

RIZALINA V. ROSALES, PLAINTIFF-APPELLEE, VS. VIRGILIO R. FRANCISCO AND EVARISTO B. URBINA, DEFENDANTS,

Ponente: SANTIAGO-LAGMAN, J.

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SANTIAGO-LAGMAN, J.:

Before Us is an Appeal from the Judgment[1] dated November 15, 2000 of the Regional Trial Court of Quezon City, Branch 93, in Civil Case No. Q-93-16651, entitled “Rizalina V. Rosales, plaintiff -versus- Virgilio R. Francisco, Evaristo B. Urbina, Iluminada M. Dandan and Nicanor J. Dandan, defendants”, the dispositive portion of which reads:

“WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of the plaintiff:

- The Deed of Absolute Sale purportedly executed by plaintiff in favor of defendant Virgilio R. Francisco is declared null and void;
- The Real Estate Mortgage constituted by defendant Virgilio R. Francisco over the subject property in favor of the defendant Iluminada M. Dandan is likewise declared null and void;
- The Register of Deeds of Quezon City is directed to cancel Transfer Certificate of Title No. 72481 and issue a replacement certificate of title in the name of plaintiff, free of the mortgage lien or encumbrance in favor of defendant Iluminada M. Dandan, annotated at the back of Transfer Certificate of Title No. 72481.
- The defendant Virgilio R. Francisco is hereby ordered to pay plaintiff P100,000.00 by way of damages plus P50,000.00 as litigation expenses/attorney's fees and to pay the costs of suit.

SO ORDERED.”

The facts as culled from the Judgment of the court a quo are as follows:

“Plaintiff alleged in her Complaint that:“2. Plaintiff was the registered owner of a parcel of land, together with the improvements existing thereon, situated at Quirino District, Quezon City, covered by Transfer Certificate of Title No. RT-59056(126766) of the Registry of Deeds for Quezon City, x – x – x

3. The aforesaid transfer certificate of title was entrusted for safekeeping by plaintiff, who is a permanent resident of the United States of America, to her sister, Genoveva R. Francisco, the mother of defendant Virgilio R. Francisco;

4. Sometime in November 1992, defendant forged the signature of plaintiff, who was at that time and until now out of the country, as vendor on an undated Deed of Absolute Sale, notarized by defendant Evaristo B. Urbina at Pasig, Metro Manila on November 9, 1992, purportedly selling, transferring and conveying to said defendant her above described property; x – x – x

5. Defendant Evaristo B. Urbina, in notarizing the forged Deed of Absolute Sale, without knowing the true identity of the purported vendor, falsely certified that plaintiff was known to be the same persons (sic) who executed the said document, thereby imparting a semblance of legality to the simulation of the same by defendant Virgilio R. Francisco;

6. On the said date of its notarization, defendant Virgilio R. Francisco fraudulently procured the registration of the simulated Deed of Absolute Sale with the Registry of Deeds for Quezon City, causing the cancellation of Transfer Certificate of Title No. RT-59056(126766) in plaintiff's name and the issuance in said defendant's name the replacement Transfer Certificate of Title No. 72481, x – x – x

7. Upon learning of defendant's fraud, plaintiff executed in San Francisco, California, U.S.A. an Affidavit of Adverse Claim on January 8, 1993, x – x – x

8. A photocopy of said Affidavit of Adverse Claim was first presented to the Register of Deeds for Quezon City on February 11, 1993, for annotation at the back of Transfer Certificate of Title No. 72481, but was not annotated as the said Register of Deeds required the submission of the duly authenticated original of the same;

9. On March 8, 1993, the duly authenticated original of plaintiff's Affidavit of Adverse Claim was presented to the Register of Deeds of Quezon City and on the same date duly annotated at the back of Transfer Certificate of Title No. 72481;

10. It appears that, subsequently, on March 10, 1993, a Real Estate Mortgage, dated March 4, 1993, executed by defendant Virgilio R. Francisco over the subject property in favor of defendant Iluminada M. Dandan, to guarantee a principal obligation in the sum of P250,000.00 was annotated at the back of Transfer Certificate of Title No. 72481;

11. As the Deed of Absolute Sale forged by defendant Virgilio R. Francisco was a nullity and conveyed no title to him over the subject property, the Real Estate Mortgage created thereon by said defendant in favor of defendant Iluminada M. Dandan was likewise null and void, the latter, who was not an innocent purchaser for value acquired no better rights than the former;

x x x.”

