

**GAVINO A. TUMALAD AND GENEROSA R. TUMALAD,
PLAINTIFFS-APPELLEES, VS. ALBERTA VICENCIO AND EMILIANO
SIMEON, DEFENDANTS-APPELLANTS.**

G.R. No. L-30173. September 30, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Case certified to this Court by the Court of Appeals (CA-G.R. No. 27824-R) for the reason that only questions of law are involved.

This case was originally commenced by defendants-appellants in the municipal court of Manila in Civil Case No. 43073, for eject-ment. Having lost therein, defendants-appellants appealed to the court a quo (Civil Case No. 30993) which also rendered a decision against them, the dispositive portion of which follows:

"WHEREFORE, the court hereby renders judgment in favor of the plaintiffs and against the defendants, ordering the latter to pay jointly and severally the former a monthly rent of P200.00 on the house, subject-matter of this action, from March 27, 1956, to January 14, 1957, with in-terest at the legal rate from April 18, 1956, the filing of the complaint, until fully paid, plus attorney's fees in the sum of P300.00 and to pay the costs."

It appears on the records that on 1 September 1955 de-fendants-appellants executed a chattel mortgage[1] in favor of plaintiffs-appellees over their house of strong materials located at No. 550 Int. 3, Quezon Boulevard, Quiapo, Manila, over Lot Nos. 6-B and 7-B, Block No. 2554, which were being rented from Madrigal & Company, Inc. The mortgage was registered in the Registry of Deeds of Manila on 2 September 1955. The herein mortgage was executed to guarantee a loan of P4,800.00 received from plaintiffs-appellees, payable within one year at 12% per annum. The mode of payment was P150.00 monthly, starting September, 1955, up to July 1956, and the lump sum of P3,150 was payable on or before August, 1956. It was also agreed that default in the payment of any of the amortizations would cause the remaining unpaid balance to become immediately due and payable, and -

"the Chattel Mortgage will be enforceable in accordance with the provisions of Special Act No. 3135, and for this purpose, the Sheriff of the City of Manila or any of his deputies is hereby empowered and authorized to sell all the Mortgagor's property after the necessary publication in order to settle the financial debts of P4, 800.00, plus 12% yearly interest, and attorney's fees."[2]

When defendants-appellants defaulted in paying, the mortgage was extrajudicially foreclosed, and on 27 March 1956, the house was sold at public auction pursuant to the said contract. As highest bidder, plaintiffs-appellees were issued the corresponding certificate of sale.[3] Thereafter, on 18 April 1956, plaintiffs-appellees commenced Civil Case No. 43073 in the municipal court of Manila, praying, among other things, that the house be vacated and its possession surrendered to them, and for defendants-appellants to pay rent of P200.00 monthly from 27 March 1956 up to the time the possession is surrendered.[4] On 21 September 1956, the municipal court rendered its decision -

“ ordering the defendants to vacate the premises described in the complaint; ordering further to pay monthly the amount of P200.00 from March 27, 1956, until such (time that) the premises is (sic) completely vacated; plus attorney's fees of P100.00 and the costs of the suit.”[5]

Defendants-appellants, in their answers in both the municipal court and court a quo impugned the legality of the chattel mortgage, claiming that they are still the owners of the house; but they waived the right to introduce evidence, oral or documentary. Instead, they relied on their memoranda in support of their motion to dismiss, predicated mainly on the grounds that: (a) the municipal court did not have jurisdiction to try and decide the case because (1) the issue involved is ownership, and (2) there was no allegation of prior possession; and (b) failure to prove prior demand pursuant to Section 2, Rule 72, of the Rules of Court.[6]

During the pendency of the appeal to the Court of First Instance, defendants-appellants failed to deposit the rent for November, 1956 within the first 10 days of December, 1956 as ordered in the decision of the municipal court. As a result, the court granted plaintiffs-appellees' motion for execution, and it was actually issued on 24 January 1957. However, the judgment regarding the surrender of possession to plaintiffs-appellees could not be executed because the subject house had been already demolished on 14 January 1957 pursuant to the order of the court in a separate civil case (No. 25816) for ejectment against the present defendants for non-payment of rentals on the land on which the house was constructed.

