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## **SECOND DIVISION**

**[ G.R. No. 205785, January 20, 2016 ]**

**HELEN B. LUKBAN, PETITIONER, VS. OPTIMUM DEVELOPMENT  
BANK, RESPONDENT.**

### **D E C I S I O N**

**CARPIO, J.:**

#### **The Case**

Before the Court is a petition for review on certiorari assailing the 28 August 2012 Decision<sup>[1]</sup> and the 7 February 2013 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV No. 95150.

#### **The Antecedent Facts**

On 18 August 2005, the City Treasurer's Office of Marikina (City Treasurer) conducted an auction sale of tax delinquent real properties, which included the real property of Melba T. Atienza (Atienza) under Transfer Certificate of Title (TCT) No. 234408 particularly described as follows:

A parcel of land (Lot 8 of the conso-subd., plan (LRA) Pcs-30783, approved as non subd., project, being a portion of the conso- of Lots 7 & 9, Blk. 87, Pcs-4259, LRC Rec. No. 7672), in the Bo. of Concepcion, (Bayanbayanan), Mun. of Marikina, MM., Is. of Luzon. Bounded on the NE., points 4-1 by Lot 5, Blk. 87, Pcs-4259; on the SE., points 1-2 by Lot 9; on the SW., points 2-3 by Lot 6; both of the conso-subd., plan; on the NW, points 4-5 by ST. Lot 66, Pcs-4259 (Katipunan St.). Beginning at a point marked "1" on plan, being S. 45 deg. 39' E., 1704.37 m. from BLBM 1, Bayanbayanan, Marikina, MM., thence S. 20 deg. 06' W., 8.00 m. to point 2; thence N. 69 deg. 54' W., 12.75 m. to point 3; thence [N]. 20 deg. 06' E., 8.00 m. to point 4; thence S. 69 deg. 54' E., 12.75 m.

to (OVER) MELBA T. ATIENZA, of legal age, Filipino, married to Franco Mariano Atienza, the point of beginning; containing an area of ONE HUNDRED TWO (102) SQUARE METERS, more or less. All points referred to are indicated on the plan and are marked on the ground by as follows: point 4, by Old PLS/Ps cyl.conc. [m]ons., 15x60 bearings true; date of the original survey, De[c]. 1910-June 1911 and that of the conso-subd., survey, executed by D.F. Caparas, GE on June 22, 1991.<sup>[3]</sup>

Petitioner Helen B. Lukban (Lukban) was the highest and winning bidder of the property during the public auction. She paid the amount of P47,265.60<sup>[4]</sup> inclusive of penalties and publication fees. On 25 August 2005, the City Treasurer issued Lukban a Certificate of Sale of Delinquent Real Property to Purchaser, acknowledging receipt of her payment. Lukban then paid the realty taxes, capital gains tax, documentary stamp tax, and all other internal revenue taxes due on the property.

On 10 June 2008, Lukban filed a petition for the cancellation of TCT No. 234408 and the issuance by the Register of Deeds of Marikina City (Marikina Register of Deeds) of a new TCT in her favor. The case was raffled to the Regional Trial Court of Marikina City, Branch 272 (trial court) and docketed as LRC Case No. R-08-1010-MK. In an Order<sup>[5]</sup> dated 22 July 2008, the trial court found that there was an entry on TCT No. 234408 annotating a prior Notice of Levy in favor of Capitol Bank, denominated as Entry No. 285574/T-No. 234408 - Mortgage. It was annotated more than 12 years ahead of the Notice of Levy for tax delinquency. The trial court noted that there was a possibility that the owner's duplicate certificate of title was not with Atienza but with Capitol Bank. The trial court further noted that while Lukban provided it with Atienza's address, she did not furnish the trial court with Capitol Bank's address. The trial court ordered Lukban to provide it with Capitol Bank's correct address so that it could be notified of the case as a party in interest. Lukban sought the help of the Marikina Register of Deeds but it could not provide her with Capitol Bank's address.

On 23 October 2008, Atty. Aleta I. Lopez (Atty. Lopez) appeared as counsel of Rizal Commercial Banking Corporation (RCBC) and manifested that RCBC had acquired a portion of the shares of Capitol Bank. Atty. Lopez further manifested that RCBC did not have the TCT of the property in its possession. Atty. Lopez informed the trial court that Capitol Bank already changed its name to Optimum Development Bank (Optimum Bank). During the hearing, Atty. Felix S. Caballes, Lukban's counsel, moved for the marking of exhibits to establish jurisdictional requirements. The exhibits included the following:

(1) Order of the trial court dated 22 July 2008;

- (2) Order dated 9 September 2008 setting the initial hearing on 23 October 2008;
- (3) Registry return slips showing that Lukban, Lukban's counsel, the Marikina Register of Deeds, and RCBC separately received copies of the 9 September 2008 Order and the petition; and
- (4) Certificate of posting.

