Supreme Court E-Library

FIRST DIVISION

[G.R. No. 70987. January 30, 1987]

GREGORIO Y. LIMPIN, JR. and ROGELIO SARMIENTO, *petitioners, vs.* **INTERMEDIATE APPELLATE COURT and GUILLERMO PONCE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENT; FINAL AND EXECUTORY; AUTHORITY OF THE COURT OVER THEIR FINAL AND EXECUTORY JUDGMENT, EXPLAINED.**— Certain it is that courts have plenary authority and control over the execution of their final and executory judgments and orders. Indeed, once that authority is timely and properly invoked, it becomes the court's ministerial and mandatory function to direct execution. That authority lasts until the judgments are fully satisfied, subject only to the time limitations prescribed therefor. With particular reference to the execution of a judgment in a mortgage foreclosure action, the authority to direct and effect the same exists until the confirmation of the foreclosure sale (and issuance and implementation of the writ of possession), confirmation being the final act which disposes of the case.

2. **ID.; ID.; ID.; EXECUTION OF FINAL AND EXECUTORY JUDGMENTS MAY NO LONGER BE CONTESTED AND PREVENTED; REASON THEREFOR.**— Certain it is too, that execution of final and executory judgments may no longer be contested and prevented, and no appeal should he therefrom; otherwise, cases would be interminable, and there would be negation of the overmastering need to end litigations.

3. **ID.; ID.; ID.; ID.; EXCEPTIONS THEREOF.**— There may, to be sure, be instances when an error may be committed in the course of execution proceedings prejudicial to the rights of a party. These instances, rare though they may be, do call for correction by a superior court, as where — 1) the writ of execution varies the judgment 2) there has been a change in the situation of the parties making execution inequitable or unjust; 3) execution is sought to be enforced against property exempt

Supreme Court E-Library

from execution; 4) it appears that the controversy has never been submitted to the judgment of the court; 5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or, 6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority. In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. That mode of elevation may be either by appeal (writ of error or *certiorari* or by a special civil action of *certiorari),* prohibition, or *mandamus*.

4. **ID.; COURTS; INTERMEDIATE APPELLATE COURT; JURISDICTION; ESTOPPEL TO QUESTION COURT'S JURISDICTION APPLIED IN CASE AT BAR.**— The petitioners also question the jurisdiction of the Intermediate Appellate Court over their persons, alleging that they were not original parties to the action for judicial foreclosure. It appears, however, that despite awareness of this ostensible defect, they fully participated without objection in the *certiorari* and *mandamus* proceedings before the respondent Appellate Court. Having thus voluntarily appeared and seen the case through its final resolution, they cannot now be permitted to turn about and repudiate the Appellate Court's jurisdiction over them.

5. **CIVIL LAW; MORTGAGE; EFFECT OF THE REGISTRATION OF THE MORTGAGE; CASE AT BAR.**— It is well settled that a recorded mortgage is a right *in rem*, a lien on the property whoever its owner may be. The recordation of the mortgage in this case put the whole world, petitioners included, on constructive notice of its existence and warned everyone who thereafter dealt with the property on which it was constituted that he would have to reckon with that encumbrance. Hence, Limpin's subsequent purchase of the "interests and participation" of Butuan Bay Wood Export Corporation in the lots covered by TCTs Nos. 92836 and 92837, as well as the sale of the same to Sarmiento on November 21, 1981, were both subject to said mortgage. On the other hand, Ponce's purchase of the lots mortgaged to him at the foreclosure sale on October 12, 1983, was subject to no prior lien or encumbrance, and could in no way be affected or prejudiced by a subsequent or junior

Supreme Court E-Library

lien, such as that of Limpin. Petitioner Sarmiento having acquired no better right than his predecessor-in-interest, petitioner Limpin, his title must likewise fail. The fact that at the time Ponce foreclosed the mortgage on October 21, 1983, the lots had already been bought by Limpin and subsequently sold to Sarmiento is of no consequence, since the settled doctrine is that the effects of the foreclosure sale retroact to the date of registration of the mortgage, *i.e.*, March 1, 1973 in the present case.

