Supreme Court E-Library

for respondent, stated in his verification that "he has read the foregoing complaint and that according to his information and belief the allegations therein contained are true and correct."

The above contention deserves scant consideration.

We rule that the defect in the original verification was cured when Renato Calma subsequently executed an affidavit to the effect that the allegations he made in support of the prayer for attachment were verified by him from the records of Comphil and the Securities and Exchange Commission. Moreover, petitioner had the opportunity to oppose the issuance of the writ.

As to the merit of the attachment order itself, we find that the allegations in the respondent's complaint satisfactorily justify the issuance of said order.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is DISMISSED for lack of merit. The Temporary Restraining Order dated February 2, 1983 is hereby DISSOLVED. Costs against the petitioners.

SO ORDERED.

Feria (Chairman), Fernan, Cruz, and *Paras, JJ.*, concur.

Alampay, J., took no part. *Cruz, J.,* was designated to sit in the Second Division.

EN BANC

[G.R. Nos. 62831-32. July 31, 1986]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **HON. INTERMEDIATE APPELLATE COURT and SPS. TEODORO and VICTORIA FLORENDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; LACK OF JURISDICTION; CANNOT BE RAISED FOR THE FIRST TIME ON

Supreme Court E-Library

APPEAL.— The issue of jurisdiction was first raised in the Court of Appeals. In the Court of Agrarian Relations, the PNB filed an answer setting up its special and affirmative defenses with counterclaim. The PNB through its counsel and representative actively participated in all the hearings. In fact, the parties agreed upon the issues of the case and the PNB never raised the issue on the alleged lack of jurisdiction of the Court of Agrarian Relations. On this score alone, the PNB is precluded from raising for the first time on appeal the issue of lack of jurisdiction of the Court of Agrarian Relations over C.A.R. Case No. 494. As we held in *Royales v. Intermediate Appellate Court* (127 SCRA 470) citing the earlier case of *Tijam v. Sibonghanoy* (23 SCRA 29): While petitioners could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent Planas. Upon this premise, petitioners cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily.

2. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; INDIVISIBILITY OF MORTGAGE OBLIGATION, EFFECT.**— Court of Agrarian Relation had jurisdiction over C.A.R. No. 494. The main issue raised in the case was whether or not the PNB should apply the face value of the Land Bank bonds to the outstanding obligation of the Florendos in consonance with Presidential Decree No. 251. It is to be recalled that while the PNB loan of the Florendos was secured by the mortgage of three lots, only one of the lots was placed under the land reform program and subjected to operation land transfer. Following the rule that a mortgage obligation is indivisible and that it cannot be divided among the different lots which are mortgaged to secure it (*Gonzales v. GSIS*, 107 SCRA 492), the inevitable effect of the placing of only one lot under the land reform program is that all the lots mortgaged, without distinction, are subject to the jurisdiction of the Court of Agrarian Relations. This is specially true in this case because the mode of payment chosen by the Florendos under Presidential Decree No. 251 subjects not only the loan value but also the outstanding balance of the obligation to settlement with Land Bank bonds. (*Gonzales v. GSIS, supra*) The case, therefore, clearly falls under Section 12(b) of Presidential Decree No. 946

Supreme Court E-Library

(Reorganizing the Court of Agrarian Relations, Streamlining their Procedures and For Other Purposes)

3. **LABOR AND SOCIAL LEGISLATION; LAND REFORM; MODES OF PAYMENT THROUGH LAND BANK; RULE.**— Section 80, Republic Act 3844, as amended provides for the modes of payment through the Land Bank of lands placed under the land reform program. The pertinent portion reads: "Section 80. Modes of payment.— The Bank shall finance the acquisition of farm lots under any of the following modes of settlement: x x x "In the event there is an existing lien or encumbrance on the land in favor of any Government lending institution at the time of acquisition by the Bank, the landowner shall be paid the net value of the land (i.e., the value of the land determined under Proclamation (sic) No. 27 minus the outstanding balance/s of the obligation/s secured by the lien/s or encumbrance/s), *and the outstanding balance/s of the obligations to the lending institutions/s shall be paid by the Land Bank in Land Bank bonds or other securities; existing charters of those institutions to the contrary notwithstanding.* A similar settlement may be negotiated by the Land Bank in the case of obligations secured by liens or encumbrances in favor of private parties or institutions.

