

[G.R. No. L-6310. November 26, 1954]

**ROSALIO PARQUI, PLAINTIFF-APPELLEE, VS. PHILIPPINE NATIONAL BANK
DEFENDANT-APPELLANT.**

D E C I S I O N

BENGZON, J.:

The Court of Appeals forwarded the record of this case because “no controversy exists as to the evidence and the facts proved thereby”, the sole juridical question being, whether or not the Philippine National Bank acquired good title to the parcel of land covered by Original Certificate No. 2109, despite the forgery of the owner’s signature to the mortgage deed.

The facts as found in the appealed decision are these:

“The land described in the complaint was originally registered in the name of the plaintiff under Original Certificate of Title No. 2109 of the Register of Deeds of this province. Fearing that he might lose his owner’s copy of the title during his evacuations in 1944, the plaintiff entrusted it for safekeeping to one Feliciano Ordoiea. Soon after liberation, he asked her to return it to him, but she replied that it was lost. In August of 1950 while paying his land taxes in Tigaon, the Municipal Treasurer informed him that the land covered by his title already belongs to the Philippine National Bank. He immediately made inquiries at the Naga Agency of the Bank. From the information he gathered he learned that his land was mortgaged in his name by someone to secure the payment of a loan; that the mortgage was foreclosed due to nonpayment of the loan; and that the land was finally adjudicated to the Philippine National Bank as highest bidder at the

auction sale. He also learned that Original Certificate of Title No. 2109 was cancelled and that in lieu thereof, Transfer Certificate of Title Mo. 358 in the name of the Philippine National Bank was issued. To annul the mortgage, sale, and the transfer Certificate of title and to recover damages, the plaintiff instituted the present action against the defendants.

“The evidence has clearly established that sometime in March of 1946, Feliciano Ordóñez asked Roman Oliver to affix the signature of the plaintiff on an application for a loan from the Philippine National Bank. Oliver at first refused, but after much coaxing, Ordóñez succeeded in convincing him to go with her and with Quintina Palraa, her daughter, to the house of Nestor Ruedas in Tigaon, Camarines Sur. Upon their arrival, Ruedas delivered to him a residence certificate in the name of the plaintiff and joined Ordóñez in asking him (Oliver) to sign the name of the plaintiff on the application. Oliver again refused but Eueda.fi told him not to have any fear, because the land to be given in security for the loan is covered by a Torrens title whose owner is already dead. Ruedas told Oliver further that he would personally accompany him to the bank and attend to the negotiation of the loan. With this assurance, Oliver finally consented and he affixed accordingly the signature of the plaintiff on the loan application marked Exh. A. After the act, they, Oliver, Ruedas, Ordóñez and Quintina Palma, proceeded to the Agency of the Bank at the then municipality of Maga, Ruedas entered the offices of the bank, while the others remained outside. After a while, Ruedas came back bringing with him the mortgage deed, Exh. B, and asked Oliver to affix also on it the signature of the plaintiff. Oliver again wrote the signature of the plaintiff on this document. Later Ruedas asked him again to affix the signature of the plaintiff on the check marked Exh. D. This Oliver likewise did. He then delivered the signed check to the cashier of the bank who paid him the sum of P400.00. Quintina Palma took the money from him, and from the bank they both went to a restaurant where they joined Ordóñez, Ruedas and Rosalia Palma, the other defendant. Upon order of Ordóñez, Quintina Palma gave Oliver P15.00 out of the money.

“The

evidence has also established that the loan application Exh. A, was favorably recommended for approval by the Sub-Agent of the bank at Tigaon. At the bottom of this exhibit is the indorsement recommending approval. This was accompanied by the agent's inspection report, Exh. 2, and by the income and expense statement of the borrower, Exh. 3. On the basis of this recommendation and report, the bank granted the loan and accepted the real estate mortgage, Exh. B, for its security. This document was subsequently registered in the office of the Register of Deeds, and because the loan was not paid on its maturity, the mortgage was foreclosed and the land sold at public auction to the bank as the highest bidder. On November 7, 1949, the land was finally adjudicated to the bank (Annex B) and subsequently the bank obtained the cancellation of Original Certificate of Title Mo. 2109 and the issuance of Transfer Certificate of Title No. 358 in its name in lieu thereof".

On the basis of the foregoing facts, the Hon. Jose T. Surtida, Judge, annulled the mortgage deed and the foreclosure proceedings, ordered the Register of Deeds of the province to cancel the new certificate of title No. 356 in the name of the Philippine National Bank and to revive the original certificate of Title in the name of Rosalio Parqui. The Bank appealed.

After carefully considering the issue, we reach the conclusion that His Honor's decision was correct. One of the essential requisites of a valid mortgage, under the Civil Code is "that the thing pledged or mortgaged be owned by the person who pledges or mortgages it" (Art. 1857 par. 2); and there is no question that Roman Oliver who pledged the property to the Philippine National Bank did not own it. The mortgage was consequently void^[1].