APPEARANCES OF COUNSEL

Danilo A. Basa for petitioners.

Sycip, Salazar, Feliciano & Hernandez Law Office and Eugenio C. Lindo for private respondent.

D E C I S I O N

NARVASA, *J.*:

Assailed in this petition for review is the decision of the Intermediate Appellate Court in A.C.-G.R. No. 02516, entitled "*Guillermo Ponce, versus Hon. Antonio P. Solano, etc., et al.*," the dispositive portion of which reads —

"WHEREFORE, the orders dated October 16, 1983[1] and December 19, 1983 of the respondent court, so far as they deny the confirmation of the sale of the lots formerly covered by TCT Nos. 92836 and 92837, are SET ASIDE and the respondent court is hereby ORDERED to confirm the sale and issue a writ of possession to the petitioner with respect to the aforesaid lots, subject to the equity of redemption of the respondent Rogelio V. Sarmiento. Without costs.

SO ORDERED."

The conflict in claims resulting from the mortgage and subsequent sale to different persons of the same real property, and the execution sale thereof at a still later date at the instance of yet another party, is what is chiefly involved in the case at

[1] October 26. 1983 is the correct date of the order referred to.

Supreme Court E-Library

bar, as well as the matter of the remedies available to correct errors in the execution of a final and executory judgment.

On February 28, 1973, four lots covered by TCTs Nos. 92836, 92837, 92839 and 92840 of the Register of Deeds of Quezon City were mortgaged by the spouses Jose and Marcelina Aquino to Guillermo Ponce and his wife Adela (since deceased) as security for a loan of ₱2,200,000.00. The mortgages were registered on March 1, 1973. Two of the lots, those covered by TCTs Nos. 92836 and 92837, were afterwards sold in 1978 by the Aquinos to the Butuan Bay Wood Export Corporation, which caused an adverse claim to be annotated on the certificates of title on February 24, 1978.[2]

In 1979, Gregorio Y. Limpin, Jr. obtained a money judgment against Butuan Bay Wood Export Corporation in Civil Case No. 10463 of the Court of First Instance of Davao. To satisfy the judgment, the lots covered by TCTs Nos. 92836 and 92837 were levied upon on September 3, 1980 and sold at public auction to Limpin as the highest bidder for the sum of ₱517,485.41 on October 6, 1980. On order of the trial court, the covering titles were cancelled and in their stead TCTs Nos. 285450 and 285451 were issued to Limpin. On November 21, 1981, Limpin sold the two lots to Rogelio M. Sarmiento. By virtue of said sale, TCTs Nos. 285450 and 285451 were cancelled on November 4, 1983, and replaced by TCTs Nos. 307100 and 397124 in Sarmiento's name.[3]

On September 2, 1980 (a day before Limpin's levy on the two lots), Ponce filed suit against the Aquino spouses for judicial foreclosure of the mortgage over the Aquinos' four lots. The case was docketed as Civil Case No. Q-30726 of the former Court of First Instance of Quezon City. On June 8, 1982, judgment was rendered in favor of Ponce. After the judgment became final, the Trial Court, in an order dated September 13, 1983, directed the sale at public auction of the four (4) mortgaged

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[2] IAC Decision, Annex "A", Petition: *Rollo*, pp. 22-23.

[3] *Id.*, *Rollo*, p. 23.

