

CARMEN PARDO DE TAVERA Y LOPEZ MANZANO, PLAINTIFF AND APPELLEE, VS. EL HOGAR FILIPINO, INC., MAGDALENA ESTATE, INC. AND ERNEST BERG, DEFENDANTS; EL HOGAB FILIPINO, INC. AND MAGD...

G.R. No. L-5893. February 28, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

A parcel of land containing an area of 2,784 square meters as described in transfer certificate of title No. 36234 issued on 6 September 1930 by the office of the Register of Deeds in and for the City of Manila was registered in the name of Andres Luna de Pardo de Tavera, single; Carlos Pardo de Tavera, married to Belen Ramirez; Gonzales; Maria Audotte Pardo de Tavera y Ramirez, 3 years of age, single; Roberto Pardo de Tavera y Ramirez, 9 years of age, single; and Carmen Pardo de Tavera y Lopez Manzano, 11 years of age, single (Exhibit B). On 6 August 1930 the co-owners agreed to organize a corporation under the name of Tavera-Luna, Inc. for the purpose of building a modern structure on the parcel of land' and to that end they also agreed to accept shares of stock of the corporation to be organized in exchange for their respective shares in the parcel of land and building erected thereon to be transferred to tfi^f. corporation (Exhibit D-2). On 12 August 1930 the duly appointed guardian of the minor Carmen Pardo de Tavera y Lopez Manzano, mother of the minor, filed a petition in the probate court (Special Proceeding No. 34154) praying for the approval of the agreement referred to (Exhibit D-2) and seeking authority to accept shares of stock of the corporation in exchange for the share of the minor in the property (Exhibit D-l). On 28 August 1930 the probate court approved the agreement in so far as the minor Carmen Pardo de Tavera y Lopez Manzano was concerned and authorized the guardian to accept the shares of stock of the corporation in exchange for the share of the minor in, the property (Exhibit E-l). The Tavera-Luna, Inc., was actually incorporated on 14 December 1930 and the guardian of the minor Carmen Pardo de Tavera y Lopez Manzano transferred her share.in the property on 16 January 1931. After the transfer of the shares of the co-owners in the property, transfer certificate of title No. 36234 (Exhibit B) was cancelled and in lieu thereof transfer certif- icate of titel No. 37347 ill the name of Tavera-Luna, Inc. was issued on 23 January 1931 (Exhibit H). On 17 January 1931 upon application of the corporation, El Hogar Filipino, Inc., a loan and building association, granted it a loan of P1,000,000 for the purpose of erecting a concrete building in lieu of the wooden building standing thereon. This loan was secured by a first mortgage registered on the certificate. On 11 February 1932 an additional loan of P300.000 was obtained by the corporation from El Hogar Filipino, Inc. secured by a mortgage on the same property. The period of the first mortgage of P1,000,000 was extended. Transfer certificate of title No. 37347 in the name of Tavera-Luna, Inc. (Exhibit H) was cancelled and in lieu thereof transfer certificate of title No. 40177 was issued on 28 April 1932 in the name of Tavera-Luna, Inc., but the parcel of land was subdivided into several lots with their respective description (Exhibit K). Again, transfer certificate of title No. 40177 (Exhibit K) was partially cancelled as to one of the several lots and transfer certificate of title No. 41127 was issued in the name of Tavera-Luna, Inc. on 25 August 1932 (Exhibit K-l). Thereafter, partial cancellations were made of transfer certificate' of title No. 40177 Exhibit K) as to some of the small lots and

transfer certificates of title Nos. 41128, 43104, 43105, 43107, 43108, 43109 and 7276 were issued in the name of Tavera-Luna, Inc. The last certificates of title cover small parts of the original parcel of land. The larger part of the parcel of land is described in transfer certificates of title Nos. 40177 (Exhibit K) and 41127 (Exhibit K-l). Not long after the construction of the building known as "Crystal Arcade" was finished, El Hogar Filipino, Inc., the mortgagee, took over the possession and management of the property to apply the rents, after deducting management expenses, to the payment of the mortgagee debt and on 28 September 1933 the mortgagee foreclosed the mortgage .extrajudicially and purchased the whole property at public auction sale for P1,363,555.37 (Exhibits L and L-l). The mortgagor having failed to redeem the property, the mortgagee consolidated its title and the certificate of title Nos. 40177 (Exhibit K) and 41127 (Exhibit K-l) in the name of Tavera-Luna, Inc. were cancelled and in lieu thereof transfer certificates of title Nos. 59596 (Exhibit M), and 59570 (Exhibit M-l were issued in the name of the mortgagee, El Hogar Filipino, Inc. on 12 August 1940. On 26 August 1943, nearly nine months after the filing of the original complaint in this case, El Hogar Filipino, Inc. .sold the whole property to Magdalena Estate, Inc. for P1,400,000 in Japanese war notes (Exhibit P). The certificates in the name of El Hogar Filipino, Inc. Nos. 59569 and 59570 (Exhibits M and M-l) were cancelled and. lieu thereof transfer certificates of title Nos. 67102 and 67103 were issued in the name of Magdalena Estate, Inc. on 26 August 1943 (Exhibits Q and Q-l). On 22 September 1943 Magdalena Estate, Inc. "sold one third undivided share in the property to Ernest Berg for P466,566.66 in in Japanese war notes (Exhibit R).

