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WHEREFORE, the judgment appealed from is hereby AFFIRMED with the modification that the indemnity is increased to THIRTY THOUSAND PESOS (₱30,000.00), and one-half (½) of the costs shall be paid by each of the accused-appellants.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, De la Fuente, and *Alampay, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-40095. July 29, 1985]

AMPARO F. LIM and RODRIGO C. LIM, *petitioners, vs.* **THE COURT OF APPEALS, EUGENIO LAMBERANG and THE DIRECTOR OF LANDS**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; WHEN SALE INVALID.— It should appear clear that when the Disputed Property was sold at public auction on February 28, 1959, ALEMAN, as judgment debtor, was no longer the owner of the Disputed Property, ownership having been acquired by LIM on January 19, 1959. The sale to LAMBERANG could not have been valid.

2. ID.; ID.; ID.; PERIOD OF REDEMPTION.— At the very least, LIM should have been allowed to redeem the Disputed Property within the one year period from February 28, 1959, which she offered to do on February 27, 1960. The mortgage in her favor was executed on February 1, 1957, while the judgment against ALEMAN was rendered on June 18, 1956. The mortgage was subsequent to the judgment.

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APPEARANCES OF COUNSEL

Balaba, Lim and Varias for petitioners.

Lood, Diel, Guzman, Calonia & Associates for respondent Lamberang.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

In this Petition for Review on *Certiorari*, petitioners assail the Decision of respondent Appellate Court in its Case No. CA-G.R. No. 35006-R. We have decided to reverse on the basis of the facts of the controversy and of considerations hereunder to be expounded:

1. According to respondent Court: "Mauricio Manasil was the original occupant and claimant of a 100-hectare *forest* land (t.s.n., Oct. 24, 1963, pp. 11, 13 and 14) situated in barrio Luna, municipality of Claveria, province of Misamis Oriental."[1] The land was occupied for "agricultural" purposes. It became alienable on March 28, 1950, the area being declared alienable and disposable and released as agricultural land under Forestry Administrative Order No. 4-51 (Exhibits "B-1" and "B-2").

2. After the death of Manuel Manasil, his son Mauricio "inherited" the land, declared the same for tax purposes in his name under Tax Declaration No. 4744 issued in 1930, paid realty taxes on the land from 1927, and inheritance tax on September 29, 1953 (Exhibit "5-Intervenor"). He had introduced improvements on the land.

3. It appears that, in 1948, Mauricio sold two parcels within the land, one of 11 hectares and the other of 10 hectares, to Catalino ALEMAN. Those two parcels constitute the Disputed Property in this case.

4. After the sale to him, ALEMAN declared the Disputed Property for tax purposes in his name under Tax Declarations

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[1] p. 8, CA Decision; p. 159, *Rollo*.

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No. 4979 and 4980. On May 31, 1956, he applied for a Free Patent over the Disputed Property (FPA No. 16-1840).

5. On February 1, 1957, ALEMAN mortgaged the Disputed Property (or his "rights") to petitioner Amparo LIM to secure the payment of a loan of ₱1,300.00 (Exhibit "C"). Due to ALEMAN's failure to pay the loan on due date, upon LIM's complaint in Civil Case No. 1435 of the Court of First Instance of Misamis Oriental, the mortgage was foreclosed. Said respondent Court: "The mortgage was foreclosed on January 17, 1957 (**set in January 19, 1959**) . . . after which **she took possession of the two parcels** of land."[2]

6. On March 3, 1960, for the sum of ₱3,000.00, ALEMAN further sold the Disputed Property to LIM (Exhibit "D") who, on the same day, filed a free patent application in her name (FPA No, 16-6769), ALEMAN's previous application being cancelled. The sale was evidently made to strengthen LIM's rights to the Disputed Property. LIM declared the Disputed Property for taxation purposes in her name on May 6, 1960, and was issued Tax Declarations 8438 and 8439, which cancelled the Tax Declarations in ALEMAN's name.

7. In the meanwhile, on February 29, 1959, the Deputy Sheriff of Misamis Oriental had levied upon and sold the Disputed Property at public auction to satisfy a judgment for ₱1,471.96, with interest, rendered on June 18, 1956 by the Municipal Court of Cagayan de Oro against ALEMAN in Civil Case No. 302, entitled "*Soc Chao vs. Catalino Aleman.*" The highest bidder was Eugenio LAMBERANG, and the corresponding certificate of sale was executed in his favor.

8. On February 27, 1960, within one year after the auction sale, LIM offered to redeem the Disputed Property, and she deposited the amount of ₱2,400.00 with the Sheriff, but LAMBERANG refused to accept the same. Later, LIM withdrew the deposit on March 11, 1960, after ALEMAN had "sold" the Disputed Property to her. It may be mentioned that after LIM

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[2] p. 10. CA Decision; p. 159. *Rollo.*

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had foreclosed the Disputed Property on January 19, 1959, she acquired the right to redeem,[3] and LAMBERANG was in duty bound to allow her redemption of the Disputed Property.

9. On March 14, 1960, the Sheriff issued a deed of conveyance to LAMBERANG, which was recorded in the Office of the Register of Deeds of Misamis Oriental on March 16, 1960. LAMBERANG obtained a Writ of Possession on April 11, 1960 by virtue of which he entered and occupied the Disputed Property.

10. On October 31, 1960, LIM and her husband filed a case against the Provincial Sheriff for the annulment of the execution sale (Civil Case No. 1856) on the ground that the Disputed Property was still public land at the time of said sale and, therefore, could not be the subject of levy and execution. LAMBERANG was allowed to intervene in the case.

11. Ultimately, the trial Court ruled in favor of LIM on the ground that the Disputed Property was public land and could not be subjected to levy and sale at public auction. LAMBERANG, as Intervenor, brought the case on appeal to respondent Court, which reversed the judgment of the lower Court.

12. Two important dates were not given full appreciation neither by the trial Court, nor by respondent Court. The latter had expressly found: (a) "The mortgage was foreclosed on January 17, 1957 (**should be January 19, 1959**) . . . after which she (LIM) took possession of the two parcels of land." (b) "**On February 28, 1959**, the Deputy Sheriff of Misamis Oriental, Jose Velez Yasay, levied and sold at public auction the two parcels of land in question."[4] It should appear clear that when the Disputed Property was sold at public auction on February 28, 1959, ALEMAN, as judgment debtor, was no longer the owner of the Disputed Property, ownership having been

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[3] Section 29, Rule 39, Rules of Court.

[4] p. 10, CA Decision; p. 159; *Rollo*.

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acquired by LIM on January 19, 1959. The sale to LAMBERANG could not have been valid.

13. At the very least, LIM should have been allowed to redeem the Disputed Property within the one year period from February 28, 1959, which she offered to do on February 27, 1960. The mortgage in her favor was executed on February 1, 1957, while the judgment against ALEMAN was rendered on June 18, 1956. The mortgage was subsequent to the judgment.[5]

14. It is not necessary to rule on whether or not the Disputed Property had already become private property on the date of the public auction. The transactions herein mentioned were in regards to "rights" to the Disputed Property, irrespective of whether the physical property was or was not private property.

WHEREFORE, the Decision of respondent Court in its case CA-G.R. No. 35006-R is SET ASIDE and the judgment of the Court of First Instance of Misamis Oriental, annulling the auction sale of February 28, 1959, is reinstated.

Without costs.

SO ORDERED.

Teehankee, Plana, Relova, Gutierrez, Jr., De la Fuente, and *Alampay, JJ.*, concur.

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[5] See Section 29, Rule 39, Rules of Court.