

NOTES *and* COMMENT

Conveyance of the Right of Redemption

By FRINE C. ASPRER

WHEN a person mortgages a piece of land as a security for a principal obligation and is unable to fulfill said obligation, he is subject to a judgment, after complaint of the creditor, to pay, "within a period of not less than three months from and after the date on which the order was made," the amount found wanting of him by the court; on his default the land shall be sold to pay the debt. The process is foreclosure of mortgage. The sale of mortgaged property whether judicial or extrajudicial gives rise by law to the right of redemption.

Execution issues in favor of a party to whom judgment is given. The property of the debtor is then subject to execution sale. If it consists of realty the sale thereof likewise gives rise to the right of redemption.

Whether arising from foreclosure or from execution the regulations concerning sales of real estate under execution govern. This is so provided by Sec. 257 of the Code of Civil Procedure in relation to Sec. 463 of the same Code.

Redemption may be exercised before either foreclosure or execution. In the former as stated before, a period of not less than three months from and after the date of the order of foreclosure is allowed. In the latter, sale may

be prevented by the payment of the amount required by the execution and costs at any time before sale.

At common law when redemption gives to the judgment debtor the right to regain property he has lost by sale under process, the right is to redeem from execution or judicial sale. And when redemption is prior to the foreclosure that indebtedness may be discharged and real property cleared from encumbrances of a mortgage, the right is commonly called the equity of redemption if based on equity, or the legal right of redemption if of statutory origin. Some states like North Carolina consider the right legal when the property is regained before foreclosure, and an equitable right, if after. Nevertheless, whether equitable or statutory, whether property is redeemed before or after the sale, the rights have been stated to be essentially the same as both involving a right to discharge the lien upon payment of the debt. (*Wissmath Packing Co. vs. Mississippi River Power Co.*, 179 Iowa 1309, 162 NW 846, LRA 1917 F 790).

The case of *Lichauco vs. Olegario*, 43 Phil. 540, is one involving the sale of the right of redemption after a writ of execution was issued. The facts are as follows: Judgment debtor Olegario sold his right of re-

demption to a third person who registered it. The right of plaintiff Lichauco not being satisfied, the right of redemption was sold under the same judgment to Lichauco who also bought previously the realty under the first execution sale. Lichauco could not register his right under his name by reason of the prior registration. Lichauco brought action to declare the transfer fraudulent, offering, in the event of the cancellation of the registration, to accept the right of redemption in complete satisfaction of his claims. The court held that undoubtedly, by provision of law (Secs. 463 and 464, Code of Civil Procedure) the debtor could transfer his right but held that it is contrary to public policy to allow the judgment creditor to have another execution issued upon the same judgment and levied upon the right of redemption.

The reasons for the holding of the court are stated in a case involving the right of redemption with regards to a factory of barrels, *Horn vs. Indianapolis National Bank* (21 Am. St. Rep. 231, 241.). Said reasons follow:

1. To make property bring its full value and discourage bidding less than the fair value of the property.

2. To secure the fair value at one sale, preventing annoyance and expense of numerous sales.

3. The law did not intend that a creditor should offer only a part of the fair value of the property and take the chance of redemption.

4. To discourage bidders from uncertainty of title and the probability that the owner of the

judgment upon which the property was sold to satisfy his claims might come in and redeem.

It is clear that the right of redemption arising from an execution sale is not subject to sale to the creditor in whose favor judgment was rendered.

For the purpose of a complete discussion of the Lichauco case, the case of *Seeman vs. Hax* (14 Colo. 536; 461; 9 LRA 341) holding that the rule is that the legal right of redemption is subject to sale by the mortgagee upon an execution obtained upon a debt not secured by the mortgage, is believed applicable and responsive to the statement of the court to the effect: "It must be understood, however, that we do not decide here (for we deem it unnecessary to do so in order to dispose of this case) whether this legal right of redemption is, or is not, subject to a new execution issued upon another judgment different from that by virtue of which the property was sold, giving rise to said right of redemption. What we wish to declare is that a judgment by virtue of which a property is sold at public auction can have no further effect on such property." (*Lichauco vs. Olegario*, 43 Phil. 544).

On the other hand, authorities are numerous upholding the sale of the equity of redemption and the legal right of redemption as between the judgment creditor and debtor. The case of *Patterson vs. Holmes* (202 Ala. 115; 79 So. 581) is similar to the Lichauco case in the sense that though sale from debtor to creditor is allowed in foreclosure, yet courts view this transaction with suspicion knowing the cred-

itor holds, as it were, the upper hand over the debtor. The facts of the case will better serve to explain the point: Patterson foreclosed a mortgage and obtained title thereto but was unable to get a deed evidencing his title. Neither did he enter into possession. The statutory right of redemption alone was all that the debtor-mortgagor retained in the property. There being no deed, Patterson needed one to perfect the sale and consequently agreed to an absolute deed of transfer subject to an oral right of redemption. It will be noted that there were two rights of redemption, one statutory and another contractual. But even without the contractual, the statutes already permitted redemption.

The deed was signed by the mortgagor on repeated assurance that the right of redemption could be availed of. It was understood by the mortgagor that the transfer was a sort of security only, treating the transaction as though the mortgage nature of the agreement were expressed in the deed.

The suit is to seek relief from the action of Patterson in stating that the statute of frauds considered the oral agreement unavailable, and that the right of redemption based on the statutes being the only right remaining to the debtor in the property, "there was no field for the operation of an absolute deed save only the extinguishment of the statutory right of redemption." In short Patterson contends that both the contractual and statutory rights of redemption were lost to the debtor.

The court upheld the intention of the parties saying in spite of the fact that an absolute deed was executed, the relation of debtor-creditor still subsisted for it was so understood by the parties from the beginning.

Thus, the rule in the Philippines as in the United States is that the right of redemption from execution sale may not be sold to the judgment creditor; while the rule is otherwise in foreclosure proceedings when there is a valuable and sufficient consideration and when there is no fraud or oppression on the debtor.

REASON

“REASON is the life of the law. nay the common law itself is nothing else but reason. The law which is perfection of reason.”—SIR EDWARD COKE.