The trial court then issued an Order setting the continuance of the proceedings on 27 November 2008 and the initial presentation of evidence on 3 December 2008.

After the termination of the lone witness' testimony but before Lukban's offer of evidence, Optimum Bank filed an Urgent Manifestation and Motion to Admit as well as its Opposition to Lukban's petition on the ground that its rights would be affected should the petition be granted. Optimum Bank alleged that while it was the registered mortgagee of the property, it was not aware that it was sold by the City Treasurer in a public auction and that Lukban was the highest bidder. Optimum Bank further alleged that the bid was too low compared to the actual market value of the property and the mortgage debt amounting to P340,000. Optimum Bank manifested that it had the original duplicate title of the property in its possession. Optimum Bank also reserved its right to present documentary evidence of its rights as mortgagee.

On 4 February 2009, Optimum Bank filed a motion for extension of time to submit its supplemental opposition and to attach proof of its interest in the property. On 4 March 2009, Lukban filed her Formal Offer of Evidence. On 25 March 2009, Optimum Bank filed a certified true copy of the Loan and Mortgage Agreement in its favor. During the hearing of 25 June 2009, Atty. Restituto Mendoza (Atty. Mendoza), Optimum Bank's counsel, failed to appear for the presentation of Optimum Bank's evidence. The hearing was reset to 17 July 2009. However, on 15 July 2009, Atty. Mendoza filed an Urgent Motion to Reset date of hearing from 17 July 2009 to 28 August 2009. The trial court denied the motion in its 17 July 2009 Order, deemed Optimum Bank to have waived its right to present evidence, and submitted the case for decision. Optimum Bank filed a motion for reconsideration but the trial court denied the motion in its Order of 30 October 2009.

Optimum Bank filed a petition for certiorari and prohibition before the Court of Appeals assailing the 17 July 2009 and 30 October 2009 Orders of the trial court. The case was docketed as CA-G.R. SP No. 111764. In a Decision<sup>[6]</sup> dated 30 November 2010, the Court of Appeals dismissed the petition and upheld the trial court's ruling that Optimum Bank had waived its right to present evidence.

Meanwhile, the trial court granted Lukban's petition.

### **The Decision of the Trial Court**

In its Decision<sup>[7]</sup> dated 16 February 2010, the trial court granted Lukban's petition. The trial court ruled that Lukban was able to satisfactorily prove that she acquired the property from a public auction sale, that the one-year redemption period lapsed without Atienza redeeming the property, and that a Final Deed of Sale was issued in her favor. The trial court noted that the City of Marikina complied with the requirements of notice and publication in accordance with Republic Act No. 7160<sup>[8]</sup> (R.A. No. 7160). The trial court further noted that Lukban paid the capital gains tax and that the Bureau of Internal Revenue issued a Tax Clearance and a Certificate Authorizing Registration in her favor.

The dispositive portion of the Decision reads:

WHEREFORE, finding merit in the herein petition, the same is hereby GRANTED. Pursuant to Section 107 of PD 1529 also known as the Property Registration Decree, Melba T. Atienza married to Franco Mariano Atienza, the registered owner of the property covered by TCT No. 234408 of the Registry of Deeds of Marikina City, or any person withholding the same is hereby ordered to surrender the said title to the Register of Deeds of Marikina City within THIRTY (30) DAYS upon receipt hereof. In case of non-compliance, the Register of Deeds of Marikina City is hereby ordered to cancel TCT No. 234408 and to issue, in lieu thereof, a new title in the name of herein petitioner, HELEN B. LUKBAN of No. 6 Remuda St., Rancho I, Marikina City, upon payment of the prescribed taxes and fees therefor. The mortgage annotated on the subject title shall be incorporated in or carried over to the new transfer certificate of title and its duplicates and shall also contain a memorandum of the annulment of the outstanding duplicate.

SO ORDERED.<sup>[9]</sup>

Optimum Bank appealed from the trial court's Decision.

### **The Decision of the Court of Appeals**

In its assailed 28 August 2012 Decision, the Court of Appeals granted the appeal and set aside the trial court's 16 February 2010 Decision.