Supreme Court E-Library

lots to satisfy the judgment. On October 12, 1983, the four lots, including those formerly covered by TCTs Nos. 92836 and 92837, were sold to Ponce himself whose bid of ₱5,200,000.00 was the highest and exactly correspond to the judgment debt. On the same day, the sheriff's certificate of sale was registered.[4]

Ponce then moved for the confirmation of the sale and the issuance of a writ of possession in his favor covering all the four lots. But the Trial Court, by order dated October 26, 1983, confirmed only the sale of the lots covered by TCTs Nos. 02839 and 92840, refusing to confirm the sale or issue a writ of possession in regard to the lots covered by TCTs Nos. 92836 and 92837 on the ground that those titles had already been cancelled and new ones issued to Gregorio F. Limpin, by order of February 16, 1982 of the Court of First Instance of Davao City in Civil Case No. 10463, already referred to.

Ponce filed a motion for reconsideration and notified Limpin. Limpin however refused to participate in the hearings contending that the Court had no jurisdiction over his person; but he did comment that the mortgage over the lots covered by TCTs Nos. 92836 and 92837 had been released by Ponce by virtue of a "Partial Release of Real Estate Mortgage" dated July 20, 1977. The Trial Court denied Ponce's motion for reconsideration, whereupon he sought corrective relief by filing a special civil action for *certiorari* and *mandamus* in the Intermediate Appellate Court, impleading Limpin and Rogelio M. Sarmiento, Limpin's vendee, as private respondents.[5]

After hearing and submission by the parties of extensive memoranda as well as documentary evidence, the respondent Appellate Court rendered the questioned decision on February 28, 1985, setting aside the judgment of the Trial Court which denied the confirmation of the sale of the lots formerly covered by TCTs Nos. 92836 and 92837, and ordering said Court to confirm the same and issue a writ of possession to Ponce with respect thereto, subject to Sarmiento's equity of redemption.

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[4] *Id.*, *Rollo*, pp. 23-24.

[5] *Id.*

Supreme Court E-Library

Hence, this petition for review, filed by Limpin and Sarmiento.

The petition should be denied.

The petitioners' contention that the action of *certiorari* and *mandamus* (instituted by Ponce in the Intermediate Appellate Court) was not the proper remedy is not well taken. The Appellate Court disposed of this preliminary issue as follows:

"Nor is there any merit in the argument of the respondents that petitioner's remedy is to appeal from the orders denying the motion for confirmation of the sale. The respondents claim that these orders are final orders and cite in support of their contention the decision in *Domalante vs. Martinez*, 20 SCRA 1136 (1967), where it was held that 'An order of confirmation in court foreclosure proceedings is a final order, not merely interlocutory. The right of appeal, therefore, has long been recognized.' The Court was there speaking of an order *confirming* the sale, as between the parties to a mortgage, not of an order, such as the ones herein in question, *denying* confirmation because a third party, not a party in the foreclosure proceedings, asserts a right to the properties sought to be foreclosed. Only a separate proceeding, such as the present case, could possibly determine the rights of such party. (See *Rivero de Ortega v. Natividad*, 71 Phil. 340 (1941).[6]

Certain it is that courts have plenary authority and control over the execution of their final and executory judgments and orders.[7] Indeed, once that authority is timely and properly invoked, it becomes the court's ministerial and mandatory function to direct execution.[8]

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[6] IAC Decision, pp. 4-5; *Rollo*, pp. 25-26.

[7] *Seavan Carrier Inc. vs. GTI Sportswear Corporation*, 137 SCRA 580; *Pelejo vs. Court of Appeals*, 116 SCRA 406; *Caminong vs. Ubay*, 96 SCRA 105; *Ipekdjian Merchandising Co., vs. Court of Tax Appeals, et al.*, 8 SCRA 59; *Santos vs. Acuña*, 100 Phil. 230; *Miranda vs. Tiangco*, 96 Phil. 526.

[8] *Garcia vs. Echiverri*, 132 SCRA 631; *Balintawak Construction Supply Corporation vs. Valenzuela*, 124 SCRA 331; *Republic v. Reyes*, 71 SCRA 450; *Carreon vs. Buissan*, 70 SCRA 57; *De Luna vs. Kayanan*, 61 SCRA 49; *Buenaventura vs. Garcia, et al.*, 78 Phil. 759; *Philippine Trust Co. vs. Santamaria*, 53 Phil. 463.