Defendant Francisco was declared in default for his failure to file his Answer. Defendants Dandan countered by stating in their Answer that they have acted in good faith in their transaction with defendant Francisco and that they were absolutely unaware of any defect in the title of the latter.

As affirmative defenses, they stated, thus:

“x x x

8. Sometime in the last week of February 1993, defendant Francisco approached defendants Dandan for a loan of P250,000.00, offering his parcel of land, together with the improvements thereon, covered by TCT No. 72481, as security. At first, defendants Dandan were hesitant, but defendant Francisco was very persistent, citing as reason that he needed money very badly.

9. Acting prudently, since the amount being borrowed was substantial, defendants Dandan went to the Office of the Register of Deeds of Quezon City, Metro Manila on March 4, 1993 and verified the status of TCT No. 72481. Defendants Dandan learned from the Office of the Register of Deeds of Quezon City that TCT No. 72481, which is registered in the name of defendant Francisco, is in order and except for the lien covered by Entry No. 3750 is free from any other encumbrances. Defendant Francisco informed defendants Dandan that the lien covered by Entry No. 3750 has already been paid and he has the release documents.

10. With the foregoing information, defendants Dandan on March 4, 1993, a Thursday, loaned defendant Francisco the amount of P250,000.00 and to secure payment of the same, defendant Francisco executed in favor of defendants Dandan a Deed of Real Estate Mortgage over the parcel of land, together with the improvements standing thereon, on the same date. Defendant Francisco also on the same date personally handed to defendants Dandan the original owner's copy of TCT No. 72481, which, except for the lien covered by Entry No. 3750, is clean.

11. On March 8, 1993, the following Monday, defendants Dandan presented to the Office of the Register of Deeds of Quezon City the following a) original owner's copy of TCT No. 72481; b) Deed of Real Estate Mortgage dated March 4, 1993; and c) release documents covering Entry No. 3750, for the purpose of registering the said real estate mortgage and for cancellation of the lien covered by Entry 3750.

12. To defendants Dandan's surprise and shock, the Office of the Register of Deeds of Quezon City, instead of registering the Deed of Real Estate Mortgage, annotated on the back of the original owner's copy of TCT No. 72481, an adverse claim covered by Entry No. 4827 and dated the inscription as March 8, 1993.

13. The Office of the Register of Deeds of Quezon City also annotated on the back of the original owner's copy of TCT No. 72481 Entry No. 5075 which cancelled Entry No. 3750 and dated the inscription as March 9, 1993.

14. The Office of the Register of Deeds of Quezon City thereafter annotated on the back of the original owner's copy of TCT No. 72481 Entry No. 5216 covering the real estate mortgage executed by defendant Francisco in favor of defendants Dandan and dated the inscription as March 10, 1993.

15. Wasting not (sic) time defendants Dandan contacted defendant Francisco about the matter, and the latter, who could no longer return the amount of P 250,000.00, assured defendants Dandan not to worry as everything was in order and that he would pay back the loan on its maturity.

16. The adverse claim covered by Entry No. 4827, lapsed thirty days after its (sic) inscription on March 8, 1993, and the same was duly cancelled by Entry No. 5231 which inscription was dated by the Office of the Register of Deeds on April 20, 1993.

17. Thereafter, defendant Francisco defaulted on his loan with defendants Dandan. Accordingly, defendants Dandan, pursuant to the rights granted them, as mortgagees, under the Deed of Real Estate Mortgage dated March 4, 1993 foreclosed the real estate mortgage extra judicially. The property covered by TCT No. 72481 was sold by the Sheriff at a public auction sale on October 14, 1993, with defendants Dandan as the highest bidder. x – x – x Defendants Dandan presented to the Office of the Register of Deeds of Quezon City the original owner's copy of TCT No. 72481 together with the Sheriff Certificate of Sale for registration on October 27, 1993. The Office of the Register of Deeds of Quezon City annotated Entry No. 6142 covering the sheriff sale, but also annotated afterwards Entry No. 1297 covering a lis pendens which inscription was dated September 22, 1993.

