

**MARIA VDA. DE SOTTO, PETITIONER, VS. HON. ANDRES REYES,
JUDGE OF COURT OF FIRST INSTANCE OF RIZAL, A. S. BUSTOS AND
PROVINCIAL SHERIFF OF RIZAL, RESPONDENTS.**

G.R. No. L-18439. August 21, 1963

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari and prohibition under Rule 67 of the Rules of Court.

On or about 21 August 1959, in the Court of First Instance of Rizal, Maria vda. de Sotto filed a complaint, amended on 11 September 1959, alleging that she is the registered owner of a parcel of land and improvements erected thereon situate in Bonifacio Subdivision, Grace Park, Caloocan, Rizal, as evidenced by transfer certificate of title No. 42415 issued in her name by the Register of Deeds in and for the province of Rizal; that on 20 February 1959, for and in consideration of the sum of P7,000, she executed a deed of sale of the parcel of land in favor of the defendant spouses Concepcion and Ricardo Flores; that P2,000 of the purchase price was to be paid in 12 equal installments beginning 30 April 1959 and the balance of P5,000 by a back pay certificate No. 3892 in the amount of P5,043.76 belonging to one Reynerio Gutierrez, who assigned it to the defendant spouses and the latter to the vendor; that on or about 21 February, at her request and representation that she had to know the owner's duplicate certificate of title No. 42415 to a person from whom she would obtain the amount to pay the cash initial installment, defendant Concepcion Flores succeeded in taking holding of such duplicate certificate; that on 27 February, without the plaintiff's knowledge or consent, said defendant presented to the Register of Deeds in and for the province of Rizal for registration the deed of sale and surrendered the owner's duplicate of transfer certificate of title No. 42415 and the Registrar of Deeds issued transfer certificate of title No. 65263 in her name and her husband's that on 20 March, without the plaintiff's knowledge and consent, the defendant spouses mortgaged the parcel of land to Leonor Gutierrez to secure the payment of P2,500; that because of the defendant's fraudulent acts she had suffered wounded feelings and moral shock and was compelled to engage the services of an attorney; and praying that the deed of sale she had executed in their favor and the mortgage constituted by them on the parcel of land in favor of Leonor Gutierrez be declared null and void; that at their expense including notarial and registration fees and documentary stamps, the defendant spouses be ordered to execute a deed of reconveyance of the parcel of land described in transfer certificate of title No. 65263; at her expense including notarial and registration fees and documentary stamps, the defendant Leonor Gutierrez, to execute a mortgage release; the Register of Deeds in and for the province of Rizal, to cancel transfer certificate of title No. 65263 and to reinstate transfer certificate of title No. 42415; the defendants, to pay such amount as the court may fix for moral damages and P1,000 for attorney's fees and expenses of litigation; the defendant spouses, to restore the possession of the parcel of land and to pay for its use and occupation from January 1958 until after the possession thereof shall have been restored to her and costs, and for any other just and equitable relief (Civil Case No. 5741).

On 5 November 1959 the defendant mortgagee Leonor Gutierrez answered with a counterclaim averring that the amended complaint states no cause of action; that she is an innocent mortgagee in good faith and for value; that

she was impleaded to be harassed and annoyed only; that she had suffered wounded feelings, moral shock, sleepless nights, social humiliation and other injuries and was constrained to engage the services of a lawyer; and praying that as far as she was concerned the amended complaint be dismissed with double costs against the plaintiff; that the latter be ordered to recognize and respect the mortgage executed in her favor and pay her moral, exemplary and actual damages, and attorney's fees in the sum of P5,000; and that she be granted other just and equitable relief. On 9 November, the plaintiff replied with a counterclaim. On 25 November, the defendant spouses filed an answer denying the material averments of the amended complaint, praying for its dismissal and any other just and equitable relief and setting up a counterclaim that, if judgment be rendered against them, they be paid P4,200, the value of the improvements and repairs they had introduced and made on the premises and P500 as attorney's fees and costs. On 6 May 1960 the parties, assisted by their respective counsel, entered into and submitted to the court for approval, a compromise agreement that within a period of seven months from the date of execution thereof the defendant spouses would sell and dispose of the parcel of land to raise and pay to the plaintiff the sum of P7,100 or, if unable to sell, to reconvey to her the property free from the mortgage executed in her (mortgagee Gutierrez') favor; that, if the above be complied with, the plaintiff would reassign the back pay certificate; and that the defendant mortgagee would hold in abeyance the foreclosure of the mortgage. On 7 June, the defendant mortgagee agreed in writing to the compromise, on condition that should the defendant spouses fail to pay the mortgagee the mortgage on the parcel of land would subsist. On 20 June, the court rendered judgment approving the compromise agreement. On 11 December, the plaintiff filed a motion alleging that the 7-month period already had expired without the parcel of land having been sold or disposed of; that the defendant mortgagee had intended to proceed with the foreclosure of the mortgage thereon; and praying that the defendant spouses be ordered to execute an instrument reconveying to her the parcel of land free from the mortgage; that the defendant mortgagee and sheriff be ordered to hold in abeyance the foreclosure of rescinded so that the plaintiff's demand or claim may be determined, as provided for in article 2041 of the Civil Code. On 23 December, the defendant mortgagee objected to the motion. By an order entered on 23 December, the court directed the defendant spouses to execute within ten days a deed of reconveyance of the parcel of land to the plaintiff subject to the mortgage in favor of Leonor Gutierrez, the granting of the rescission of the compromise for non-compliance therewith prayed for as alternative not being legal and feasible, because the plaintiff had agreed that if the reconveyance of the parcel of land to the plaintiff should eventuate it would be subject to the mortgage; or, should they fail to execute the instrument, the Clerk of Court would execute it at the expense of the defendant spouses. On 3 February 1961 the court granted a countermotion filed by the defendant mortgagee praying for the sale at public auction of the lot. On 14 February, the plaintiff moved that the order of 3 February be suspended and the case reopened, on the ground that mortgagee Leonor Gutierrez is fictitious and inexistent^[1] and that such being the case the mortgage in her favor is invalid. On 18 February, the defendant mortgagee, by her counsel A. S. Bustos, objected to the motion to reopen, because said mortgagee does exist. On 23 February, the court denied the motion to reopen. After considering the plaintiff's motion for reconsideration^[2] and the objection thereto filed by counsel for Leonor Gutierrez, on 12 April 1961 the court denied the motion for reconsideration. Her second motion, to which the defendant mortgagee again objected, also was denied on 25 April 1961.