4. **ID.; ID.; ID.; LAND BANK'S BONDS; MAY BE APPLIED AS PAYMENT FOR OBLIGATION IN FAVOR OF MORTGAGOR OVER LOTS PLACED UNDER LAND REFORM.**— This issue has been squarely resolved in the case of *Gonzales v. GSIS.* In resolving the issue, we ruled: We find the foregoing asseverations self-serving and in contravention of Presidential Decree No. 251, which ordains that "the *outstanding balance* of the obligations to the lending institution/s shall be paid by the Land Bank in Land Bank bonds or other securities." It is clear then that it is not only the *loan value* but the outstanding balance of the obligation that has to be settled with Land Bank bonds, and as discussed above, at their par or face value. The fact that only one agricultural land of the four securities was placed under land reform should make no difference. Although it may be conceded that the obligation of the petitioners is, in a sense, divisible because it can be settled partially according to current practice, it does not render the mortgage of four (4) parcels of land also divisible. Generally, the divisibility of the principal obligation is not affected by the indivisibility of the mortgage. The mortgage obligation is indivisible; that is, it cannot be divided among the

Supreme Court E-Library

different lots. A real estate mortgage voluntarily constituted by the debtor on two or more parcels of land is one and indivisible. Each and every parcel under mortgage answers for the totality of the debt. Being indivisible, the full value of the one parcel being paid for by the Land Bank should be applied in full to the outstanding loan obligation without any discounting. (*Gonzales v. GSIS*, 107 SCRA 492, 501-502).

APPEARANCES OF COUNSEL

Diaz Del Rosario Ilao & Basa Law Office for petitioner.
Luis F. de Castro for private respondents.

DECISION

GUTIERREZ, JR., *J.*:

These petitions ask for the review of the Court of Appeals' decisions in CA-G.R. No. 13913-CAR entitled Teodoro N. Florendo and Victoria B. Florendo, plaintiffs-appellants *v.* Land Bank of the Philippines, et al., defendants-appellees, Philippine National Bank, et al. defendants-appellants and CA-G.R. No. 13689-SP, entitled Philippine National Bank, petitioner-appellant *v.* Hon. Court of Agrarian Relations (12th Regional District, Branch IV, Dumaguete City), et al.

The subject matter of both cases was the decision of the Court of Agrarian Relations in CAR Case No. 494 for specific performance and damages filed by spouses Teodoro N. Florendo and Victoria B. Florendo against the Land Bank of the Philippines and the Philippine National Bank and some officers of the two government banks.

Plaintiffs-spouses Teodoro N. Florendo and Victoria B. Florendo are the registered owners of three parcels of land covered by OCT No. S-V-97, TCT No. F-T-11 and TCT No. MT-98 of the Register of Deeds, Negros Oriental. These properties were mortgaged with the Philippine National Bank to secure a loan obtained by the Florendos.

Upon the promulgation of Presidential Decree No. 27, the property covered by OCT-S-V-97 was subjected to operation land

Supreme Court E-Library

transfer of the land reform program. This parcel of land was, therefore, redistributed to 31 tenants. The value of the land was assessed at P148,716.48. The Florendos were paid under Section 80 of Republic Act 3844 as amended by Section 7 of Presidential Decree 251. Pursuant to this law, the Land Bank on August 9, 1979 remitted to the Philippine National Bank P94,500.00 in bonds and a check in the amount of P332.31 for a total of P94,832.31 to pay the outstanding obligation of the Florendos so that the lot covered by OCT No. S-V-97 could be released to the Land Bank and the "assignment of rights" could be accomplished by the Florendos.