The appellant argues, in substance, that inasmuch as the forged mortgage load been registered, and the Philippine National Bank had purchased (at the foreclosure) in good faith relying, upon such registered mortgage, it acquired a good title as purchaser in accordance with the doctrine that, "under the Torrens Act a forged transfer when duly entered In the Registry of Property can become the

root of a valid title in favor of a *bona fide* purchaser for value” (Cruz vs. Fabie, 35 Phil. 144).

But in that case there was a forged *sale* (not mere mortgage) which was registered first, and the newly issued title was thereafter transferred to a bona fide purchaser. The principle implies that such *bona fide* purchaser was not a party to and did not know the first falsification. Anyway, it must be obvious that in this litigation, the National Bank could acquire no better rights *as purchaser* than those it had as *mortgagee*.

The appellant also cites *Blondeau vs. Nano*, 61 Phil. 629. It must be admitted that such decision contains some observations^[2] favoring the appellant’s side. But as we remarked in a recent decision (*Lara et al. vs. Ayroso*, G. R. L-6122 May 31, 1954) in *Blondeau vs. Nano* “the mortgage deed *had not been forged*, and the owner had by his negligence or acquiescence if not actual connivance made it possible for the fraud, to be committed.” More applicable to the instant appeal is the aforesaid *Lara-Ayroso* precedent wherein the owner’s daughter somehow managed to obtain possession of the father’s torrens title, and in connivance with an impostor who posed as her father and forged his signature to the mortgage deed, obtained a loan on the security of the father’s land. We annulled the mortgage, declining to follow the obiter considerations in the *Blondeau* decision.

Thru Mr. Justice Reyes (Alex) this Court ruled:

“There can be no question that the mortgage under consideration is a nullity, the same having been executed by an impostor without the authority of the owner of the interest mortgaged. Its registration under the Land Registration Law lends it no validity because, according to the last *proviso* to the second paragraph of section. 55 of that law” registration procured by the presentation of a forged deed is null and void.”

It has not escaped our notice that in this litigation the owner

delivered his title to Feliciano Ordoñez, whereas in the Lara-Ayrosa case the owner kept his title in his trunk. Nevertheless there is no doubt that in both instances there was no permission granted by the owner for the use of his title; and in both instances said owner had been illicitly deprived of the possession of his document of ownership.

A more serious point arises in connection with appellant's argument that upon being informed by Feliciano Ordoñez of the loss of his title the herein plaintiff should have given prompt notice to the Register of Deeds of such loss, in accordance with section 55 of Act No. 496^[3]; and that his failure to do so, is an element to be considered favorably to the defendant Bank. However it does not appear that this defense was interposed in the court below, although the complaint had alleged the reported loss in the hands of Feliciano Ordoñez. At any rate, it is not shown that before approving Oliver's mortgage, the Bank examined the records in the Register of Deeds and had thereby been misled to its prejudice.

Plaintiff's failure to send the prescribed cautionary notice would be material if it had contributed, to the Bank's deception. Obviously, none would count it against him if the mortgage had been accomplished before he knew the loss of his title.

Indeed it may be gathered from the evidence that what actually led to the approval of the mortgage and the payment of the money to Roman Oliver, (personating Rosalio Parqui) was the "inspection report" of the Bank's agent D. Narvaez and his "income and expense statement", both positively identifying the borrower-applicant (Oliver) as Rosalio Parqui. In said two exhibits such agent made these remarks:

"I have a guide in inspecting the property, the owner-applicant himself, who is residing at the barrio of Tinauanan, Tigaon, Cam. Sur, with Res. Cert. No. 738661 dated Feb. 21, 1946, issued at Tigaon, Camarines Sur."

"Mr. Rosalio Parqui is unmarried, nor has he anybody under him for support. He lives in a very

economical way and resides in the same property hereto offered by him as security.” * * *

“Mr. Rosalio Parqui has never been a borrower from this Bank. In the past he always managed to keep his expenses within his income. However, because he wants to make a general re cultivation of his property which is hereto offered as security, he naturally needs some extra money. He is well known for his promptness in meeting his commitments.”

And Narvaes did not declare under oath “that he thought Oliver was Parqui because the former exhibited to him the Certificate of Title No. 2109”. Therefore it may not be said that the false personation happened thru Oliver’s possession of the title.

An additional circumstance may be mentioned as an equitable feature of the controversy: One of the principal actors in the fraudulent scheme was Nestor Ruedas, who gave Oliver a new residence certificate in the name of Parqui, who persuaded him to sign for Parqui and later presented the mortgage papers to the Bank for approval. The plaintiff-appellee repeatedly states that Ruedas was “chief clerk of the municipal treasurer at Tigaon”, a sub-agent of the Bank, If this is true, appellant does not deny it. Ruedas was practically connected with the Bank, his knowledge of the impersonation being imputable to the said defendant institution.

For all these reasons, the appealed judgment should be and is hereby affirmed with costs.

Paras, C.J. Pablo, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L. JJ., concur

^[1] Veloso vs. La Urbana, 58 Phil. 68.1.

^[2] Which was practically obiter dictum, because unnecessary to justify the resulting award.

^[3] * * * In case of the

loss or theft of an owner's duplicate certificate, notice shall be sent
by the owner or by some one in his behalf to the register of deeds * *
*."

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