Supreme Court E-Library

That authority lasts until the judgments are fully satisfied, subject only to the time limitations prescribed therefor.[9] With particular reference to the execution of a judgment in a mortgage foreclosure action, the authority to direct and effect the same exists until the confirmation of the foreclosure sale (and issuance and implementation of the writ of possession), confirmation being the final act which disposes of the case.[10]

Certain it is too, that execution of final and executory judgments may no longer be contested and prevented, and no appeal should lie therefrom; otherwise, cases would be interminable, and there would be negation of the overmastering need to end litigations.[11]

There may, to be sure, be instances when an error may be committed in the course of execution proceedings prejudicial to the rights of a party. These instances, rare though they may be, do call for correction by a superior court, as where —

1) the writ of execution varies the judgment[12]

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[9] Sec. 6. Rule 39: *Republic vs. Court of Appeals*, 137 SCRA 220; *Arnaldo vs. Court of First Instance*, 73 SCRA 26; *David vs. Ejercito*, 71 SCRA 484; *Development Bank of the Philippines vs. Tañada*, 56 SCRA 470; *Tan Ching Ji vs. Mapalo*, 37 SCRA 510; *Donnelly vs. Court of First Instance of Manila*, 44 SCRA 381; *Philippine Refining Company, Inc. vs. Flores*, 39 SCRA 577.

[10] *Lonzame vs. Amores*, 134 SCRA 386; *Philippine National Bank vs. Adil*, 118 SCRA 110; *Rural Bank of Oroquieta (Misamis Occidental) Inc. vs. Court of Appeals*, 101 SCRA 5; *De Los Angeles vs. Court of Appeals*, 61 SCRA 369; *Ocampo vs. Domalanta*, 20 SCRA 1136; *Clemente vs. H.E. Heacock Co.*, 20 SCRA 115; *Alto Insurance Co., Inc. vs. Eleuterio Limacaco, et al.*, 56 O.G. 3746.

[11] *Heirs of Pedro Guminpin vs. Court of Appeals*, 120 SCRA 687; *Fariscal Vda. de Emnas, et al. vs. Emnas, et al.*, 95 SCRA 470; *Quintos vs. Republic*, 78 SCRA 547; *Soliven vs. WCC*, 77 SCRA 518; *Bilbao vs. Republic*, 8 SCRA 177; *Daquis vs. Bustos*, 94 Phil. 913; *Contreras, et al. v. Felix, et al.*, 78 Phil. 540; *Layda vs. Legaspi*, 39 Phil. 84; *Dy Cay vs. Crossfield & O'Brien*, 38 Phil. 521; *Molina vs. de la Riva, et al.*, 8 Phil. 569.

[12] *Pamantasan ng Lungsod ng Maynila vs. Hon. Intermediate Appellate Court, et al.*, G.R. No. 65439 (UDK-7316), July 31, 1986; *De Guzman*

Supreme Court E-Library

2) there has been a change in the situation of the parties making execution inequitable or unjust;[13]

3) execution is sought to be enforced against property exempt from execution;[14]

4) it appears that the controversy has never been submitted to the judgment of the court;[15]

5) the terms of the judgment are not clear enough and there remains room for interpretation thereof;[16] or,

6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority;[17]

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vs. Court of Appeals, 137 SCRA; *Pastor, Jr. vs. Court of Appeals*, 122 SCRA 885; *Malacora vs. Court of Appeals*, 117 SCRA 435; *Imperial Insurance, Inc. vs. De los Angeles*, 111 SCRA 24; *Windor Steel Manufacturing Co., Inc. vs. Court of Appeals*, 102 SCRA 275; *Uytiepo vs. Aggabao*, 35 SCRA 186; *Manila Railroad Co., vs. Yatco, et al.*, 23 SCRA 735; *Corpus vs. Alikpala*, 22 SCRA 104; *Silvestre, et al. vs. Torres, et al.*, 57 Phil. 885; *Bank of the Philippine Islands vs. Green*, 48 Phil. 284.

