

JOSEFA PEÑAFLORIDA VDA. DE ARANCILLO AND VICENTE ARANCILLO, MOVANTS AND APPELLANTS, VS. REHABILITATION FINANCE CORPORATION, OPPOSITOR AND APPELLEE.

G. R. No. L-4602. August 31, 1951

Ponente: FERIA, J.

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FERIA, J.:

The facts in this case as stated in appellants' brief and accepted as correct by the appellee are the following:

"On February 19, 1947, Carmen Ubalde executed a deed of donation inter vivos in favor of Asencion Arancillo, predecessor-in-interest of Josefa Periaflorida Vda. de Arancillo and Vicente Arancillo (herein movants-appellants), involving a certain parcel of land, identified as Lot No. 7669 of the Cadastral Survey of Pototan, Iloilo, and covered by Original Certificate of Title No. 41448 of the land records of the province of Iloilo. Dr. Asencion Arancillo, the donee, died on June 18, 1948, in the city of Manila and was succeeded in all his property rights by herein movants-appellants. Lot No. 7679 was mortgaged to the Agricultural and Industrial Bank, predecessor-in-interest of appellee, prior to the execution of the aforementioned donation. On July 29, 1948, Carmen Ubalde, the registered owner, liquidated her mortgage indebtedness to the Agricultural and Industrial Bank and executed a new mortgage in favor of the Agricultural and Industrial Bank, now Rehabilitation Finance Corporation, the owner's copy of Torrens Title No. 41448 covering Lot No. 7679 has been in the possession of the mortgagee. On October 13, 1948, movants-appellants requested the oppositor-appellee to lend them the owner's copy of Torrens Title No. 41448 covering Lot No. 7679 in order that they could register the aforementioned deed of donation without prejudice to the rights of the Rehabilitation Finance Corporation as mortgagee of the property in question. The oppositor-appellee refused; and, hence, on November 19, 1948, appellants filed a motion, in court, praying that the said Rehabilitation Finance Corporation be compelled to deliver the owner's duplicate copy of the Torrens title aforementioned to the Register of Deeds of Iloilo in order that the deed of donation could be registered (Record Appeal, pp. 1-5). Said motion, which was opposed by appellee (Record Appeal, pp. 6-7) was denied by the Court of First Instance of Iloilo in its order dated November 29, 1948 (Record Appeal, pp. 8-9). Movants-appellants filed a motion for reconsideration which was denied by the lower court in its order dated December 20, 1948 (Record Appeal, pp. 22-27,)"

The appellants in their first and second assignments of errors, submit the following arguments:

"(a) In the light of the decision of the Supreme Court in the case of Bank of the Philippine Islands vs. Ty Cameo Sobrino et al., the refusal of the Rehabilitation Finance Corporation to surrender the owner's copy of the Torrens title to the Register of Deeds or its opposition to the registration of the deed of donation in question is equivalent to questioning the validity of said donation which can only be done in an ordinary action.

"(b) The validity of the prohibition contained in the mortgage contract in the case at bar to the effect that the mortgagor shall not sell, dispose of, or encumber the mortgaged property without the consent of the mortgagee is not in issue.

"(c) The prohibition mentioned in the preceding paragraph must be interpreted and construed in relation to the

other stipulation of the same contract which states that in case the property mortgaged is sold or conveyed in spite of the prohibition, the vendee shall assume the mortgage together with the vendor.

"(d) In view of the principles on interpretation of contracts laid down in Articles 1284 and 1285 of the Civil Code and sec. 59 of Rules 123 of the Rules of Court, the aforementioned stipulation qualifying the prohibition must be made applicable to the instant case." (Appellants Brief, pp. 12, 13.)

The mortgage contract executed by the appellants' predecessor in interest in favor of the defunct Agricultural and Industrial Bank and now the appellee, contains the following proviso:

"The Mortgagor shall not sell, dispose of nor in any manner encumber the mortgaged property, without the written consent of the Mortgagee. If in spite of this stipulation the property is sold, the Vendee shall assume the mortgage in the terms and conditions under which it is constituted, it being understood that the assumption by the Vendee shall not release the Vendor of his obligation to the Agricultural & Industrial Bank; on the contrary, both Vendor and Vendee shall be jointly and severally liable for said mortgage obligation." (Record on Appeal, pp. 22-23.)