The motion of plaintiffs for dismissal of the appeal, execution of the supersedeas bond and withdrawal of deposited rentals was denied for the reason that the liability therefor was disclaimed and was still being litigated, and under Section 8, Rule 72, rentals deposited had to be held until final disposition of the appeal.[7]

On 7 October 1957, the appellate court of First Instance rendered its decision, the dispositive portion of which is quoted earlier. The said decision was appealed by defendants to the Court of Appeals which, in turn, certified the appeal to this Court. Plaintiffs-appellees failed to file a brief and this appeal was submitted for decision without it.

Defendants-appellants submitted numerous assignments of error which can be condensed into two questions, namely;

- (a) Whether the municipal court from which the case originated had jurisdiction to adjudicate the same;
- (b) Whether the defendants are, under the law, legally bound to pay rentals to the plaintiffs during the period of one (1) year provided by law for the redemption of the extrajudicially foreclosed house.

We will consider these questions seriatim.

(a) Defendants-appellants mortgagors question the jurisdiction of the municipal court from which the case originated, and consequently, the appellate jurisdiction of the Court of First Instance a quo, on the theory that the chattel mortgage is void ab initio whence would follow that the extrajudicial foreclosure, and necessarily consequent auction sale, are also void. Thus, the ownership of the house still remained with defendants-appellants who are entitled to possession and not plaintiffs-appellees. Therefore, it is argued by defendants -appellants, the issue of ownership will have to be adjudicated first in order to determine possession. It is contended further that ownership being in issue, it is the Court of First Instance which has jurisdiction and not the municipal court.

Defendants-appellants predicate their theory of nullity of the chattel mortgage on two grounds, which are: (a) that their signatures on the chattel mortgage were obtained through fraud, deceit, or trickery and (b) that the subject matter of the mortgage is a house of strong materials, and, being an immovable, it can only be the subject of a real estate mortgage and not a chattel mortgage.

On the charge of fraud, deceit or trickery, the Court of First Instance found defendants-appellants' contentions as not supported by evidence and accordingly dismissed the charge,[8] confirming the earlier finding of the municipal court that "the defense of ownership as well as the allegations of fraud and deceit are mere allegations ".[9]

It has been held in *Supia and Batiaco vs. Quintero and Ayala*[10] that "the answer is a mere statement of the facts which the party filing it expects to prove, but it is not evidence";[11] and further, that when the question to be determined is one of title, the Court is given the authority to proceed with the hearing of the cause until this fact is clearly established. In the case of *Sy vs. Dalman*,[12] wherein the defendant was also a successful bidder in an auction sale, it was likewise held by this Court that in detainer cases the claim of ownership "is a matter of defense and raises an issue of fact which should be determined from the evidence at the trial that determines jurisdiction are the allegations or averments in the complaint and the relief asked for.[13]

Moreover, even granting that the charge is true, fraud or deceit does not render a contract void ab initio, and can only be a ground for rendering the contract voidable or annulable pursuant to Article 1390 of the New Civil Code, by a proper action in court.[14] There is nothing on record to show that the mortgage has been annulled. Neither is it disclosed that steps were taken to nullify the same. Hence, defendants-appellants' claim of ownership on the basis of a voidable contract which has not been voided fails.

It is claimed in the alternative by defendants-appellants that even if there was no fraud, deceit or trickery, the chattel mortgage was still null and void ab initio because only personal properties can be subject of a chattel mortgage. The rule about the status of buildings as immovable property is stated in *Lopez vs. Orosa, Jr. and Plaza Theatre, Inc.*,[15] cited in *Associated Insurance Surety Co., Inc. vs. Iya, et al.*,[16] to the effect that -

" it is obvious that the inclusion of the building, separate and distinct from the land, in the enumeration of what may constitute real pro-perties (art. 415, New Civil Code) could only mean one thing - that a building is by itself an immovable property irrespective of whether or not said structure and the land on which it is adhered to belong to the same owner."

