

**GEMMA R. HECHANOVA, ACCOMPANIED BY HER HUSBAND,
NICANOR HECHANOVA, JR., AND PRESCILLA R. MASA,
ACCOMPANIED BY HER HUSBAND, FRANCISCO MASA, PETITIONERS,
VS. HON. MIDPANTAO L. ADI...**

G.R. No. L-49940. September 25, 1986

Ponente: YAP, J.

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YAP, J.:

Petitioners seek the annulment of various orders issued by the respondent Presiding Judge of Branch II, Court of First Instance of Iloilo, in Civil Case No. 12312 entitled "Pio Servando versus Jose Y. Servando et al." A temporary restraining order was issued by this Court on May 9, 1979, staying until further orders the execution of the decision rendered by the respondent Judge in said case.

The case under review is for the annulment of a deed of sale dated March 11, 1978, executed by defendant Jose Y. Servando in favor of his co-defendants, the petitioners herein, covering three parcels of land situated in Iloilo City. Claiming that the said parcels of land were mortgaged to him in 1970 by the vendor, who is his cousin, to secure a loan of P20,000.00, the plaintiff Pio Servando impugned the validity of the sale as being fraudulent, and prayed that it be declared null and void and the transfer certificates of title issued to the vendees be cancelled, or alternatively, if the sale is not annulled, to order the defendant Jose Servando to pay the amount of P20,000.00, plus interests, and to order defendants to pay damages. Attached to the complaint was a copy of the private document evidencing the alleged mortgage (Annex A), which is quoted hereunder:

"August 20, 1970

"This is to certify that I, Jose Yusay Servando, the sole owner of three parcel of land under Tax Declaration No. 28905, 44123 and 31591 at Lot No. 1, 1863-Portion of 1863 & 1860 situated at Sto. Nino St., Arevalo, Compania St. & Compania St., Interior Molo, respectively, have this date mortgaged the said property to my cousin Pio Servando, in the amount of TWENTY THOUSAND PESOS (P20,000.00), redeemable for a period not exceeding ten (10) years, the mortgage amount bearing an interest of 10% per annum.

I further certify that in case I fail to redeem the said properties within the period stated above, my cousin Pio Servando, shall become the sole owner thereof.

(SGD.) JOSE YUSAY SERVANDO

WITNESSES:

(Sgd) Ernesto G. Jeruta

(Sgd) Francisco B. Villanueva"

The defendants moved to dismiss the complaint on the grounds that it did not state a cause of action, the alleged mortgage being invalid and unenforceable since it was a mere private document and was not recorded in the

Registry of Deeds; and that the plaintiff was not the real party in interest and, as a mere mortgagee, had no standing to question the validity of the sale. The motion was denied by the respondent Judge, in its order dated June 20, 1978, "on the ground that this action is actually one for collection".

On June 23, 1978, defendant Jose Y. Servando died. The defendants filed a Manifestation and Motion, informing the trial court accordingly, and moving for the dismissal of the complaint pursuant to Section 21 of Rule 3 of the Rules of Court, pointing out that the action was for recovery of money based on an actionable document to which only the deceased defendant was a party. The motion to dismiss was denied on July 25, 1978, "it appearing from the face of the complaint that the instant action is not purely a money claim, it being only incidental, the main action being one for annulment and damages".

On August 1, 1978, plaintiff filed a motion to declare defendants in default, and on the very next day, August 2, the respondent Judge granted the motion and set the hearing for presentation of plaintiff's evidence ex-parte on August 24, 1978.

On August 2, 1978, or the same day that the default order was issued, defendants Hechanova and Masa filed their Answers, denying the allegations of the complaint and repeating, by way of special and affirmative defenses, the grounds stated in their motions to dismiss.

On August 25, 1978, a judgment by default was rendered against the defendants, annulling the deed of sale in question and ordering the Register of Deeds of Iloilo to cancel the titles issued to Priscilla Masa and Gemma Hechanova, and to revive the title issued in the name of Jose Y. Servando and to deliver the same to the plaintiff.

The defendants took timely steps to appeal the decision to the Court of Appeals by filing a notice of appeal, an appeal bond, and a record on appeal. However, the trial court disapproved the record on appeal due to the failure of defendants to comply with its order to eliminate therefrom the answer filed on August 2, 1978 and accordingly, dismissed the appeal, and on February 2, 1979, issued an order granting the writ of execution prayed for by plaintiff.

We find the petition meritorious, and the same is hereby given due course.

It is clear from the records of this case that the plaintiff has no cause of action. Plaintiff has no standing to question the validity of the deed of sale executed by the deceased defendant Jose Servando in favor of his co-defendants Hechanova and Masa. No valid mortgage has been constituted in plaintiff's favor, the alleged deed of mortgage being a mere private document and not registered; moreover, it contains a stipulation (pacto comisorio) which is null and void under Article 2088 of the Civil Code. Even assuming that the property was validly mortgaged to the plaintiff, his recourse was to foreclose the mortgage, not to seek annulment of the sale.

WHEREFORE, the decision of the respondent court dated August 25, 1973 and its Order of February 2, 1979 are set aside, and the complaint filed by plain-tiff dated February 4, 1978 is hereby dismissed.

SO ORDERED.

Narvasa, Melencio-Herrera, Paras, and Feliciano, JJ., concur.

Cruz, J., on leave.

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