The Court of Appeals ruled that actual notice to the registered owner of the real property is a condition *sine qua non* for the validity of the auction sale. The Court of Appeals ruled

that the records of the case did not show that Atienza actually received a notice of the auction sale. According to the Court of Appeals, such failure invalidated the auction sale and as a consequence, Lukban did not acquire any right therefrom. However, Optimum Bank, not being the registered owner of the property, was not entitled to the notice of sale. The Court of Appeals then ruled that it was no longer necessary to rule on Optimum Bank's arguments that the issuance of a new TCT to Lukban would impair its rights as a mortgagee and that Lukban had the burden to prove that the mortgage debt had been paid.

The dispositive portion of the Decision reads:

WHEREFORE, the Appeal is hereby GRANTED. The Decision dated 16 February 2010 of the Regional Trial Court of Marikina City, Branch 272 granting the Petition for Cancellation of Transfer Certificate of Title (TCT) No. 234408 and Issuance of a New One and ordering the issuance of a new TCT in favor of appellee Helen B. Lukban, in LRC Case No. 08-1010-MK, is SET ASIDE. The public auction sale conducted on 18 August 2005 is declared VOID for lack of notice to Melba T Atienza, the registered owner of the subject property.

SO ORDERED.<sup>[10]</sup>

Lukban filed a motion for reconsideration. In its 7 February 2013 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

Lukban argued that:

A. The Honorable Court of Appeals committed serious error of law in setting aside the 16 February 2010 Decision of the Honorable Regional Trial Court and declaring void the public auction sale conducted on 18 August 2005 by the City Treasurer of Marikina City because the Decision dated 16 February 2010 (the "Decision" for short) was issued in accordance with applicable law, jurisprudence and the rules of evidence, and the public auction sale on 18 August 2005 (the "auction sale" for short) was performed in accordance with what Sections 254, 258 and 260 of Republic Act No. 7610, as amended, or the Local Government Code of 1991 (RA No. 7610 for short) provides insofar as the procedure in public auction sale of delinquent real property is concerned.

B. The Honorable Court of Appeals committed reversible error of law in the

interpretation and application of the law when it ruled to invalidate the public auction sale notwithstanding the fact that the appeal of respondent was premised only on the following so-called arguments:

- a. That petitioner did not adduce evidence that the so-called loan of Melba T. Atienza had been paid;
- b. That petitioner has the burden of proving that Melba T. Atienza had paid her so-called loan; and
- c. That respondent was entitled to personal notice of the public auction sale.<sup>[11]</sup>

### **The Issues**

We can sum up the issues of this case as follows:

- (1) Whether the Court of Appeals committed a reversible error in setting aside the trial court's Decision based on an issue that was not raised by the parties; and
- (2) Whether the Court of Appeals committed a reversible error in setting aside the trial court's Decision on the ground that the registered owner did not receive a copy of the notice of auction sale.

### **The Ruling of this Court**

In its petition before the Court of Appeals, Optimum Bank argued that Lukban did not proffer any proof that the mortgage debt had been paid. It alleged that since the annotation of the mortgage on the property had not been cancelled, the presumption was that the mortgage amount of P340,000 in its favor was still unpaid. Optimum Bank likewise argued that it should have been notified of the delinquency sale because as a person having legal interest in the property, it should have been given the right to redeem the property under Section 261 of R.A. No. 7160. It further argued that the cancellation of TCT No. 234408 would effectively extinguish its interest in the property.

In resolving the issue before it, the Court of Appeals premised its Decision on an issue that was not raised in the petition. Instead of ruling solely on the issues raised by Optimum Bank, the Court of Appeals ruled on the basis of the lack of notice of the auction sale on Atienza under Section 260 of R.A. No. 7160. According to the Court of Appeals, the records failed to disclose that Atienza actually received a notice of the auction sale from the City Treasurer.

We must point out here that Atienza is not a party to the case before the Court of Appeals



and in the present case before this Court. On 9 September 2008, the trial court issued an Order which states:

This is a verified Petition For The Cancellation of Transfer Certificate of Title No. 234408 and Issuance of New One filed by petitioner Helen B. Lukban on June 10, 2008.

WHEREFORE, notice is hereby given that the said petition will be heard by this Court on October 23, 2008 at 8:30 in the morning.

Let this Order together with the petition be posted for three (3) consecutive weeks prior to the date of hearing in three (3) conspicuous public places in this city where the said land is situated and on the land itself at the expense of the petitioner.

