

PHILIPPINE NATIONAL BANK, PETITIONER-APPELLEE, VS. PRIMITIVA MALLORCA, OPPOSITOR-APPELLANT.

G.R. No. L-22538. October 31, 1967

Ponente: SANCHEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2fe91ca15b38/>

SANCHEZ, J.:

Disputed by appellant Primitiva Mallorca is the correctness of the order of the Court of First Instance of Iloilo, sitting as a Cadastral Court,[1] directing her to surrender to the Register of Deeds her co-owner's copy of Transfer Certificate of Title No. T-24256. This is necessary to enable the Philippine National Bank[2] to secure in its name Torrens title to the property involved which it acquired in a foreclosure sale upon mortgage executed in its favor.

The background facts may be recited as follows:

Way back in 1950, one Ruperta Lavilles mortgaged a 48,965 square meter-parcel of land situate in Passi, Iloilo (Lot 1504, Passi Cadastral Survey) to the PNB as security for a loan of P1,800.00. The lot was covered by Transfer Certificate of Title 27070 in the name of Ruperta Lavilles. The mortgage was duly recorded.

On January 12, 1958, while the mortgage above-described was in full force and effect, and without PNB's knowledge and consent, Ruperta Lavilles sold to appellant Primitiva Mallorca 20,000 square meters of the mortgaged land.

On January 17, 1958, Mallorca moved the Iloilo cadastral court to have the sale to her duly annotated on the title,[3] and, for the purpose, to require PNB to surrender the owner's copy of TCT 27070 to the Register of Deeds.

The court order of February 3, 1958 directed PNB to deliver said TCT 27070 to the Register of Deeds, and warned that "[t]he mortgage in favor of the Philippine National Bank is duly registered in the Office of the Register of Deeds and to whomsoever the land is sold the vendee will assume the responsibility of complying with the provisions of the mortgage."

The Register of Deeds then cancelled TCT 27070, issued a new one, TCT 24256, making two co-owner's copies of the title - one each for Ruperta Lavilles and for Primitiva Mallorca. PNB's mortgage lien was annotated on both copies.

Ruperta Lavilles failed to pay her mortgage debt. PNB, on April 16, 1958, foreclosed the mortgage extrajudicially. On May 12, 1958, a certificate of sale was issued to PNB as the highest bidder in the foreclosure sale. This certificate of sale was registered with the Register of Deeds of Iloilo.

In March, 1959, Mallorca sued PNB to enforce her right of redemption with damages.[4]

On February 9, 1960, judgment was rendered in the case just stated, dismissing the claim for damages but declaring Mallorca "entitled to exercise her right of redemption with respect to the 20,000 square meters sold to her by Ruperta Lavilles within the period specified by law."

Mallorca's appeal from this judgment was, on June 18, 1960, denied by the lower court - it was filed out of time. Her move to reconsider was rejected. She then went to the Court of Appeals on mandamus. On January 14, 1961, the appellate court denied the same for lack of merit.[5]

Primitiva Mallorca failed to exercise her right of redemption as decreed by the court.

Thus, the final deed of sale in favor of PNB, dated February 19, 1962, was presented to the Register of Deeds on April 10, 1962 for registration. The latter refused to register without Mallorca's co-owner's copy of TCT 24256. By letter of May 18, 1962, the Register of Deeds required Mallorca to surrender said copy. She did not comply.

And so, PNB lodged the present petition for consolidation of title in the cadastral court. The bank prayed that Mallorca's co-owner's copy of TCT 24256 be declared null and void, and that the Register of Deeds be directed to cancel the same and to issue a new title in the name of PNB, upon payment of the legal fees.

By order of August 18, 1962, the court a quo required Mallorca "to deliver the co-owner's duplicate copy of TCT 24256 to the Register of Deeds within a period of five (5) days."

Mallorca appealed this order to the Court of Appeals.[6] The latter, however, in its resolution of February 18, 1964, certified the case to this Court, as the issues present questions of law.

1. Appellant's stand is that her undivided interest consisting of 20,000 square meters of the mortgaged lot, remained unaffected by the foreclosure and subsequent sale to PNB. Because,, so she argues, she was not a party to the real estate mortgage in favor of PNB, and she "neither secured nor contracted a loan" with said bank. What PNB foreclosed, she maintains; "was that portion belonging to Ruperta Lavilles only", not the part belonging to her.

Appellant's position clashes with precepts well-entrenched in law. By Article 2126 of the Civil Code,[7] a "mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted." Sale or transfer cannot affect or release the mortgage. A purchaser is necessarily bound to acknowledge and respect the encumbrance to which is subjected the purchased thing and which is at the disposal of the creditor "in order that he, under the terms of the contract, may recover the amount of his credit therefrom." [8] For, a recorded real estate mortgage is a right in rem, a lien on the property whoever its owner may be.[9] Because the personality of the owner is disregarded; the mortgage subsists notwithstanding changes of ownership; the last transferee is just as much of a debtor as the first one; and this, independent of whether the transferee knows or not the person of the mortgagee[10] So it is, that a mortgage lien inseparable from the property mortgaged. All subsequent purchasers thereof must respect the mortgage, whether the transfer to them be with or without the consent of the mortgagee. For, the mortgage, until discharged, follows the property,[11]

And then, militating against appellant's cause is one other special feature of a real mortgage - its indivisibility.[12] This Court has understood mortgage indivisibility in the sense that each and every parcel under mortgage answers for the totality of the debt.[13]