The Philippine National Bank, however, notified the Florendos, that of the total Land Bank bonds of P94,500.00 the bank was willing to accept only P15,500.00 at face value and the balance of P79,400.00 at a 40% discount for a total discount of P31,600.00 thus crediting the Florendos with a total sum of P53,232.31. Included in said amount was the Land Bank check of P332.31. The Philippine National Bank stated that it had a policy of accepting Land Bank bonds on a one to one basis only in so far as property subjected to the agrarian land reform was concerned. All others were accepted at a discounted rate.

The Florendos, in a letter dated October 25, 1979, expressed their non-conformity with the Philippine National Bank's policy. The Philippine National Bank maintained its stand and refused to approve for registration with the Register of Deeds of Negros Oriental the "Assignment of Rights" and the release of lot No. S-V-97 to the Land Bank.

After trial on the merits, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Declaring plaintiff's loan and/or indebtedness with the defendant PNB secured by OCT S-V-97; TCT T-H-98 and TCT F-T-11 to have been duly paid and satisfied as of August, 1979;

2. Declaring the plaintiffs entitled to the release of all the above-mentioned collaterals held by the defendant PNB;

Supreme Court E-Library

3. Declaring the Land Bank bonds worth P94,832.31 and check in the amount of P332.31 as full satisfaction of plaintiffs account with the PNB;

4. Ordering the defendant PNB to deliver and release unto the plaintiffs OCT S-V-97, TCT T-H-98 and TCT F-T-11 held by them as securities for the plaintiffs loan;

5. Ordering defendant Land Bank to settle and pay the accounts of the herein plaintiffs with the Development Bank of the Philippines from the remaining balance of the value of the subject property;

6. Dismissing all other claims of plaintiffs for lack of evidence; and

7. Dismissing the counterclaim of defendant PNB for lack of merit. No pronouncement as to COSTS.

The Florendos and the Philippine National Bank appealed the lower court's decision to the Court of Appeals where the case was docketed as CA-G.R. No. 13913-CAR.

In the meantime upon motion of the Florendos, the trial court ordered the issuance of a writ of execution to enforce the decision. Consequently, the Philippine National Bank filed a petition for *certiorari* with preliminary prohibitory injunction to stay the execution and enforcement of the court's decision during the pendency of the appeal. This petition was docketed as CA-G.R. No. 13913-CAR. The Court of Appeals then issued the prayed for restraining order.

In its joint decision of the two cases, the Court of Appeals affirmed the judgment. The temporary restraining order earlier issued by the court was lifted to enable the immediate enforcement of the writ of execution issued in CAR Case No. 494 by the Court of Agrarian Relations.

On January 12, 1983, we issued a temporary restraining order enjoining the Sheriff of the Court of Agrarian Relations, Dumaguete City from enforcing or implementing the writ of execution issued by the Court of Agrarian Relations dated January 5, 1982 and/or the decision of the respondent Court of Appeals in CA-G.R. No. 13913-CAR and CA-G.R. No. 13689-SP until otherwise ordered by us.

The Philippine National Bank (PNB) alleges that the respondent Court of Appeals erred in not finding that:

Supreme Court E-Library

A

SECTION 80 OF THE AGRARIAN REFORM CODE, AS AMENDED, DOES NOT APPLY TO LANDS NOT SUBJECTED TO P.D. NO. 27 AND THEREFORE NOT COVERED BY AGRARIAN REFORM, IN WHICH CASE, ACCEPTANCE OF LAND BANK BONDS AS PAYMENTS IS NOT COMPULSORY.

B

P.D. NO. 694 (PNB CHARTER) INSTEAD APPLIES TO LANDS OR TO THAT PORTION OF THE MORTGAGE LIEN/ ENCUMBRANCE NOT SUBJECTED TO AGRARIAN REFORM, PARTICULARLY SECTION 80 OF THE AGRARIAN REFORM CODE, IN WHICH CASE, PNB MAY VALIDLY DETERMINE THE MANNER AND CONDITIONS IN WHICH LAND BANK BONDS MAY BE ACCEPTED AS PAYMENTS.