18. The Deed of Real Estate Mortgage dated March 4, 1993 executed by defendant Francisco in favor of defendant Dandan is valid and cannot be annulled.

19. Plaintiff, not being a party to the aforesaid Deed of Real Estate Mortgage, has no legal personality to annul the same.

20. Defendants Dandan, having foreclosed already the real estate mortgage on October 14, 1993 and being the highest bidder in the public auction sale, are already the owners of the parcel of land, together with the improvements standing thereon, covered by TCT No. 72481, which ownership plaintiff could no longer question or annul.

21. As registered in the Office of the Register of Deeds of Quezon City, the Deed of Real Estate Mortgage executed by defendant Francisco in favor of defendants Dandan is superior than, and cannot be defeated by, the lien of plaintiff covered by Entry No. 1297 (lis pendens).

22. Defendants Dandan, in dealing with defendant Francisco, has acted in good faith and for value.

23. Plaintiff is guilty of gross negligence in the safekeeping of her transfer certificate of title.

24. Plaintiff is already in estoppel to question the validity of TCT No. 72481 and the Deed of Real Estate Mortgage executed by defendant Francisco in favor of defendants Dandan.

x x x.”

Defendant Atty. Evaristo B. Urbina, whose name appears as Notary Public on the “Deed of Absolute Sale”, designated as Doc. No. 280; Page No. 57; Book No. XXVIII; Series of 1992, averred in his Answer that while said document showed his signature and notarial seal, he never notarized said document. He offered as proof a loose-leaf of his Notarial Report dated October 15, 1992, wherein the entered Doc. No. 280; Page No. 57; Book No. XXVIII; Series of 1992, refers to a Deed of Absolute Sale involving a motor vehicle executed by one Homobono Gomez, a resident of No. 52 Ortigas Avenue, Rosario, Pasig, Metro Manila, in favor of Serafin Adefuin, a resident of Labuin, Sta. Cruz, Laguna; that the original copy of the said loose-leaf in the Notarial Report for the month of October, 1992 is now appended to the records of the Notarial Section of the Regional Trial Court of Pasig, Metro Manila.

He further averred that his personal investigation on the matter showed that the document in question was fictitiously notarized by his former office clerk namely, Gloria Loyola on October 15, 1992, after he summarily and outrightly dismissed her from her job when he was informed by the Chief of the Notarial Section of the Regional Trial Court of Pasig, Metro Manila that several persons were verifying in that Notarial Section Office regarding several notarized documents purportedly notarized by him but which were not actually his Notarial Reports. One of these documents is the Deed of Absolute Sale in question, which, according to him, has been fictitiously notarized by Gloria Loyola after her dismissal in August 1992.”[2]

The issues having been joined, pre-trial conference was conducted and a Pre-Trial Order[3] was issued. Thereafter, trial on the merits ensued.

After trial, the court a quo issued the assailed Judgment dated November 15, 2000, ruling in favor of Rizalina V. Rosales (appellee herein). Dissatisfied, Spouses Iluminada M. Dandan and Nicanor J. Dandan (appellants herein) via the instant appeal elevated the matter to this Court raising the following assignment of errors:[4]

“First Assignment Of Error

THE TRIAL COURT SERIOUSLY ERRED, AS A MATTER OF FACT AND LAW, IN HOLDING THAT THE REAL ESTATE MORTGAGE (EXH. 9), FOR WHICH DEFENDANTS DANDAN PAID VALUABLE CONSIDERATION AND ACTED IN GOOD FAITH RELYING ON TCT NO. 72481 (EXH. 2) IN THE NAME OF DEFENDANT FRANCISCO, IS NULL AND VOID.

COROLLARILY, THE TRIAL COURT SERIOUSLY ERRED, AS A MATTER OF FACT AND LAW, IN HOLDING THAT ENTRY NO. PE. 4827 INVOLVING PLAINTIFF'S ADVERSE CLAIM WAS REGULARLY ANNOTATED ON THE ORIGINAL OWNER'S COPY OF TCT NO. 72481 AND SHOULD PREVAIL OVER THE REAL ESTATE MORTGAGE IN FAVOR OF DEFENDANTS DANDAN (ENTRY NO. 5216).

