

JUANA S. RUPERTO-OBANDO, PETITIONER-APPELLEE, VS. FIDELITY & SURETY COMPANY OF THE PHILIPPINE ISLANDS, OPPOSITOR-APPELLANT.*G.R. No. L-2490. September 26, 1950*

Ponente: OZAETA, J.

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This is an appeal from an order of Judge Dionisio de Leon of the Court of First Instance of Manila directing the register of deeds of the City, of Manila, upon payment of the corresponding fees and the presentation of the duplicates of transfer certificates of title Nos. 62161 and 62162, to cancel the mortgage and its amendment which are annotated on said certificates of title, entries Nos. 4041/T-61377 and 6608/T-61377, respectively.

It appears that on March 30, 1941, petitioner-appellee mortgaged to the appellant Fidelity & Surety Company of the Philippine Islands three parcels of land situated in the City of Manila and more particularly described in transfer certificates of title Nos. 62161 and 62162, for the amount of P9,000 payable in five years with interest at 8% per annum, which mortgage was amended on July 2, 1941, by increasing the amount to P11,811.10. The mortgagor had been regularly paying the monthly amortization agreed upon and on June 5, 1944, paid in full the balance of P5,167.45, whereupon the mortgagee executed the corresponding release of said mortgage in due form. Said release of mortgage, however, was burned before it could be presented for registration in the office of the register of deeds of Manila. Of this fact the mortgagor informed the mortgagee by letter and requested the latter to execute a new deed of cancellation of mortgage; but, thru its vice-president, the said mortgagee informed the mortgagor also by letter that "it is the policy of the company not to recognize any payment made during the Japanese occupation."

The present petition was filed before Branch IV of the Court of First Instance of Manila under section 112 of the Land Registration Act. It was opposed by the mortgagee on the ground that the payment made by petitioner on June 5, 1944, to the oppositor was made under duress, compulsion and intimidation, for which reason, it was alleged, said payment was null and void and had no legal effect, and that the court had no jurisdiction to entertain the petition under section 112 of the Land Registration Act.

The opposition was undoubtedly motivated by the fact that at the time it was filed this Court had not yet decided on the validity of payments of prewar obligations made during the Japanese occupation. That question having since been definitely determined by this Court adversely to the present appellant's contention in *Haw Pia vs. China Banking Corporation*, 45 O.G. Supp. No.9, 229, and other subsequent cases, it seems to us that appellant's opposition ceases to present any substantial issue that would warrant a full-dress trial in an ordinary civil action. We think no useful purpose will be served by requiring a formal trial but that, on the other hand, unnecessary trouble and expense to the parties will be avoided by affirming the order appealed from.

The order is affirmed, without any finding as to costs.

Moran, C.J., Paras, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

Tuason, J., I dissent from the majority opinion on the grounds stated in the dissents in *Haw Pia v. China Banking Corporation*, 45 O.G. Supp. No. 9, 229, and in other cases in which this Court's decisions were rested on the *Haw Pia v. China Banking Corporation* principle.

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