C

EVEN IF THE LAND BANK BONDS IN QUESTION WERE TAKEN BY PNB FULLY AT THEIR FACE VALUE, PRIVATE RESPONDENTS WOULD STILL REMAIN INDEBTED TO PNB.

D

SINCE PRIVATE RESPONDENT's LOAN WITH PNB REMAINS UNPAID, THE LATTER IS IN NO POSITION TO DISCHARGE OR RELEASE THE MORTGAGE CONSTITUTED ON OCT-S-V-97, MUCH LESS ON THE TWO OTHER TITLES.

E

COURT OF AGRARIAN RELATIONS IS WITHOUT JURISDICTION OVER SUBJECT MATTER OF THE CASE INSOFAR AS THE LANDS NOT SUBJECTED TO P.D. NO. 27 ARE CONCERNED. SAID LANDS ARE NOT COVERED BY AGRARIAN REFORM.

The issues raised above are as follows: (1) whether or not the Court of Agrarian Relations had jurisdiction over CAR Case No. 494; (2) whether or not Section 80, Republic Act 3844 as amended by Presidential Decree 251 applies to lands not covered by Presidential Decree No. 27; and (3) whether or not the Land Bank bonds of P94,500.00 and the Land Bank check of P332.31 remitted to the PNB are sufficient to pay the full outstanding obligation of the Florendos to the PNB.

Supreme Court E-Library

The issue of jurisdiction was first raised in the Court of Appeals. In the Court of Agrarian Relations, the PNB filed an answer setting up its special and affirmative defenses with counterclaim. The PNB through its counsel and representative actively participated in all the hearings. In fact, the parties agreed upon the issues of the case and the PNB never raised the issue on the alleged lack of jurisdiction of the Court of Agrarian Relations.

On this score alone, the PNB is precluded from raising for the first time on appeal the issue of lack of jurisdiction of the Court of Agrarian Relations over C.A.R. Case No. 494. As we held in *Royales v. Intermediate Appellate Court* (127 SCRA 470) citing the earlier case of *Tijam v. Sibonghanoy* (23 SCRA 29):

> While petitioners could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent Planas. Upon this premise, petitioners cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily.

More important, however, is that the Court of Agrarian Relation had jurisdiction over C.A.R. No. 494. The main issue raised in the case was whether or not the PNB should apply the face value of the Land Bank bonds to the outstanding obligation of the Florendos in consonance with Presidential Decree No. 251. It is to be recalled that while the PNB loan of the Florendos was secured by the mortgage of three lots, only one of the lots was placed under the land reform program and subjected to operation land transfer. Following the rule that a mortgage obligation is indivisible and that it cannot be divided among the different lots which are mortgaged to secure it (*Gonzales v. GSIS*, 107 SCRA 492), the inevitable effect of the placing of only one lot under the land reform program is that all the lots mortgaged, without distinction, are subject to the jurisdiction of the Court of Agrarian Relations. This is specially true in this case because the mode of payment chosen by the Florendos under Presidential Decree No. 251 subjects not only the loan value but also the outstanding balance of the obligation to settlement with Land Bank bonds. (*Gonzales v. GSIS,*

Supreme Court E-Library

supra) The case, therefore, clearly falls under Section 12(b) of Presidential Decree No. 946 (Reorganizing the Court of Agrarian Relations, Streamlining their Procedures and For Other Purposes) which provides:

Section 12. Jurisdiction over Subject Matter. The Court of Agrarian Relations shall have original and exclusive jurisdiction over.

x x x x x x x x x

(b) Questions involving rights granted and obligations imposed by laws, Presidential Decrees, Orders, Instructions, Rules and Regulations issued and promulgated in relation to the agrarian reform program.

The issue raised in relation to Section 80, Republic Act 3844 as amended by Presidential Decree 251 stems from the PNB's refusal to apply the Land Bank bonds worth P94,500.00 at face value to the entire outstanding obligation of the Florendos to the former.