Certain deviations, however, have been allowed for various reasons. In the case of *Manarang and Manarang vs. Ofilada*,[17] this Court stated that " it is undeniable that the parties to a contract may by agree-ment treat as personal property that which by nature would be real pro-erty", citing *Standard Oil Company of New York vs. Jaramillo*. [18] In the latter case, the mortgagor conveyed and transferred to the mortgagee by way of mortgage "the following described personal property." [19] The "personal property" consisted of leasehold rights and a building. Again, in the case of *Luna vs. Encarnacion*, [20] the subject of the contract designated as Chattel Mortgage was a house of mixed materials, and this Court held therein that it was a valid Chattel mortgage because it was so expressly designated and specifically that the property given as security "is a house of mixed materials, which by its very nature is considered personal property". In the later case of *Navarro vs. Pineda*, [21] this Court stated that -

"The view that parties to a deed of chattel mortgage may agree to consider a house as per-sonal property for the purposes of said contract, 'is good only insofar as the contracting parties are concerned. It is based, partly, upon the prin-ciple of estoppel' (*Evangelista vs. Alto Surety*, No. L-11139, 23 April 1958). In a case, a mortgaged house built on a rented land was held to be a personal property, not only because the deed of mortgage considered it as such, but also because it did not form part of the land (*Evangelis-ta vs. Abad*, (CA); 36 O. G. 2913), for it is now settled that an object placed on land by one who had only a temporary right to the same, such as the lessee or usufructuary, does not become im-mobilized by attachment (*Valdez vs. Central Al-ta-gracia*, 222 U. S. 58, cited in *Davao Sawmill Co., Inc. vs. Castillo, et al.*, 61 Phil. 709). Hence, if a house belonging to a person stands on a rented land belonging to another person, it may be mortgaged as a personal property as so stipu-lated in the document of mortgage. (*Evangelista vs. Abad*, supra.) It should be noted,

however, that the principle is predicated on statements by the owner declaring, his house to be a chattel, a conduct that may conceivably estop him from subsequently claiming otherwise." (Ladera vs. C. N. Hodges, (CA) 48 O. G. 5374).[22]

In the contract now before Us, the house on rented land is not only expressly designated as Chattel Mortgage; it specifically provides that "the mortgagor voluntarily CEDES, SELLS and TRANSFERS by way of Chattel Mortgage[23] the property together with its leasehold rights over the lot on which it is constructed and participation. "[24] Although there is no specific statement referring to the subject house as personal property, yet by ceding, selling or transferring a property by way of chattel mortgage defendants-appellants could only have meant to convey the house as chattel, or at least, intended to treat the same as such, so that they should not now be allowed to make an inconsistent stand by claiming otherwise. Moreover, the subject house stood on a rented lot to which defendants-appellants merely had a temporary right as lessee, and although this can not in itself alone determine the status of the property, it does so when combined with other factors to sustain the interpretation that the parties, particularly the mortgagors, intended to treat the house as personalty. Finally, unlike in the Iya cases, Lopez vs. Orosa, Jr. and Plaza Theatre, Inc.[25] and Leung Yee vs. F. L. Strong Machinery and Williamson,[26] wherein third persons assailed the validity of the chattel mortgage,[27] it is the defendants-appellants themselves, as debtors - mortgagors who are attacking the validity of the chattel mortgage in this case. The doctrine of estoppel therefore applies to the herein defendants-appellants, having treated the subject house as personalty.