Second Assignment Of Error

THE TRIAL COURT SERIOUSLY ERRED, AS A MATTER OF FACT AND LAW, IN NOT APPLYING THE EQUITABLE PRINCIPLE THAT AS BETWEEN TWO PERSONS WHO HAVE BEEN VICTIMIZED, THE PERSON WHO THROUGH HER MISPLACED CONFIDENCE, IN THIS CASE, THE PLAINTIFF, MADE POSSIBLE THE FRAUD, SHOULD BEAR THE RISK OF LOSS.

COROLLARILY, THAT PLAINTIFF HAD NOT DEMANDED FROM HER SISTER, GENOVEVA R. FRANCISCO, THE RETURN OF HER TCT NO. RT. 59056 TO WHOM SHE ENTRUSTED THE SAME, AND HAD NOT FILED ANY CRIMINAL OR CIVIL SUIT AGAINST HER, OR ANY CRIMINAL COMPLAINT FOR FALSIFICATION AGAINST DEFENDANT FRANCISCO, HER OWN NEPHEW, ALL THE MORE MAKES THE APPLICATION OF THE AFOREMENTIONED EQUITY PRINCIPLE

PROPER.”

The appellants assert that the court a quo erred in ruling that the Real Estate Mortgage[5] dated March 4, 1993 constituted on the property[6] covered by TCT No. 72481 (“subject property”) was null and void. According to them, the said court, in concluding that it was physically improbable for the appellee to execute the Deed of Absolute Sale[7] dated November 9, 1992 involving the subject property, merely relied on her bare testimony that she was in the United States of America in November, 1992 when the said Deed was executed. They likewise point out that from the time that defendant Virgilio R. Francisco[8] (“Francisco” for brevity) approached them sometime in the last week of February, 1993 for a loan of P250,000.00 and offered the said property as security, up to the time that the Real Estate Mortgage dated March 4, 1993 was executed, the only annotation at the back of the original owner's copy of TCT No. 72481 was Entry No. 3710.[9] In fact, even when they went to the Office of the Register of Deeds of Quezon City on March 8, 1993 to register the said Real Estate Mortgage, they were never informed by the said Register of Deeds of the appellee's adverse claim[10] (Entry No. P.E. 4827-T-72481) over the property and only learned about it on March 10, 1993. They further insist that the said adverse claim was already ineffectual as a result of its cancellation on April 20, 1993.[11]

We do not agree.

Prefatorily, We must emphasize the well-settled rule in this jurisdiction that factual findings and conclusions of the trial court are entitled to great weight and respect, and will not be disturbed on appeal in the absence of any clear showing that the court overlooked certain facts or circumstances which would substantially affect the disposition of the case.[12] This is because the said court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[13]

In the present case, the court a quo held, and rightly so, that the Real Estate Mortgage dated March 4, 1993 constituted over the subject property was null and void. It explained, thus –

“There is ample proof that plaintiff Rosales was not in the Philippines when the Deed of Absolute Sale in favor of defendant Francisco was allegedly executed by her. It is undisputed that the plaintiff has been in the United States of America since April of 1972. She stated that none of her intermittent vacation in the Philippines for a period of three weeks each in 1978, 1984, 1987 and 1995 was anywhere near the time of the execution of the said Deed of Absolute Sale which was in November 1992. It is undisputed that the parcel of land, together with the improvements existing thereon, situated at Quirino District, Quezon City, covered by Transfer Certificate of Title No. RT-59056(126766) of the Registry of Deeds for Quezon City, which was made the subject matter of the same Deed of Sale, was in the name of plaintiff Rosales and that it was only entrusted to her sister, Genoveva Rosales Francisco, for safekeeping, along with her other important documents. She allowed the family of her sister, though, to use it for themselves and later, she also allowed them to have it rented out to other people and to collect the proceeds therefrom.

