

PATRICIO CONTRERAS AND JERUSALEM GINGCO, PLAINTIFFS AND APPELLANTS, VS. THE CHINA BANKING CORPORATION, JUAN B. MOLINA AND TEODORA ARENAS, DEFENDANTS AND APPELLEES.

CA-No. 74. May 25, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

Plaintiffs are praying that the deed of mortgage executed by defendant spouses Juan B. Molina and Teodora Arenas in favor of the China Banking Corporation on November 8, 1930, be annulled; that all defendants be ordered to pay them the amount of P4,836.31; that spouses Molina be ordered to pay them the amount of P2,115; and that the China Banking Corporation be ordered to pay the amount of P135 monthly from August, 1934, until final judgment, besides costs.

Spouses Arcadio Gingco and Dolores Contreras were the owners of two accesorias of strong materials, located at Sande Street, Tondo, Manila, one with three front doors Nos. 1643, 1645 and 1647, and the other with two doors Nos. 1635 and 1637.

On June 23, 1928, Dolores Contreras died, leaving as her only heirs the widower and their daughter Jerusalem Gingco.

On November 6, 1928, Arcadio Gingco sold the two accesorias to Juan B. Molina and Teodora Arenas.

On June 24, 1930, Arcadio Gingco and Felix D. Blanco, administrator of the estate of Dolores Contreras, initiated civil case No. 36669 of the Court of First Instance of Manila against the spouses Juan B. Molina and Teodora Arenas for the annulment of the sale, and on August 22, 1930, they secured a decision, declaring the sale null and void as to one-half of said accesorias, Jerusalem Gingco being the owner thereof, and ordering said Jerusalem Gingco to pay defendants the sum of P1,500, representing one-half of the cost of repairs made in the property, plus legal interest from February 27, 1930, and one-half of the rents paid, or may continue being paid, by defendants on the land where the buildings were located. Arcadio Gingco was ordered to pay defendants the sum of P1,500 with legal interest.

Notwithstanding said decision, defendants Juan B. Molina and Teodora Arenas mortgaged the two accesorias in favor of the China Banking Corporation on November 8, 1930, to answer for a loan obtained by them from said bank in the amount of P2,000.

On the date of the execution of the deed of mortgage, November 8, 1930, the decision had not become final and executory, because both parties appealed therefrom, although later both withdrew their respective appeals and the decision became final and executory on December 29, 1930.

In the case, the spouses Juan B. Molina and Teodora Arenas were represented by Attorneys Feria & La O. They were also the attorneys of the China Banking Corporation.

Plaintiffs in this case maintained that the spouses Molina and the China Banking Corporation acted in bad faith in the execution of the deed of mortgage, for the purpose of evading the execution of the decision rendered in civil case No. 36669.

On August 19, 1933, the administrator of the estate of Dolores Contreras and Jerusalem Gingco filed a complaint in civil case No. 44960 of the Court of First Instance of Manila against the spouses Molina for the collection of one-half of the rents received by the latter from the properties in question.

On February 28, 1934, decision was rendered in the case, ordering defendants to pay the plaintiffs the amount of P4,836.31, plus rents defendants may continue collecting on the property from November, 1933. As to the partition of the property, the court suggested another separate action, if it could not be agreed upon extra judicially. Said decision was affirmed by the Supreme Court on May 10, 1935.

Due to the failure of Jerusalem Gingco to pay the spouses Molina the amount of P1,500, as ordered in the decision in civil case No. 36669, execution was issued on defendants' petition. As a result, Jerusalem Gingco's share in the property was adjudicated in public auction to defendant Teodora Arenas on November 6, 1933. Said share acquired by Teodora Arenas was automatically redeemed by Jerusalem Gingco as a result of the decision rendered in case No. 44960 on February 28, 1934, affirmed by the Supreme Court on May 10, 1935, in which it was declared that:

"The defendants in this case are, therefore, liable to the plaintiffs for all the amounts above referred to, which make a total of P6,629.65. From this sum, however, there should be deducted, and Jerusalem Gingco is duty bound to pay to the defendants in accordance with said decision in civil case No. 36669, the amount of P1,500 and six per cent interest thereon from February 27, 1930, to October 31, 1933, which amounts to P293.33, making a total of P1,793.33. After deducting said amount of P1,793.33 from P6,629.64, defendants, therefore, owe to the plaintiff the amount of P4,836.31."