(b) Turning now to the question of possession and rentals of the premises in question. The Court of First Instance noted in its decision that nearly a year after the foreclosure sale the mortgaged house had been demolished on 14 and 15 January 1957 by virtue of a decision obtained by the lessor of the land on which the house stood. For this reason, the said court limited itself to sentencing the erstwhile mortgagors to pay plaintiffs a monthly rent of P200.00 from 27 March 1956 (when the chattel mortgage was foreclosed and the house sold) until 14 January 1957 (when it was torn down by the Sheriff), plus P300.00 attorneys' fees.

Appellants mortgagors question this award, claiming that they were entitled to remain in possession without any obligation to pay rent during the one year redemption period after the foreclosure sale, i.e., until 27 March 1957. On this issue, We must rule for the appellants.

Chattel mortgages are covered and regulated by the Chattel Mortgage Law, Act No. 1508.[28] Section 14 of this Act allows the mortgagee to have the property mortgaged sold at public auction through a public officer in almost the same manner as that allowed by Act No. 3135, as amended by Act No. 4118, provided that the requirements of the law relative to notice and registration are complied with.[29]

In the instant case, the parties specifically stipulated that "the chattel mortgage will be enforceable in accordance with the provisions of Special Act No. 3135 "[30] (Emphasis supplied)

Section 6 of the Act referred to[31] provides that the debtor-mortgagor (defendants-appellants herein) may, at any time within one year from and after the date of the auction sale, redeem the property sold at the extra judicial foreclosure sale. Section 7 of the same Act[32] allows the purchaser of the property to obtain from the court the possession during the period of redemption: but the same provision expressly requires the filing of a petition with the proper Court of First Instance and the furnishing of a bond. It is only upon filing of the proper motion and the approval of the corresponding bond that the order for a writ of possession issues as a matter of course. No discretion is left to the court.[33] In the absence of such a compliance, as in the instant case, the purchaser can not claim possession during the period of redemption as a matter of right. In such a case, the governing provision is Section 34, Rule 39, of the Revised Rules of Court[34] which also applies to properties purchased in extrajudicial foreclosure proceedings.[35] Construing the said section, this Court stated in the aforesaid case of Reyes vs.

Hamada,

"In other words, before the expiration of the 1-year period within which the judgment-debtor or mortgagor may redeem the property, the purchaser thereof is not entitled, as a matter of right, to possession of the same. Thus, while it is true that the Rules of Court allow the purchaser to receive the rentals if the purchased property is occupied by tenants, he is, nevertheless, accountable to the judgment-debtor or mortgagor as the case may be, for the amount so received and the same will be duly credited against the redemption price when the said debtor or mortgagor effects the redemption. Differently stated, the rentals receivable from tenants, although they may be collected by the purchaser during the redemption period, do not belong to the latter but still pertain to the debtor or mortgagor. The rationale for the Rule, it seems, is to secure for the benefit of the debtor or mortgagor, the payment of the redemption amount and the consequent return to him of his properties sold at public auction." (Emphasis supplied)

The Hamada case reiterates the previous ruling in *Chan vs. Espe*.^[36]

Since the defendants-appellants were occupying the house at the time of the auction sale, they are entitled to remain in possession during the period of redemption or within one year from and after 27 March 1956, the date of the auction sale, and to collect the rents or profits during the said period.

It will be noted further that in the case at bar the period of redemption had not yet expired when action was instituted in the court of origin, and that plaintiffs-appellees did not choose to take possession under Section 7, Act No. 3135, as amended, which is the law selected by the parties to govern the extrajudicial fore-closure of the chattel mortgage. Neither was there an allegation to that effect. Since plaintiffs-appellees' right to possess was not yet born at the filing of the complaint, there could be no violation or breach thereof. Wherefore, the original complaint stated no cause of action and was prematurely filed. For this reason, the same should be ordered dismissed, even if there was no assignment of error to that effect. The Supreme Court is clothed with ample authority to review palpable errors not assigned as such if it finds that their consideration is necessary in arriving at a just decision of the case.^[37]

It follows that the court below erred in requiring the mortgagors to pay rents for the year following the foreclosure sale, as well as attorney's fees.