Likewise, let a copy of this Order together with copy of the petition be served upon: 1) the Office of the Registry of Deeds of Marikina City; 2) the registered owner Melba T. Atienza at her address stated in T.C.T. 234408, i.e., Rm. A-1, 992 Halili Complex, Quezon City; and 3) the registered mortgagee Capitol Bank, now RCBC Savings Bank at its main office Tektite Bldg., West Tower, Exchange Road, Ortigas Center, Pasig City and at its Marikina Branch, J.P. Rizal St., San Roque, Marikina City.<sup>[12]</sup>

The records showed that the copies of the Order and the Petition sent to Atienza remained unserved despite several attempts to serve them on her. At the back of the envelope containing the 9 September 2008 Order were written notations of the attempts made on 18 September, 22 September and 23 September 2008 while the notations at the back of the envelope of the 23 October 2008 Order showed that attempts to serve were made on 3 November, 4 November, and 7 November 2008. The copies were returned to sender with the notation "unclaimed."<sup>[13]</sup> Thus, Atienza did not participate in the proceedings before the trial court. The only oppositor before the trial court was Optimum Bank.

Only the registered owner of the property is deemed the taxpayer who is entitled to a notice of delinquency and other proceedings relative to the tax sale.<sup>[14]</sup> In this case, Atienza received the Warrant of Levy<sup>[15]</sup> and the Notice of Sale.<sup>[16]</sup> Whether Atienza received the Notice of Public Auction is a factual issue that was not raised by Optimum Bank because it is an issue that only Atienza, being the registered owner, can raise.

We do not find merit in the claim of Optimum Bank that the issuance of a new TCT in





Clearly, only the registered owner is entitled to the Notice of Sale.

**WHEREFORE**, we **GRANT** the petition. We **SET ASIDE** the 28 August 2012 Decision and the 7 February 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 95150 and **REINSTATE** the trial court's 16 February 2010 Decision in LRC Case No. R-08-1010-MK.

**SO ORDERED.**

*Del Castillo, Mendoza, Perlas-Bernabe,*<sup>\*</sup> and *Leonen, JJ.*, concur.

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<sup>\*</sup> Designated acting member per Special Order No. 2312 dated 19 January 2016.

[1] *Rollo*, pp. 47-57. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybanez and Victoria Isabel A. Paredes concurring.

[2] *Id.* at 77-79.

[3] *Id.* at 48.

[4] *Records*, p. 10. In the Court of Appeals' Decision, the amount stated is P45,265.

[5] *Rollo*, p. 49.

[6] *Id.* at 115-122.

[7] *Id.* at 85-88. Penned by Judge Felix P. Reyes.

[8] The Local Government Code of 1991.

[9] *Rollo*, p. 88.

[10] *Id.* at 56.

[11] *Id.* at 31-32.

- [12] Folder of Exhibits, p. 3.
- [13] Records, pp. 30-H and 30-1.
- [14] *Talusan v. Tayag*, 408 Phil. 373 (2001).
- [15] Folder of Exhibits, p. 15.
- [16] *Id.* at 17.
- [17] *Rollo*, p. 88.
- [18] *Id.*
- [19] Section 180 of R.A. No. 7160 provides:

Sec. 180. *Final Deed to Purchaser.* - In case the taxpayer fails to redeem the property as provided herein, the local treasurer shall execute a deed conveying to the purchaser so much of the property as has been sold, free from liens of any taxes, fees, or charges, related surcharges, interests, and penalties. The deed shall succinctly recite all the proceedings upon which the validity of the sale depends.

Under Section 180, the treasurer's conveyance to the purchaser shall be free from tax liens or their charges and penalties. All other liens are not extinguished. Section 180 repealed Section 80 of Presidential Decree No. 464 (Real Property Tax Code) where the final bill of sale is issued free from any encumbrance or third party claim. Section 80 states:

Sec. 80. *Issuance of final bill of sale.* - In case the delinquent taxpayer or his representative, or any person holding a lien or claim over the property, fails to redeem the same within the period of one year from the date of sale as provided in Section seventy- eight hereof, the provincial or city treasurer shall make an instrument sufficient in form and effect to convey to the purchaser the property purchased by him, free from any encumbrance or third party claim whatsoever, and the said instrument shall succinctly set forth all proceedings upon which the validity of the sale depends. Any balance of the proceeds of the sale left after deducting the amount of the taxes and penalties due and the costs of sale shall be returned to the owner or his representative.

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