

DOMINGA LUI, PETITIONER, VS. THE HONORABLE MAGNO S. GATMAITAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, CALOOCAN BRANCH AND CONRADO POTENCIANO, RESPONDENTS.

G.R. No. L-4574. May 23, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Briefly, the facts pertinent in this case are as follows. On November 4, 1948, petitioner DOMINGA LUI as owner of a parcel of land with a house on it, described in Transfer Certificate of Title No. 2902 of Rizal, by means of a "sale with assumption of mortgage" (Exh. "10") conveyed said property to Enriqueta J. de Ocampo married to Hermenegildo de Ocampo for the sum of P19,000.00, with the condition that the vendee Enriqueta assumed the obligation of paying P11,000.00 to the Philippine national Bank for which amount the property had been mortgaged. The deed was registered and Transfer Certificate of Title No. 12048 was Issued to Enriqueta. One day before, however, that is, on November 3, 1948, the vendee Enriqueta executed an "acknowledgment of indebtedness" to the effect that the total consideration of the deed of sale, Annex "10", was P30,000.00, and that she still owed the vendor Dominga the sum of P14,000.00 (Annex "A").

On February 3, 1949, Enriqueta mortgaged the sane property to Dr. Conrado Potenciano to secure a loan of P16,000.00 (Annex "I") with the condition that the loan will be paid within a period of three (3) months, but renewable for a period of another three (3) months at the option of the mortgagee. This mortgage was registered in the office of the Register of Deeds. From the amount of the loan Enriqueta paid off the Philippine National Bank and released the mortgage in favor of said institution. Because of the failure of Enriqueta to pay the loan of P16,000.00, Potenciano foreclosed the mortgage on the property in question and on October 6, 1949, as the highest bidder, purchased the property for P19,528.44 at a public auction sale conducted by the Sheriff.

On September 2, 1949, Dominga Lui filed a complaint, Civil Case No. 928, in the Court of First Instance of Rizal against Enriqueta, her husband Hermenegildo, and Conrado Potenciano, which complaint was later amended on October 14, 1949. The purpose of the complaint was to annul and void the contract of sale with assumption of mortgage, Annex "10", executed by her in favor of Enriqueta J. de Ocampo, on the ground that it was fictitious and fraudulent; also to declare the mortgage in favor of Potenciano to secure the loan of P16,000.00 illegal and void, including the sale of the property at public auction to him; lastly, to declare the property as still belonging to her (plaintiff). The theory of the plaintiff is that she was, by means of deceit and fraud, prevailed upon by Enriqueta to execute the deed of sale with assumption of mortgage, and that Enriqueta later in connivance with Potenciano mortgaged the sane property to him and allowed the mortgage to be foreclosed resulting in the sale of the property to him. On the same day that the original complaint was filed on September 2, 1949, Dominga filed a notice of lis pendens with the Register of Deeds of Rizal to the effect that she had commenced an action to rescind the contract of sale in favor of Enriqueta.

In the course of the hearing of Civil Case No. 928, and because said hearing was postponed at the request of

plaintiff's counsel, Judge Encarnacion by order dated May 31, 1950 (Annex "4"), required the plaintiff to post a bond in the sum of P2,000.00, to answer for whatever damages that may be occasioned to the adverse party, presumably meaning Dr. Potenciano. It would appear that notwithstanding the conveyance made of the property by Dominga to Enriqueta and after the foreclosure of the mortgage in favor of Potenciano and the subsequent sale of the property to him, the plaintiff continued occupying the greater portion of the house on the lot in question, and not only did not pay any rent but even collected the monthly rentals of the rest of the building being paid by the Puericulture Center, without accounting for the same. It was undoubtedly for this reason that because of the delay in the hearing of the case requested by plaintiff's counsel, said plaintiff was required to file a bond.

Potenciano, feeling, according to him, that the bond of P2,000.00 was not sufficient to answer for damages he may suffer because of the continued occupancy of the building by plaintiff, asked the court to appoint a receiver of the property by means of a petition for that purpose, dated June 30, 1950 (Exh. "5"). In an order dated July 2, 1950, Annex "6", Judge Encarnacion after stating that altho Potenciano was owner of the property sold to him at a foreclosure sale, yet he did not enjoy the possession nor the rents thereof, because it was being occupied by plaintiff, granted the petition and appointed the Bank of the Philippine Islands as receiver upon filing by Potenciano of a bond in the sum of P2,000.00. In a separate order on the same date, July 2, 1950 (Annex "7"), the trial court cancelled the bond of P2,000.00 previously required of the plaintiff, for the reason that the appointment of the receiver was sufficient security or protection of the rights of Potenciano.