FOR THE FOREGOING REASONS, the decision appealed from is reversed and another one entered, dismissing the complaint. With costs against plaintiffs-appellees.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Exhibit "A", page 1, Folder of Exhibits.

[2] See paragraph "G", Exhibit "A", supra.

[3] Exhibit "B", page 4, Folder of Exhibits.

[4] Page 2, Defendants' Record on appeal, page 97, Rollo.

[5] Page 20, Id., page 115, Rollo.

[6] Now Section 2, Rule 70, Revised Rules of Court, which reads that -

"Sec. 2. Landlord, to proceed against tenant only after demand.- No landlord, or his legal representative or assign, shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease,

unless the tenant shall have failed to pay such rent or comply with such conditions for a period of five (5) days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon."

[7] See CFI order of 20 February 1957, pages 21-25, Defendants' Record on Appeal.

[8] Page 31, Defendants' Record on Appeal, page 213, Rollo.

[9] See Municipal court decision, pages 17-18, Defendants' Record on Appeal, pages 199-200, Rollo.

[10] 59 Phil. 320-321.

[11] Underscoring supplied.

[12] L-19200, 27 February 1968, 22 SCRA 834; See also Aquino vs. Deala, 63 Phil. 582 and De los Reyes vs. Elepaño, et al., G. R. No. L-3466, 13 October 1950.

[13] See Canaynay vs. Sarmiento, L-1246, 27 August 1947, 79 Phil. 36.

[14] Last paragraph, Article 1290, N. C. C., supra.

[15] No. L-10817-18, 28 February 1958, 103 Phil. 98.

[16] No. L-10837-38, 30 May 1958, 103 Phil. 972.

[17] No. L-8133, 18 May 1956, 99 Phil. 109.

[18] No. L-20329, 16 March 1923, 44 Phil. 632.

[19] Underscoring supplied.

[20] No. L-4637, 30 June 1952, 91 Phil. 531.

[21] No. L-18454, 30 November 1963, 9 SCRA 631.

[22] Underscoring supplied.

[23] Underscoring supplied.

[24] See paragraph 2 of Exhibit "A", page 1, Folder of Exhibits.

[25] Supra.

[26] Supra.

[27] See Navarro vs. Pineda, supra.

[28] Effective 1 August 1906.

[29] See Luna vs. Encarnacion, et al., No. L-4637, 30 June 1952, 91 Phil. 531.

[30] See paragraph "G", Exhibit "A", supra.

[31] Section 6, Act No. 3135, as amended, provides:

"In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successor in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at

any time within the term of one year from and after the date of the sale and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act." (Underscoring supplied)

[32] Section 7, Act No. 3135, as amended, states:

"In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the Province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act." (Underscoring supplied)

[33] See *De Gracia vs. San Jose, et al.*, No. L-6493, 25 March 1954.

[34] "Sec. 34. Rents and profits pending redemption. State-ment thereof and credit therefor on redemption. - The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is en-titled to receive the rents of the property sold or the value of the use and occupation thereof when such property is in posses-sion of a tenant. But when any such rents and profits have been received by the judgment creditor or purchaser, or by a redemp-tioner, or by the assignee or either of them, from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid;"

[35] See *Reyes vs. Hamada*, No. L-19967, 31 May 1965, 14 SCRA 215; Underscoring supplied.

[36] No. L-16777, 20 April 1961, 1 SCRA 1004.

[37] *Saura Import & Export Co. vs. Philippine International Surety Co., et al.*, No. L-15184, 31 May 1963, 8 SCRA 143, 148; *Hernandez vs. Andal*, 78 Phil. 198, See also Sec. 7, Rule 51, of the Revised Rules of Court. Cf. *Santaella vs. Otto Lange Co.*, 155 Fed. 719; *Mast vs. Superior Drill Co.*, 154 Fed.. 45, Francisco, Rules of Court (1965 Ed) Vol. 3, page 765.

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