She further testified that she came to know of the alleged transfer of the abovesaid property to Virgilio Francisco from the latter's sister. Defendant Francisco's sister was told by the lessee of the property that some people were asking if defendant Francisco was the real owner of the property, as the same was showing a certificate of title in his name to alleged buyers.

It is therefore physically improbable for her to appear and sign the questioned document before a notary public, who would acknowledge the same to be her own free voluntary act and deed. The plaintiff and the notary public both repudiated the genuineness and authenticity of the said document. Atty. Urbina categorically stated and showed proof that he did not notarize the same document. His testimony as to the falsity of the document rendered the said document spurious, the transaction fictitious, inexistent and void ab initio. The rule that contracts of sale are void and produce no effect whatsoever where the price which appears there as paid, has, in fact, never paid by the purchaser to the vendor, also applies to the case at bar. Such mortgage contract and the

subsequent foreclosure sale are inexistent and cannot be considered consummated.

Transfer Certificate of Title No. 72481 having been procured by means of a forged deed of sale is a nullity and conveys no title to defendant Francisco. x – x – x

From the documentary and testimonial evidence presented, it cannot be gainsaid that the defendant Dandan has already been notified of the claim being made by the plaintiff. The records disclose that the annotation of Adverse Claim entered as P.E. 4827-T-72481 on page B of TCT 72481 was registered on March 8, 1993 while the annotation of Real Estate Mortgage inscribed on page C of the same title as Entry No. 5216-T-72481 was only made on March 10, 1993.

x – x – x

For a deed of real estate mortgage to affect third parties, it must be in a public instrument and recorded in the Registry of Property. In the instant case, the material date is the registration and not the execution of the real estate mortgage. The Real Estate Mortgage in favor of defendant Dandan became effective as against third parties, including plaintiff, only on March 10, 1993, after compliance with the requirements of Sec. 60 of P.D. No. 1529 and Art. 2125 of the Civil Code. However, on that date, the plaintiff's affidavit of adverse claim was already annotated on the back of TCT 72481 in the custody of the Registry of Deeds of Quezon City.

As far as the plaintiff therefore is concerned, the real estate mortgage did not exist prior to March 10, 1993, its date of registration in the Registry of Deeds. On the other hand, defendant Dandan is charged of constructive notice of plaintiff's adverse claim as of March 8, 1993 before the effectivity of the real estate mortgage. Thus, defendant Dandan cannot be considered a mortgagee in good faith and for value who could be entitled to protection. Whatever rights she has acquired by virtue of her transaction with defendant Francisco remains subordinated to plaintiff's rights over the property.

x – x – x

The mortgage lien being ineffective as against plaintiff due to the priority of the registration of his adverse claim over the registration of the real estate mortgage, the court holds that the foreclosure of the mortgage caused by defendant Dandan cannot be binding upon the plaintiff. At the time the foreclosure sale was conducted, a notice of lis pendens was already annotated on the title. The record shows that the date of inscription on Page C of the subject titled of the said notice to be September 22, 1993, a month earlier than the annotation of the Sheriff's Certificate of Sale on the same title (additional sheet). Inasmuch as defendant Dandan ignored the notice of lis pendens annotated on the title when she bought the lot in the auction sale, she acted in bad faith and cannot therefore be considered as an innocent purchaser for value. x – x – x”[14] (Emphasis supplied)

As to appellants' assertion that the appelle's adverse claim was already ineffectual as of April 20, 1993, the trial court had this to say, viz:

“As for the Affidavit of Cancellation of Adverse Claim executed by defendant Dandan and annotated on the same title, the court holds that such was not only unprocedural but it failed to realize the objective it sought to achieve. The Supreme Court ruled in one case that an adverse claim does not become automatically ineffective after the lapse of thirty (30) days from the date of registration as it may seem to appear under Section 70 of P.D. 1529. It held in *Sajonas vs. Court of Appeals*[15] that the “provision on cancellation of adverse claim by verified petition would serve to qualify the provision on the effectivity period. The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. For if the adverse claim has already ceased to be effective upon the lapse of said period, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony.”