It would appear also that later, about September 20, 1950, upon petition of Dominga Lui, the same court but the Caloocan Branch presided over by respondent Judge Gatmaitan, revoked the appointment of the receiver. Potenciano immediately asked for the reconsideration of the order, but the same was denied by an order of November 29, 1950, Annex "E", which, however, required the plaintiff to post a bond of P1,000.00 to respond for any damages that might be sustained by Potenciano. Plaintiff moved for the reconsideration of this order (Exh. "F"), but the motion was denied in an order of January 26, 1951 (Annex "H"), wherein Judge Gatmaitan among other things said that the hearing of the case had been lagging along and plaintiff had been collecting P60.00 a from the Puericulture Center which was occupying a part of the building, and that it was difficult at the time to advance an opinion as to who was going to win in the end, and that the court believed that provisional justice could be secured only by maintaining the order requiring the plaintiff to file a bond of P1,000.00. To annul that order of respondent Judge Gatmaitan requiring plaintiff to file a bond of P1,000.00, the present petition for certiorari was filed by Dominga Lui.

From all what has been stated about the ownership and possession of the property in question and the relations of the parties thereto, we fail to see why the plaintiff-petitioner had gone into all the trouble and expense of resorting to this action of certiorari just to avoid filing a bond in the relatively small sum of P1,000.00. She claims that respondent Judge had no authority to require the filing of said bond. Bearing in mind that at the time the order was issued, her case had not yet been decided by the trial court, and that consequently, the trial court did not know who really owned the property and who had the right of possession to it, simple justice dictated that plaintiff who was occupying the greater portion of the house on the lot without paying any rent for it and who was also collecting and using the rent of P60.00 being paid by the Puericulture Center which occupied the remainder of the building, should give some security to Potenciano in whose favor the property was mortgaged in the sum of P16,000.00, who had foreclosed the mortgage and who had bought the property at a foreclosure sale for P19,528.44. Of course, plaintiff claims that the conveyance of the property by her to Enriqueta was the revolt of fraud practised upon her, and that the subsequent mortgage of the same property to Potenciano was also done through collusion and fraud. Potenciano equally claimed that the mortgage to him was above board; that he never had any dealings with the plaintiff, and that although the notice of lis pendens was filed in the office of the Register of Deeds, that was done long after the mortgage of the property to him.

In the memorandum for the petitioner Dominga Lui filed in this Court on July 31, 1951, in lieu of oral argument, is quoted a portion of the decision of Judge Gatmaitan in Civil Case No. 928, the case filed by plaintiff against Enriqueta, her husband and Dr. Potenciano, which decision is dated May 28, 1951, about three months after the filing of the petition for certiorari. As far as we can gather from the portion of the decision quoted, the trial court found the conveyance of the property from Dominga to the spouses De Ocampo, valid, but sentenced the said spouses to pay plaintiff the sum of P14,000.00, the amount owing to her, Potenciano was absolved from the complaint. The foreclosure sale was declared void for failure to comply with the posting of notices of the sale but the Court ordered the De Ocampo spouses to pay Potenciano the amount of the mortgage of P16,000.00 within ninety (90) days from notice otherwise, the mortgage would be foreclosed. Even under this decision the filing of the bond by plaintiff required by respondent Judge Gatmaitan would be justified. Unless conditions have changed of which we are not aware, plaintiff continues to occupy the house, even collecting the rent of a portion thereof, when she is no longer the owner of the land. True, the present owners, the De Ocampo spouses owe her P14,000.00, but this is a personal obligation without any security. On the other hand, the same spouses, owners of the property, owe Potenciano P16,000.00, and what is more, the property in question is mortgaged to him. As such mortgagee he has an interest in the property and right to an assurance that it will be preserved and well-taken care of, because in case the debt to him was not paid within 90 days, the mortgage would be foreclosed and the property sold at public auction. That was the reason why he had asked for and succeeded in having a receiver appointed to take care of the property. That appointment was later cancelled but on condition that for the security of Potenciano, the plaintiff occupying the property and collecting rents therefrom should file a bond in the relatively small sum of P1,000.00. This is but just and fair and respondent Judge acted within the law and in the exercise of sound discretion in making the requirement.

In view of all the foregoing, we find the petition to be without merit and so DENY the same, with costs against petitioner. Writ of preliminary injunction DISSOLVED.

Paras, Tuason, Pablo, Bautista Angelo, Bengzon, and Labrador, JJ., concur. Padilla, Feria, Reyes, and Jugo, JJ., did not take part.

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