Upon petition of Jerusalem Gingco, execution was issued in case No. 44960 against the spouses Molina. As a result, the sheriff announced the public auction of the share of said spouses in the property in question. But the public auction was stopped in view of the third-party claim filed by the China Banking Corporation, Jerusalem Gingco having failed to file the bond required by the sheriff in order to proceed with the public auction. In said third-party claim, the China Banking Corporation was represented by Attorneys Feria & La O, the same attorneys of the spouses Molina.

Before mortgaging the property to the China Banking Corporation, the spouses Molina secured the insurance of the property from the Philippine Guaranty Company. On August 23, 1934, as a result of a fire, the property suffered damages in the amount of P693.03, which was paid by the Philippine Guaranty Company to the spouses Molina who, on their part, indorsed the corresponding check to the China Banking Corporation on October 13, 1934. The bank applied the amount as part payment of the loan granted to spouses Molina.

The lower court rendered decision declaring valid the deed of mortgage in favor of the China Banking Corporation, dated November 8, 1930, ordering the spouses Molina to pay Jerusalem Gingco the amount of P2,000 as indemnity for damages; ordering the spouses Molina to pay the China Banking Corporation their debt to free the property in question from all liens, and, in case of their failure, granting Jerusalem Gingco the right to make the payment, the amount to be included in what Jerusalem Gingco may collect from the spouses Molina by execution of the decision in this case; ordering a deduction of P576.25 from the credit of Jerusalem Gingco against the spouses Molina, as an excess of the amount paid by Teodora Arenas in the public auction made in case No. 36669; ordering the spouses Molina to pay Jerusalem Gingco P2,520 as rents for the period from September 4, 1934, to September 4, 1941, plus P30 monthly from then on until the two doors of the property redeemed by

the Molinas be delivered to Jerusalem Gingco; ordering plaintiffs to pay the clerk's fees in this case as soon as they are able to collect the necessary amount from the spouses Molina; and ordering said defendants to pay the costs.

Plaintiffs appealed from this decision. As first assignment of error plaintiffs question the lower court's declaration of validity of the deed of mortgage executed by the spouses in favor of the China Banking Corporation.

We are of opinion that the assignment of error is well taken in the sense that the deed of mortgage with respect to the one-half of the mortgaged property belonging to plaintiff Jerusalem Gingco, is null and void ab initio, because the spouse Molina, the mortgagors, had absolutely no authority and could not mortgage a property belonging to a third person; and as to the remaining one-half of the

property belonging to the mortgagors, the mortgage must be declared rescinded, under either paragraphs 3 or 4 of article 1291 of the Civil Code.

The proved facts in this case tend to show that the spouses Molina mortgaged to the China Banking Corporation the property in question in order to defeat the effectiveness of the decision declaring one-half as belonging to Jerusalem Gingco, and to frustrate the collection of the monetary claims of Jerusalem Gingco for which the spouses Molina were sentenced to pay. Paragraph 3 of article 1291 of the Civil Code is applicable, it appearing from the record that Jerusalem Gingco was not able to collect said monetary claims in view of the third party claim filed by the China Banking Corporation based on the deed of mortgage in question. The deed of mortgage as to the one-half belonging to the spouses Molina must, therefore, be cancelled and rescinded. Although there is no direct evidence to the effect that the spouses Molina executed the deed of mortgage with the purpose of defrauding Jerusalem Gingco, said purpose may, however, be deduced from the fact that the deed of mortgage was executed after an adverse decision had been rendered against said spouses Molina, and this is the position taken by the Supreme Court of Spain in its sentencia of March 13, 1902. (See also the decision of the Supreme Court in *Panlilio vs. Victorio*, 35 Phil., 706.)

But if any doubt is to be entertained as to the applicability of paragraph 3 of article 1291 of the Civil Code in the present case, there cannot be any question as to the applicability of paragraph 4 of the same article. The deed of mortgage in question has for its object a property in litigation, and the deed of mortgage was executed by the spouses Molina without the knowledge and approval of neither the plaintiff nor the court having cognizance of the litigation. The spouses Molina cannot allege that the one-half belonging to them was free from litigation, because the action involved the whole property and at the time the deed of mortgage was executed the appeals of both parties have not as yet been withdrawn.

Lastly, defendants have not successfully rebutted the following applicable presumption established in article 1297 of the Civil Code:

"Alienations upon valuable consideration, made by a person against whom a judgment in any instance has been previously rendered, * * * shall also be presumed fraudulent."

Appellant assigns as second error of the lower court its failure to order the China Banking Corporation to indemnify Jerusalem Gingco in the amount of P6,951.31, which was adjudicated in her favor in civil case No. 44960 of the Court of First Instance of Manila, and which appellant failed to collect in view of the third-party claim filed by said bank, and the rents which said appellant failed to collect from accesorias Nos. 1635, 1637 and 1639 at the rate of P65 a month, beginning from September 4, 1934.