It does not really matter that the mortgagee, as in this case, did not oppose the subsequent sale. Naturally, because the sale without PNB's knowledge. Even if such knowledge is chargeable to PNB, its failure to object to the sale could not have any impairing effect upon its rights as mortgagee. After all, a real mortgage is merely an encumbrance; it does not extinguish the title of the debtor, whose right to dispose - a principal attribute of ownership - is not thereby lost.[14] And, on the assumption that PNB recognized the efficaciousness of the sale by Ruperta Lavilles of a portion of the mortgaged land to Primitiva Mallorca, which Lavilles "had the right to make" and which anyway PNB "cannot oppose", PNB cannot be prejudiced thereby, for, at all events, "such sale could

not affect the mortgage, as the latter follows the property whoever the pos-sessor may be."[15]

On Primitiva Mallorca's part, she cannot rightfully deny the mortgage lien on the portion of the land she purchased. First. Registration of the mortgage in the Register of Deeds is notice to all persons of the existence thereof.[16] Second. By express provision of Section 39 of the Land Registration Act, "every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrance except those noted on said certificate."[17] Clear implication exists that if an encumbrance is so noted, that purchaser is bound thereby, Third. Mallorca herself petitioned the court to order PNB to deliver the owner's copy of TCT 27070 to the Register of Deeds for annotation of Mallorca's interest, as heretofore adverted to. And the court, in giving its stamp of approval to the petition, expressly directed that "to whomsoever the land is sold the vendee will assume the responsibility of complying with the provisions of the mortgage." Fourth. Mallorca's own co-owner's copy of the title issued to her carried PNB's mortgage lien. Fifth. The fact that Mallorca failed to exercise her right of redemption, which she sought to enforce in a judicial court, ends her interest to the land she claims, and, doubtless, estops her from denying PNB's mortgage lien thereon.

We, accordingly, rule that PNB has the right to consolidate its title on the entire lot mortgaged by Ruperta Lavilles in its favor, including the 20,000 square meter-undivided interest of Primitiva Mallorca. And this, by virtue of the foreclosure sale and the expiry of Mallorca's right of redemption.

2. In a final effort to overturn the order under review, appellant espouses the thesis that the lower court, acting as a cadastral court, is without jurisdiction in the premises. Her syllogism is this: she is questioning the right of PNB to declare TCT 24256 as null and void insofar as the 20,000 square meter-undivided portion is concerned; the issue is thus raised to the level of "contentious litigation"; and, going by jurisprudence,[18] a cadastral court is devoid of power to act thereon.

The precedents appellant depends on cannot serve as authority, in her case. For, those cases involved unresolved issues. Here, the question she presents - whether her undivided share in the lot is encumbered or unencumbered - has been definitely passed upon in the redemption case she brought against PNB (Civil Case 5149, Court of First Instance of Iloilo). Mallorca herself acknowledged the validity of that encumbrance when she commenced said civil case. Given the facts, PNB's petition to consolidate title falls under the rule that a cadastral court has jurisdiction to entertain a petition for the cancellation of an outstanding certificate of title where the registered owner has been lawfully divested of his title thereof.[19] For, the truth is that this case presents no substantial controversy. As held in the case of Castillo vs. Ramos, supra, pp. 814-815 -

"where a petition concerning the cancellation of any encumbrance noted on a Torrens certificate of title is filed within the record of the land registration case in which the basic decree was entered and there is no substantial controversy in regard thereto between the petitioner and any other interested party, such petition may be considered as a mere incidental matter in such land registration case and may therein be acted upon by the proper court."[20]

Upon the record as it stands, the lower court order of August 18, 1962 is, as it is hereby, affirmed.

Costs against oppositor-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, J.P., Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

[1] Cadastral Case 30, GLRO Record 487, Lot 1504, Passi Cadastre, Court of First Instance of Iloilo.

[2] Hereinafter referred to simply as PNB.

[3] Cadastral Case 29, GLRO Record 487, Lot 1504, Passi Cadastre, Court of First Instance of Iloilo.

[4] Civil Case 5149, Court of First Instance of Iloilo.

[5] CA-G. R. 28505-R.

[6] CA-G. R. 31487-R.

[7] Formerly Article 1876 of the Civil Code of Spain of 1889.

[8] *Bischoff vs. Pomar*, 12 Phil. 690, 700.

[9] Altavas, *The Law of Mortgages in the Philippine Islands*, 1924 ed., p. 2.

[10] *Id.*, at p. 5.

[11] Peña, *Registration of Land Titles and Deeds*, 1961 ed., p. 225; emphasis supplied. See also V Tolentino, *Civil Code of the Philippines*, 1962 ed., p. 477.

[12] Article 2089, Civil Code.

[13] *Goquiolay vs. Sycip*, L-11840, December 10, 1963.

[14] *E. C. McCullough, & Co. vs. Veloso*, 46 Phil. 1, 4.

[15] *Id.*

[16] Section 51, Land Registration Act.

[17] Emphasis supplied. See *De Barreto vs. Villanueva*, L-14938, December 29, 1962.

[18] *Castillo vs. Ramos*, 78 Phil. 809, 813, and *Garcia vs. Belzunce*, 84 Phil. 802, 804.

[19] Secs. 111 and 112, Land Registration Act, *Cavan vs. Wislezenus*, 48 Phil. 632, 635-636; *Alto Surety & Insurance Co., Inc. vs. Limcaco*, 58 O.G. No. 21, pp. 3746, 3747.

[20] Emphasis supplied.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.