Hence, this petition.

Whether Leonor Gutierrez, the mortgagee, is real or fictitious is the point disputed by the parties. The petitioner claims that the mortgagee does not exist, for the reason that in spite of an extensive and diligent verification made by her and investigators including the Caloocan Police Department, at her residential address at No. 113 or 115 G. del Pilar street, Caloocan, Rizal, as appearing in her residence certificate No. A-524372 issued on 17 February 1961 in Caloocan, Rizal, and at No. 118 G. del Pilar street, Caloocan, Rizal, which counsel for the defendant mortgagee pointed out to be the correct address of mortgagee Leonor Gutierrez, she could not be found; that the

record of the case shows that said mortgagee never was personally served with notices issued by the court nor had she appeared in person in court; and that her counsel A. S. Bustos had admitted that there was no way to get in touch with her. Upon the ground that the mortgagee is fictitious and inexistent, the petitioner contends that the mortgage executed in her favor is null and void and therefore the parcel of land should be reconveyed to her (the petitioner) free from the mortgage. On the other hand, attorney A. S. Bustos, impleaded as respondent, argues that said Leonor Gutierrez really exists and in support of the argument reproduces or inserts in his memorandum a letter dated 25 October 1961 addressed to him by detective Ricardo F. Valdez of the Caloocan Police Department, which reads in part, as follows:

* * * please be informed that after having been duly apprised that "Leonor Gutierrez" is really residing at 118 M. H. del Pilar St., Grace Park, this municipality, re-verification was conducted by the undersigned and it was fully established that "Leonor Gutierrez is the daughter of Mr. Jose G. Gutierrez and Adelaida Gonzales and that the Gutierrez family were permanently residing at the aforementioned address.

Having consented and agreed to the compromise that the reconveyance of the parcel of land was to be subject to the mortgage in favor of Leonor Gutierrez should the debt for which the mortgage was constituted be not paid, the petitioner, plaintiff in the court below, cannot complain if the respondent court should enforce the compromise. The existence or inexistence of the mortgagee cannot be threshed out in the case before the respondent court. The judgment on the compromise was final. The refusal of the respondent court to reopen the case for the purpose of determining whether the mortgagee is real or fictitious person does not constitute a grave abuse of discretion amounting to excess of jurisdiction.

The writ prayed for is denied and the writ of preliminary injunction heretofore issued is discharged, without pronouncement as to costs.

Bengon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Attached as Annex A to the motion is a joint affidavit by Leonardo P. Baron, Antonio Q. Sotto and Jose N. Bunda stating "that despite our diligent efforts in our said verification and investigation, we were not able to find the person or the existence of Leonor Gutierrez."

[2] Supporting the motion for reconsideration is a verification report dated 22 February 1961 by Cpl. Alfredo E. Mendoza of the Caloocan Police Department, which in part states that "after said verification, the undersigned proceeded to 115 G. del Pilar st. this municipality, which address appears on the said residence certificate issued to 'Leonor Gutierrez,' it was found out that there is no person by that name living there and instead an old woman by the name of Caridad Rivera admitted being the owner and occupant of the said abode, coupled with the information rendered by one Mr. Guillermo Pineda who resides in the same house."

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