The question involved in the present case is not the validity of the donation, but whether or not the appellee may be compelled against its will to give its consent to the registration of said donation, in view of the above quoted stipulation. The appellee does not and can not question the validity of the transfer by donation to the appellants or their predecessor in interest of the property mortgaged, because said property, being registered in accordance with the Torrens System or Act No. 496, can not be considered as transferred until and unless said transfer has been registered.

In the case of Philippine Industrial Co. vs. El Hogar Filipino and Vallejo, (45 Phil. 336, 339, 341), this Court held that the prohibition in a mortgage contract against the encumbrance sale or disposal of the property mortgaged without the consent of the mortgagee is valid, because it is not contrary to law, morals, or public interest (sec. 1255 of the Civil Code). Such prohibition being valid, it follows that the appellee can not be compelled by the courts to give its consent to the registration of the deed of donation of the property mortgaged by delivering for that purpose the transfer certificate of title in its possession. Otherwise the mortgagor may circumvent the prohibition by compelling the mortgagee to do what the latter has the right not to do, or give its consent against its will to the sale or disposal or encumbrance of the mortgaged property.

The decision in the case of Bank of the Philippine Islands vs. Ty Cameo, et al. (57 Phil., 803) is not applicable to the present case. In said case the second mortgage had already been registered in the office of the Register of Deeds when the motion to cancel such registration was filed. And this Court held that the Court of First Instance of Pangasinan was correct in holding that the cancellation of the registration of said second mortgage involves the question of validity thereof; and the said court had no jurisdiction to pass upon that question. However, in deciding said question upon the request of the parties, this Court held that the second mortgage in said case was valid because the mortgage contract, read in its entirety, does not give the mortgagee the right to treat the second mortgage as null* and void, but only to immediately foreclose the mortgage as a penalty for such violation. This Court did not pass upon the validity of an agreement made expressly in a contract, giving the mortgagee the right to treat such second mortgage or disposal without the mortgagee's consent as null and void, as a penalty for such violation. While, in the present case the donation has not been yet registered, and therefore the question of validity of the transfer by donation of the property mortgaged to the appellants is not and can not be the question in issue.

The decision in the case of Ty Cameo has not reversed or modified the ruling laid down in the case of Philippine Industrial Co. vs. El Hogar Filipino (45 Phil., 336), which held valid the prohibition to sell, dispose of, or in any manner encumber the mortgaged property such as the one contained in the above quoted paragraph of the mortgage contract under consideration.

Although the owner's certificate of title has been delivered by the mortgagor to the mortgagee and is in the possession of the latter, it is still possible that the mortgagor may sell, dispose of or in any manner encumberance the mortgaged property, and register the sale, transfer or encumbrance in the owner's certificate of title, without the written consent of the mortgagee; for as the attorney for the appellee says, the certificate of title may be borrowed by the mortgagor from the mortgagee for a purpose other than the registration of a document of transfer or second encumbrance, or it may be accidentally lost and found by another person, or it may be stolen and delivered to the mortgagor, in which cases the transfer or second mortgage may have the opportunity of effecting the registration of a subsequent instrument of transfer or second encumbrance, without the consent of the mortgagee.

As to the appellants' third assignment of error, the lower court was right in holding that "It is neither for this Court nor for the movants to inquire into the reasons why the mortgagee does not welcome any change in the position of the mortgage debtor. It is enough that the agreement prohibiting the disposition of the mortgaged property by the mortgagor without the consent of the mortgagee is valid and binding." Besides, as the appellee's attorney says in connection with this particular case: "On this point, we wish to state that in the matter of granting loans the Rehabilitation Finance Corporation does not consider the sufficiency of securities alone. As a government institution, it is guided by certain policies designed to accomplish a governmental program. It is in pursuance of those policies that it has seen fit to include certain conditions in the mortgage contract which if violated might hamper such program."

In view of the foregoing, the order appealed from is affirmed with costs against the appellants.

Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

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