Section 80, Republic Act 3844, as amended provides for the modes of payment through the Land Bank of lands placed under the land reform program. The pertinent portion reads:

"Section 80. Modes of payment.— The Bank shall finance the acquisition of farm lots under any of the following modes of settlement:

x x x x x x x x x

"In the event there is an existing lien or encumbrance on the land in favor of any Government lending institution at the time of acquisition by the Bank, the landowner shall be paid the net value of the land (i.e., the value of the land determined under Proclamation (sic) No. 27 minus the outstanding balance/s of the obligation/s secured by the lien/s or encumbrance/s), *and the outstanding balance/s of the obligations to the lending institutions/s shall be paid by the Land Bank in Land Bank bonds or other securities; existing charters of those institutions to the contrary notwithstanding.* A similar settlement may be negotiated by the Land Bank in the case of obligations secured by liens or encumbrances in favor of private parties or institutions. (Italics supplied)"

The PNB maintains that under this provision the Land Bank bond payments should be applied at face value only to that extent of the proportionate loan value of the collateral subjected to Presidential Decree No. 27 and the balance of the bonds, if any, should be accepted as payments to release the mortgage on the

Supreme Court E-Library

lands not covered by the land reform program at market value or market price pursuant to the PNB Charter.

Under this premise, the PNB submits that the Land Bank bonds worth P94,500.00 should be applied to the outstanding obligation of the Florendos as follows: (1) P15,500.00 (loan value of the land placed under PD 27) at face value and the remaining (2) P79,000.00 at a discount of 40% reducing its value to only P47,400.00.

The posture taken by PNB is not well-taken. This issue has been squarely resolved in the case of *Gonzales v. GSIS*, earlier cited. The spouses Gonzales obtained a housing loan of P80,000.00 from the respondent GSIS repayable in installments within fifteen years with interest using as collaterals residential lots and two parcels of agricultural land. The Gonzaleses were able to pay only a few monthly installments leaving an unpaid obligation of P135,884.82, including accumulated interest. The mortgaged agricultural lands were placed under the land reform program. The Land Bank took over and tried to pay the GSIS by remitting P23,505.00 in cash and P93,500.00 in Land Bank bonds. The GSIS refused acceptance unless the payment in bonds was to be discounted. The Gonzales spouses, therefore, filed a case to compel the GSIS to accept the Land Bank bonds at their face value as payment for their outstanding housing loan.

The GSIS' refusal to apply the Land Bank bonds at face value to the outstanding obligation of the Gonzales spouses was premised on the argument that the GSIS is not compelled to accept Land Bank bonds for the discharge of existing encumbrances on lands given as security to the GSIS but not acquired by the Land Bank under Presidential Decree No. 27. Like the PNB in the instant petition, the GSIS asserted that their Land Bank bonds payments should be applied at face value only to that portion of the loan secured by the land covered by Presidential Decree No. 27.

In resolving the issue, we ruled:

We find the foregoing asseverations self-serving and in contravention of Presidential Decree No. 251, which ordains that "the *outstanding balance* of the obligations to the lending institution/s shall be paid by the Land Bank in Land Bank bonds or other securities." (Italics supplied). It is clear then that it is not only the *loan value* but the outstanding balance

Supreme Court E-Library

of the obligation that has to be settled with Land Bank bonds, and as discussed above, at their par or face value.

The fact that only one agricultural land of the four securities was placed under land reform should make no difference. Although it may be conceded that the obligation of the petitioners is, in a sense, divisible because it can be settled partially according to current practice, it does not render the mortgage of four (4) parcels of land also divisible. Generally, the divisibility of the principal obligation is not affected by the indivisibility of the mortgage. The mortgage obligation is indivisible; that is, it cannot be divided among the different lots. A real estate mortgage voluntarily constituted by the debtor on two or more parcels of land is one and indivisible. Each and every parcel under mortgage answers for the totality of the debt. Being indivisible, the full value of the one parcel being paid for by the Land Bank should be applied in full to the outstanding loan obligation without any discounting. (*Gonzales v. GSIS*, 107 SCRA 492, 501-502).