[13] *Luna vs. Intermediate Appellate Court*, 137 SCRA 7; *Cabrias vs. Adil*, 135 SCRA 354; *Central Textile Mills, Inc. vs. United CMC Textile Workers Union-(TGWF)*, 94 SCRA 883; *Ang vs. Navarro*, 81 SCRA 458 citing *City of Cebu vs. Mendoza*, 66 SCRA 174; *Laurel vs. Abalos*, 30 SCRA 281; *De los Santos vs. Rodriguez, et al.*, 22 SCRA 451; *Abellana vs. Dosdos*, 13 SCRA 244 citing *Candelaria vs. Canizares*, 114 Phil. 672 in turn citing *City of Butuan vs. Hon. Ortiz*, 113 Phil. 636; *Vda. de Albar vs. Carandang*, 6 SCRA 211; *Hernandez, et al. vs. Clapis, et al.*, 98 Phil. 684; *Ocampo vs. Sanchez*, 97 Phil. 472; *Ki Kim Tho vs. Sanchez*, 82 Phil. 776; *Cunanan vs. Rodas*, 78 Phil. 800; *Amor vs. Jose*, 77 Phil. 703; *Chua Lee vs. Mapa*, 51 Phil. 624; *Warner Barnes & Co. vs. Jaucian*, 13 Phil. 4; *Molina vs. De la Riva*, 8 Phil. 569.

[14] Section 12, Rule 39, Rules of Court; see also Articles 223, 231, 232, 243, 247, 301, 1708, 2026, *Civil Code of the Philippines*.

[15] *Yulo vs. Powell*, 36 Phil. 732.

[16] *Imperial Insurance Inc. vs. De los Angeles*, 111 SCRA 24; *Heirs of Juan D. Francisco vs. Muñoz Palma*, 37 SCRA 753.

[17] *Luna vs. IAC*, 137 SCRA 7; *De Guzman vs. CA*, 137 SCRA 730; See also Feria, *J., Civil Procedure*, 1969 ed., pp. 542-43 citing *Amor vs. Jugo, et al.*, 77 Phil. 703.

Supreme Court E-Library

In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. That mode of elevation may be either by appeal (writ of error or *certiorari*[18]) or by a special civil action of *certiorari*, prohibition, or *mandamus*.[19]

The petitioners also question the jurisdiction of the Intermediate Appellate Court over their persons, alleging that they were not original parties to the action for judicial foreclosure. It appears, however, that despite awareness of this ostensible defect, they fully participated without objection in the *certiorari* and *mandamus* proceedings before the respondent Appellate Court. Having thus voluntarily appeared and seen the case through its final resolution, they cannot now be permitted to turn about and repudiate the Appellate Court's jurisdiction over them.

This Court has ruled:

"* * * And as we have previously quoted approvingly 'a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.' While the jurisdiction of a tribunal may be challenged at any time, sound public policy bars the petitioners from so doing after having procured that jurisdiction themselves, speculating on the fortunes of litigation.

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The petitioners, to borrow the language of Justice Bautista Angelo, 'cannot adopt a posture of double-dealing without running afoul of the doctrine of estoppel.' The principle of estoppel is in the interest of a sound administration of the laws. It should deter those who are disposed to trifle with the courts by taking inconsistent positions

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[18] *Romero, Sr. vs. Court of Appeals*, 40 SCRA 172.

[19] *Vda. de Sayman vs. Court of Appeals*, 121 SCRA 650; *Gonzales vs. Sayo*, 122 SCRA 607; *Pasta, Jr. vs. Court of Appeals*, 122 SCRA 885; *Belfast Surety and Insurance Co., Inc. vs. People*, 111 SCRA 385; *New Pacific Timber & Supply Co., Inc. vs. Seneris*, 101 SCRA 696; *De Luna vs. Kayanan*, 61 SCRA 49.