The said Affidavit of Cancellation did not cause the annotation of plaintiff's annotation of adverse claim to be cancelled. What is prescribed by law is a court order granting the cancellation sought by means of a verified

petition before a Regional Trial Court where the land is situated, after notice and hearing.”[16]

Considering that the Deed of Absolute Sale dated November 9, 1992 was null and void and did not convey any rights that could ripen into a valid title,[17] it necessarily follows that the subsequent Real Estate Mortgage dated March 4, 1993 constituted by defendant Francisco in appellants’ favor was also null and void, because the former was not the owner of the subject property.

The appellants next submit that the appellee’s acts or omissions made possible the perpetration of fraud by defendant Francisco. According to them, she entrusted her certificate of title over the subject property (TCT No. RT-59056)[18] to her sister, Genoveva R. Francisco, and even allowed her and her family (Genoveva’s) to stay in the said property but never demanded the return thereof nor instituted any criminal or civil case against her or defendant Francisco in connection with the said title. Considering the foregoing, it is their view that the court a quo should have applied the equitable principle that as between two persons who have been victimized, the person who through her misplaced confidence made possible the fraud – appellee herein – should bear the loss.

We are not persuaded.

As correctly pointed out by the appellee, the aforesaid equitable principle is applicable only in a situation where the owner has been shown to be negligent or in connivance with the forger and that the purchaser or mortgagor acquired the property or rights therein in good faith and for value. In the present case, the appellee was not shown to be negligent. Upon learning that defendant Francisco caused the registration of the Deed of Absolute Sale dated November 9, 1992 and obtained TCT No. 72481, she executed in San Francisco, California, USA, an Affidavit of Adverse Claim[19] on January 8, 1993 and had it duly annotated on the said certificate of title on March 8, 1993.

Neither can We consider the appellants as mortgagees nor as purchasers in good faith. As aforementioned, the Deed of Absolute Sale dated November 9, 1992 and the Real Estate Mortgage dated March 4, 1993 were null and void and that they have constructive notice of appellee’s adverse claim over the subject property as of March 8, 1993.[20] There being no valid real estate mortgage, there could also be no valid foreclosure or valid auction sale, either.[21]

WHEREFORE, premises considered, the assailed Judgment dated November 15, 2000 of the Regional Trial Court of Quezon City, Branch 93, is AFFIRMED, en toto.

SO ORDERED.

De Los Santos, (Chairman) and Pizarro, JJ., concur.

[*] Raffled to the Present Ponente on March 19, 2004

[1] Rollo pp. 41-50; Original Record, pp. 407-416

[2] Per RTC Judgment dated November 15, 2000, Rollo, pp. 41-46

[3] Original Record, p. 92

[4] Rollo, pp. 23-24

[5] Original Record, pp. 184-185

[6] The parcel of land described in paragraph 2 of the appellee’s Complaint, Ibid., p. 2

[7] Ibid., pp. 117-120

[8] Appellee's nephew.

[9] The said entry involves a real estate mortgage to Bernie and Rebecca Pabustan.

[10] Date of inscription of Entry No. P.E. 4827-T-72481 is March 8, 1993. Please see page B of TCT 72481, Original Record, p. 126

[11] Please see "Affidavit to Cancel Adverse Claim" dated April 19, 1993, executed by appellant Iluminada M. Dandan, Ibid., p. 192

[12] Finman General Assurance Corporation, vs. Court of Appeals, G.R. NO. 138737, July 12, 2001, 361 SCRA 214, 220

[13] Lopez, vs. Court of Appeals, G.R. NO. 110929, January 20, 2000, 322 SCRA 686, 694

[14] Per RTC Judgment dated November 15, 2000, Rollo, pp. 46-49

[15] 256 SCRA 79.

"The correct citation, however, for Sajonas vs. Court of Appeals is G.R. No. 102377, July 5, 1996, 258 SCRA 79, 96."

[16] Per RTC Judgment dated November 15, 2000, Rollo, p. 49

[17] Cruz vs. Bancom Finance Corporation, G.R. No. 147788, March 19, 2002, 379 SCRA 490, 509

[18] Original Record, pp. 114-115

[19] Ibid., pp. 121-122

[20] Per RTC Judgment dated November 15, 2000, Rollo, p. 48

[21] Cruz vs. Bancom Finance Corporation, supra

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