The assignment is also well-taken. The China Banking Corporation must answer for the payment of the amounts above mentioned as a consequence of our conclusion as to the nullity of the mortgage.

Appellant's third assignment of error does not need any resolution.

Appellant's fourth assignment of error is also well-taken, because the lower court failed to take into consideration the fact that spouses Molina must have also to pay to Jerusalem Gingco the rents they collected from November, 1933, which, according to the testimony of Patricio Contreras, amounted to P2,115 up to July, 1934.

For all the foregoing, the deed of mortgage dated November 8, 1930, is declared null and void as to the one-half of the mortgaged property belonging to Jerusalem Gingco and rescinded as to the remaining one-half belonging to the spouses Molina, and the appealed decision is modified by ordering all the defendants to pay Jerusalem Gingco the amount of P6,951.31, plus the additional amount of P30 monthly from September 4, 1934, to September 4, 1941, and to continue paying the same monthly amount thereafter until the two new doors of the accesorias in question are delivered to said Jerusalem Gingco. The defendants shall also pay the filing fees of the complaint in the lower court and the costs in both instances.

De Joya, Hilado, and Bengzon, JJ., concur.

CONCURRING AND DISSENTING:

OZAETA, J.,

I concur in the annulment of the mortgage executed by the defendant spouses Juan V. Molina and Teodora Arenas in favor of their co-defendant, the China Banking Corporation, in so far as it purported to affect one-half of the mortgaged property which belonged to the plaintiff Jerusalem Gingco. The said spouses could not mortgage what did not belong to them. (Paragraph 2, article 1857, Civil Code.) And they appear to have executed the mortgage in bad faith, for at that time the Court of First Instance of Manila had rendered judgment against them in civil case No. 36669 declaring that the herein plaintiff Jerusalem Gingco was the owner of one-half of the property in question.

The theory of the trial court that the defendant China Banking Corporation was a mortgagee in good faith and that therefore the entire mortgage was valid, is untenable. The property in question consists of two accesorias built on a lot rented from another person. The said accesorias do not appear to have been registered under the Land Registration Act. According to the trial court the China Banking Corporation relied upon the deed of sale of said accesorias in favor of the spouses Juan V. Molina and Teodora Arenas, which had been annulled by the court as to one-half of the accesorias which belongs to the Plaintiff Jerusalem Gingco. The mortgage in question could not prejudice the plaintiff Jerusalem Gingco, who not a party to it.

It was therefore plain error on the part of the trial court to require the plaintiff Jerusalem Gingco to respect the said mortgage and to pay it off in the event the spouses Molina should fail to do so.

I dissent from that portion of the decision of the Court which rescinds the said mortgage as to the other half of the property, which belongs to the mortgagors Juan V. Molina and Teodora Arenas. There is no basis in the pleadings and in the proofs for such rescission. The prater in plaintiffs' answer to the cross-complaint and counterclaim of the defendants Juan V. Molina and Teodora Arenas is for the annulment of the mortgage "with respect to the participation of the plaintiffs" in the mortgaged property. The rescission of the mortgage as to the one-half of the property belonging to the mortgagors upon the theory that it was made in fraud of creditors and that, moreover, it related to a thing in litigation, in violation of paragraphs 3 and 4 of article 1291 of the Civil Code, has not been raised in issue either in the lower court or in this Court. I find no factual basis for the application of paragraph 3 of article 1291. When the mortgage in question was signed on November 8, 1930, Jerusalem Gingco was not a

creditor but a debtor of the spouses Molina to the extent of P1,500, in accordance with the judgment rendered on August 22, 1930, in civil case No. 36669. Civil case No. 44960, wherein the said spouses were adjudged to pay certain sums of money to Jerusalem Gingco, was not instituted until August 19, 1933, or nearly three years after the date of said mortgage. The latter, therefore, cannot be said to have been made in fraud of creditors. Whether paragraph 4 of article 1291 is applicable, I express no opinion for the reason that the parties have not been heard upon that question.

My vote is that the judgment of the trial court should be reversed in so far as it declares valid the mortgage executed by the spouses Molina in favor of the China Banking Corporation as to the portion of the mortgaged property belonging to the plaintiff Jerusalem Gingco and requires the latter to pay the said mortgage should the said mortgagors fail to do so and should be affirmed in all other respects. Judgment modified.

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