Supreme Court E-Library

contrary to the elementary principles of right dealing and good faith. For this reason, this Court closes the door to the petitioners' challenge against the jurisdiction of the Court of Appeals and will not even honor the question with a pronouncement."[20]

"Petitioner, however, is estopped, on ground of public policy, from invoking the plea of lack of jurisdiction after submitting itself to the jurisdiction of the Court of Appeals and assailing its jurisdiction only after an adverse judgment was rendered against the petitioner. * * *"[21]

The petitioners further argue that the Appellate Court erred in according superiority to the mortgage rights of Ponce over the levy and sale in favor of petitioner Limpin and the subsequent sale of the property to petitioner Sarmiento.

The Appellate Court correctly ruled that the rights and interests of petitioners Limpin and Sarmiento to the property in question are subordinate to those of respondent Ponce, who holds a prior and senior lien. According to said Court:

"* * * This case is controlled by the decision in *Santiago v. Dionisio*, 92 Phil. 495 (1935). In the *Santiago* case, Ramon San Diego mortgaged his land to Eulalia Resurreccion. Later he sold it to Apolonia Santiago. As the mortgage debt was not paid, Resurreccion had the mortgage foreclosed. The Supreme Court upheld the sale to Dionisio, subject, however, to the equity of redemption of Santiago. The Court stated:

. . . [T]he effect of the failure to implead a subordinate lien holder or subsequent purchaser or both is to render the foreclosure ineffective as against them, with the result that there remains in their favor the "unforeclosed equity of redemption." But the foreclosure is valid as between the parties to the suit. (*Ibid.*; 2 Moran's Rules of Court, 3rd ed., p. 239)

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[20] *Crisostomo vs. Court of Appeals*, 32 SCRA 54.

[21] *Summit Guaranty & Insurance Co., Inc. vs. Court of Appeals*, 110 SCRA 241; see also *Ong Ching vs. Ramolete*, 51 SCRA 13, *Manalo vs. Mariano*, 69 SCRA 80, *One Heart Sporting Club vs. Court of Appeals*, 108 SCRA 416, and *Paredes vs. Court of Appeals*, 132 SCRA 501.

Supreme Court E-Library

Applied to this case, this means that the sale to Ponce, as the highest bidder in the foreclosure sale of the two lots in question should have been confirmed, subject to Limpin's (and now Sarmiento's equity to redemption. As held in *Santiago v. Dionisio, supra*, the registration of the lands, first in the name of Limpin and later of Sarmiento, was premature. At most what they were entitled to was the registration of their equity of redemption."[22]

Moreover:

"The superiority of the mortgagee's lien over that of a subsequent judgment creditor is now expressly provided in Rule 39, Section 16 of the Revised Rules of Court, which states with regard to the effect of levy on execution that it shall create a lien in favor of a judgment creditor over the right title and interest of the judgment debtor in such property at the time of the levy, subject to the liens or encumbrances then existing."[23]

It is well settled that a recorded mortgage is a right *in rem*, a lien on the property whoever its owner may be.[24] The recordation of the mortgage in this case put the whole world, petitioners included, on constructive notice of its existence and warned everyone who thereafter dealt with the property on which it was constituted that he would have to reckon with that encumbrance. Hence, Limpin's subsequent purchase of the "interests and participation" of Butuan Bay Wood Export Corporation in the lots covered by TCTs Nos. 92836 and 92837, as well as the sale of the same to Sarmiento on November 21, 1981, were both subject to said mortgage. On the other hand, Ponce's purchase of the lots mortgaged to him at the foreclosure sale on October 12, 1983, was subject to no prior lien or encumbrance, and could in no way be affected or prejudiced by a subsequent or junior lien, such as that of Limpin.[25] Petitioner Sarmiento having acquired no better right than his predecessor-in-interest, petitioner Limpin, his title must likewise fail.

