtained from [Amelia and her late husband, Cecilio Marino] a loan in the amount of P98,000.00, secured by a mortgage on the former's real property described as follows:

`A certain residential lot, located at No. 36-B Ibarra St., E.B.B., Olongapo City, containing an area of 100 square meters, more or less, bounded on the North by Jaime Labrador; on the South by Lot 546, Ts-308; on the West by Lot 546, Ts-308; and on the East by Road; declared under T.D. No. 002-3118R. A two-storey residential house, located and erected thereon, containing a floor area of 26/26 sq. meters, more or less[,] (m)ade of cement, CHB and wood and under G.I. Roofings declared under T.D. No. 002-3118R; and with an assessed value of P3,600.00 and P4,290.00 respectively. (Annex A, Real Estate Mortgage; p. 25, Rollo).'

The parties' agreement was embodied in a "Real Estate Mortgage" contract. However, despite [spouses Salcedo's] failure to pay the loan obligation within the one (1) year period provided for in the Real Estate Mortgage contract, petitioners and private respondents again executed an Agreement on December 13, 1993, extending the period of the payment of the loan obligation for another one (1) year. Executed before the Office of the Barangay Captain of Barangay East Bajac Bajac, the Agreement contained the stipulation that `failure of the mortgagor to comply with his/her obligation, he/she will surrender voluntarily the real estate mortgaged to the mortgagee.' (Annex D, Agreement; p. 31 Rollo).

[Spouses Salcedo] again failed to pay their indebtedness. Thus, on February 1, 1994, [spouses Marino] filed before the Municipal Trial Court in Cities of Olongapo City a `Motion for the Issuance of a Writ of Execution' (p. 53, Rollo), alleging that [spouses Salcedo] failed to comply

with their obligation under the Agreement, and that said Agreement has not been repudiated nor a petition for nullification thereof filed before the proper court.

[Spouses Salcedo] filed their Opposition to the motion contending that the Agreement was entered into in violation of the Local Government Code since said Agreement was not coursed through the Lupon or the Pangkat, and that the document was not attested to by the Lupon chairman or the Pangkat chairman. [They] also argued that the agreement is null and void since the stipulation providing that in case [they], as mortgagors, failed to comply with their obligation, they will voluntarily surrender the mortgaged property to [the mortgagees], violates the prohibition of Article 2088 of the Civil Code on *pactum commissorium* stipulations.

The trial court denied [spouses Marino's] motion for execution on the ground that the same may be enforced only after June 13, 1994.

On July 13, 1994, [spouses Marino] again filed a motion for execution which was again denied by the trial court on the ground that there was no sufficient compliance with the Local Government Code requiring prior conciliation as a pre-condition for the filing of an action in court.

[Spouses Marino] sought a reconsideration thereof arguing that the Agreement entered into by them is an amendment of the Real Estate Mortgage contract, and should be construed as a "Real Estate Mortgage with right of possession or Antichresis" and that the stipulation providing for the voluntary surrender by [spouses Salcedo] of the mortgaged property is an additional security for the loan. [They] also contend that there is no violation of the prohibition on *pactum commissorium* stipulations because there is no agreement that [they] can dispose of the mortgaged property, and that the only issue in the Agreement is their right of possession over the mortgaged property. [They] likewise attached a "Certification" dated July 26, 1994, and issued by the Barangay Captain certifying that the dispute between private respondents and petitioners had already been brought to the attention of the Office of the Barangay Captain.

After conducting hearings on [spouses Marino's] motion for reconsideration, the trial court issued an Order dated August 9, 1996 granting the same. Thus, the trial court ordered the issuance of a writ of execution in favor of [spouses Marino]. The trial court, in ruling in favor of [spouses Marino], ruled that:

`The Court, in assessment of the written agreement, together with the Barangay Certifications submitted by the mortgagee, has found out that although the said agreement lacks the attestation contemplated by law, the purpose of the mediation conducted by the barangay captain has been convincingly achieved.

The allegation of the mortgagor that the amicable settlement is null and void and contrary to law, considering that the surrender of possession is tantamount to a *pactum commissorium*, in violation of Article 2288 (sic) of the Civil Code, is untenable.

In this case, it is crystal clear that what was expressly stipulated in the agreement was that the mortgagor will voluntarily surrender the mortgaged property to the mortgagee, in case of non-payment of their obligation. There was no stipulation that the property will be appropriated by the mortgagee in case of non-compliance with the said agreement. What is prohibited by Article 2288 (sic) dealing with *pactum commissorium*, is the automatic appropriation by the creditor or pledgee in payment of the loan at the expiration of the period agreed upon. (pp. 1-2, Order dated August 9, 1996, Rollo).

[Spouses Salcedo] filed a motion to recall the writ of execution, claiming that they are ready to pay their indebtedness, which was then deposited with the trial court. [Spouses Marino] filed their opposition to the motion.

On August 23, 1996, a writ of execution was issued addressed to the City Sheriff who was commanded to cause [spouses Salcedo] to vacate the disputed premises and surrender the same to [spouses Marino]. A 'Notice to Vacate' (Annex 'F'; p. 33, Rollo) was then issued by the Clerk of Court and City Sheriff ordering [spouses Salcedo] to forthwith vacate and surrender possession of the mortgaged property to [spouses Marino].

On September 16, 1996, a 'Certificate of Possession' (Annex 'G'; p. 34, Rollo) was issued by the Clerk of Court and City Sheriff delivering the mortgaged property to [spouses Marino].

On June 6, 1997, [spouses Salcedo] filed the complaint for recovery of possession which, as hereinabove stated, was dismissed by the trial court for lack of prior barangay conciliation.

On appeal to the Regional Trial Court, the trial court's dismissal was affirmed."^[3]

Spouses Salcedo appealed the decision of the Regional Trial Court^[4] to the Court of Appeals. On October 28, 1998, the Court of Appeals reversed the decision of the trial court. It further held that the spouses Salcedo were entitled to recover possession of their mortgaged property since the agreement to extend the term of