The P94,500.00 Land Bank bonds remitted by the Land Bank to the PNB to pay the Florendos' obligation should, therefore, be applied at their face value.

The PNB, however, insists that the P94,500.00 bonds even if applied at face value and the Land Bank check worth P332.31 would not be sufficient to pay the outstanding obligation of the Florendos which, according to its computation, was P152,499.29 as of July 10, 1979.

The record is clear that at the time the Land Bank remitted the P94,500.00 bonds and the check worth P332.31, the outstanding obligation of the Florendos to the PNB as agreed upon by both banks was only P94,832.31. In fact the PNB insistence that after the discounting of P94,500.00, there would still be an excess of more than P30,000.00 on the outstanding obligation of the Florendos was based on the reason behind their refusal to surrender the titles of the mortgaged properties. Thus, Atty. Remollo, the PNB representative testified:

ATTY. REMOLLO:

The trouble is the plaintiff is asking for the release of the property. Assuming for the sake of argument that we will accept the bond who will pay the excess? The excess is more than P30,000.00? (TSN, June 24, 1980, p. 13).

Supreme Court E-Library

The more than P30,000.00 alleged excess was based on the P94,500.00 land bank bonds being valued by PNB at only P63.232.31. Adding the check worth P332.31 would yield the amount of P63,564.62 thus leaving an excess of P31,267.69, from Florendo's outstanding obligation of P94,832.31.

The Court of Appeals did not err, in rejecting the unilateral computation of the PNB on the amount of the Florendos' total obligation.

Considering the foregoing, we rule that the P94,500.00 bonds and the check worth P332.31 remitted by the Land Bank totally discharge the outstanding obligation of the Florendos to the PNB.

On the other hand, the Florendos challenge the decision of the then Court of Appeals on two grounds, namely, (1) the denial of their claim to moral and exemplary damages and (2) the failure of the appellate court to order the Land Bank to pay their indebtedness to the Development Bank of the Philippines (DBP) and release to them their torrens title (OCT-Q-V-22) over another parcel of land free from all liens and encumbrances. The challenge is not well taken.

We agree with the appellate court about there being no clear evidence that the named officers of the two banks acted in a wanton or willful manner in their dealings with Teodoro Florendo which would warrant the award for moral and exemplary damages.

On the second issue, we rule that the Land Bank has no responsibility to pay the Florendos' outstanding obligation to the DBP. The DBP loan was a separate transaction and has nothing to do with the PNB loan. Moreover, the loan of the Florendos' with the DBP was secured by a parcel of land different from those mortgaged with the PNB. The DBP is not a party in these two petitions.

It is to be noted, however, that the then Court of Appeals "affirmed in full" the decision of the Court of Agrarian Relations. Paragraph 5 of the dispositive portion of the decision of the lower court states:

WHEREFORE, judgment is hereby rendered as follows:

Supreme Court E-Library

x x x x x x x x x

5. Ordering the defendant Land Bank to settle and pay the amounts of the herein plaintiffs with the Development Bank of the Philippines from the remaining balance of subject property.

x x x x x x x x x

Considering our findings on this matter, this part of the decision of the lower court affirmed by the then Court of Appeals should be deleted.

WHEREFORE, the instant petitions are DISMISSED for lack of merit. The questioned decision of the then Court of Appeals is MODIFIED in that Number 5 of the dispositive portion of the decision of the Court of Agrarian Relations which was affirmed by the then Court of Appeals is hereby DELETED. The decision is AFFIRMED in all other respects. The temporary restraining order we issued dated January 5, 1982 is DISSOLVED.

SO ORDERED.

Teehankee C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Cruz, and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. 65439 (UDK-7316). July 31, 1986]

PAMANTASAN NG LUNGSOD NG MAYNILA, *petitioner, vs.* **HON. INTERMEDIATE APPELLATE COURT, HON. FILEMON FERNANDEZ, JR., HON. ALBINA MANALO-DANS, as Commissioners of Civil Service Commission and HERNANI P. ESTEBAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; CONSTRUED. — Execution is a remedy afforded