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[22] *Rollo*, p. 24.

[23] *Cabral vs. Evangelista*, 28 SCRA 1005.

[24] *Philippine National Bank vs. Mallorca*, 21 SCRA 694.

[25] *Bank of Phil. Islands vs. Noblejas*, 105 Phil. 418; *Gonzalo Puyat & Sons, Inc. vs. Philippine National Bank*, 4 SCRA 1257.

Supreme Court E-Library

The fact that at the time Ponce foreclosed the mortgage on October 21, 1983, the lots had already been bought by Limpin and subsequently sold to Sarmiento is of no consequence, since the settled doctrine is that the effects of the foreclosure sale retroact to the date of registration of the mortgage, *i.e.*, March 1, 1973 in the present case.

"* * * It is well to note that the mortgage in favor of the late Ramon Eugenio was annotated on November 13, 1952 at the back of the certificates of title in controversy, while the adverse claim was only annotated on the same certificate more than one year later, on December 21, 1953. Hence, the adverse claim could not effect the rights of the mortgagee; and the fact that the foreclosure of the mortgage and the consequent public auction sale have been effected long after the annotation of the adverse claim is of no moment, because the foreclosure sale retroacts to the date of registration of the mortgage."[26]

Anent the claim that respondent Ponce executed a deed of partial release of his mortgage on July 20, 1977, the evidence discloses that Ponce and Jose Aquino, the mortgagor, thereafter executed separate affidavits dated December 1, 1983, stating that the said partial release was void, not only for want of consideration but also for lack of the signatures of Ponce's two sons who at the time of the execution of the document, were co-mortgagees as successors and heirs of Mrs. Adela Ponce. Moreover, the Deed of Partial Release was not registered but had simply been attached, together with the Deed of Sale of the lands to Butuan Bay Wood Export Corporation, to said corporation's affidavit of adverse claim, the last being the document which was actually registered, on February 24, 1978 as already stated. Thus the mortgage in favor of Ponce and his late wife was still subsisting, when the notice of levy in favor of Limpin was annotated on the original of OCTs Nos. 92836 and 92837, and even when the execution sale in favor of Limpin pursuant to the levy was registered. Said annotation was cancelled only on November 25, 1981, after the properties had been sold on execution to Limpin on October 6, 1981.

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[26] *Bank of Philippine Islands vs. Noblejas, supra*, citing *Cruz vs. Sandoval*, 69 Phil. 736; and *Lopez vs. Vijandre*, 72 Phil. 56.

Supreme Court E-Library

The petitioners finally assert that respondent Ponce did not have a right of action for foreclosure over the lots in question in the Trial Court, much less to pursue this case, first in the respondent Intermediate Appellate Court and now, before this Court, because as early as August 18, 1976, he and his wife had donated the lots to the Doña Josefa Edralin Marcos Foundation and the donation had been accepted on August 31, 1976. However, that donation was never registered, a fact that the petitioners admit. Even if this Court were inclined to take up that issue now, though raised only for the first time, it is obvious that no resolution thereof could possibly improve the petitioners' position as against that of the private respondent or the latter's transferee.

WHEREFORE, the petition is denied, with costs against petitioners.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Gutierrez, Jr., Cruz, and *Gancayco, JJ.*, concur.

SECOND DIVISION

[G.R. No. 72307. January 30, 1987]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LORETO PILAPIL WITH FOUR (4) OTHER JOHN DOES,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; APPELLANT'S IDENTIFICATION NOT AFFECTED BY SUPPRESSED EVIDENCE AS HE WAS POSITIVELY IDENTIFIED BY VICTIM.— As to the allegation that the prosecution suppressed the evidence that the face of the witness was covered by an empty sack rendering appellant's identification by the witness doubtful this fact is of no moment.