On 17 November 1942, Carmen Pardo de Tavera y Lopez Manzano brought an action in the Court of First Instance of Manila to annul the transfer of her right, share and interest in the property made by her guardian to Tavera- Luna, Inc. However, before judgment could be rendered by the Court, the battle for liberation of Manila supervened: and the record of the case was destroyed. After reconstitution of the record of the case, amendment to the pleadings to include the Magdalena Estate, Inc. and Ernest Berg to party-defendants and trial on the merits, the Court of First Instance of Manila rendered judgment annulling the order of the probate court that had granted authority to the guardian of the plaintiff to transfer her ward's right, share interest in the parcel of land to Tavera-Luna, Inc. and the transfer thereof pursuant thereto; the transfers of the ward's share in the property to El Hogar Filipino, Inc., Magdalena Estate, Inc. and Ernest Berg; the certificates of title issued to the transferees in so far as the ward's share in the property is concerned; and ordering cancellation of transfer certificates issued to the transferees and issuance of new ones in the name of the transferees and the plaintiff with the statement in the certificates to be issued that plaintiff's share in the property is two-ninths, free from any lien or encumbrance, and accounting of the income collected by the transferees during the periods of their respective possession of the property and payment or delivery thereof to the, plaintiff in so far as her share in the property is concerned. The defendants have appealed.

The point that the plaintiff's action is barred by the statute of limitations is no longer urged, because the plaintiff became of age and released from guardianship on 19 November 1940 (Exhibit N-l and O-1) and the action was brought on 17 November 1942, or within the period provided for in section 579, Act No. 190, which says:

No action for the recovery of any estate sold by a guardian can be maintained by the "ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal of such disability.

The plaintiff contends and the trial court sustained her claim that the order of the probate court of 28 August 1930 (Exhibit E-l) is a nullity because the provisions of section 569, Act No. 190, the law then in force, were not complied with and for that reason the probate court was without jurisdiction to order the transfer of her share in the property to the corporation to be organized and' formed. She alleges and argues that as the petition which brought about the entry of the order of the probate court of 28 August 1930 was not verified; it did not set forth the

condition of the estate of the ward and the facts and circumstances upon which the petition was founded tending to show the necessity or expediency of the sale (transfer) ; the Court did not direct "the next of kin to the ward, and all persons interested in the estate, to appear before the judge or court, at the time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale or such estate," the order is a nullity for lack of jurisdiction of the court issuing it.

That the probate court in guardianship proceedings No. 34154 entitled "Tutela de la menor Carmen Pardo de Tavera y Lopez Manzano," had jurisdiction over the petition filed by the guardian admits of no doubt. Only upon the ground of lack of jurisdiction may an order entered by a court be assailed collaterally. If the court had jurisdiction, -irregularities in the proceedings which would or could invalidate the court's order may be assailed directly by means of an appeal but not collaterally.[1] Lack of verification of a petition filed in a probate court for the sale of real property belonging to the estate of a minor is not a jurisdictional defect.[2] It should have been attacked directly and not collaterally.[3] In her petition the guardian alleged that the transfer of her ward's share in the property to the corporation then to be organized would be to or for her benefit and she expected that the construction of a new building would enhance the value of her ward's share in the property and increase her income (Exhibits D-1 and D-2). No other consideration or motive could have prompted the guardian, mother of the minor, to file the petition. It is not necessary for a grant of authority to the guardian to sell the estate of the ward to state that the income "is insufficient to maintain the ward and his family or to maintain or educate the ward when a minor." It is enough, as the other alternative of the law provides, that "it appears to the satisfaction of the court that it is for the benefit of the ward that his real estate or some part thereof should be sold, and the proceeds thereof put out at interest, or invested in some productive security." [4] The petition of the guardian falls under the last quoted part of section 569, Act No. 190. That part of the section, requiring the probate court to enter an order directing the next of kin to the ward and all persons interested in the estate to appear before the court at a time and place therein specified, was substantially complied with, because the next kin to the ward was her own guardian and mother and all persons interested in the estate of the ward were her uncles and aunt who agreed to make the transfer of their respective shares in the property to the corporation, Tavera-Luna, Inc. Moreover, "next of kin" are those whose relationship is such that they are entitled to share in the estate as distributees.[5] There were no creditors to the ward's estate. Notice to "the next of kin to the ward, and all persons interested in the estate, to appear before the judge or court, at the time and place therein specified," was not necessary, because the next of kin to the ward and all persons interested in the estate were her mother and guardian, uncles and aunt. Under these circumstances we are of the opinion that that part of the provision of section 569, Act No. 190, has been complied with. Hearing on the petition, as required in said section does not necessarily mean that witnesses testify or documents be produced or exhibited. If the court be satisfied that the allegations of the petition are true and the interested persons or close relatives of the ward did not object because they themselves were interested in the scheme to organize a corporation to which all their shares in the property were to be transferred, the provisions of the law on hearing were also complied with. The conclusion arrived at renders it unnecessary for us to pass upon the question whether El Hogar Filipino, Inc. was a purchaser for value and in good faith. Suffice it to say that even if the loan was granted when the certificate of title was still in the name of the plaintiff and her co-owners, the fact that the loan was applied for by an entity that was in the process of organization and by the same persons who were the registered owners of the property, the mortgagee was entitled to rely upon the order of the probate court granting authority to the guardian to make the transfer of the share of her ward in the property and was not bound to inquire further to find out whether there were irregularities committed or defects or vices that would render the order null and void.[1] So also the question whether the action brought by Carlos Pardo de Tavera y Cembrano in his own behalf and in behalf of the minor, the herein plaintiff-appellee, is *res judicata* need not be passed upon. Certainly, it would be awkward for this Court to review a final decree or judgment which

upheld the validity of the mortgage in favor of the appellant, El Hogar Filipino, Inc., in the case of Carlos Pardo de Tavera and Carmen Pardo de Tavera Manzano vs. El Hogar Filipino, Inc., 68 Phil., 712, and to declare null and void the order of the probate court as far as the share in the property of the minor is concerned, a declaration which would partly reopen, review, reverse or set aside that final decree or judgment rendered by this Court.

This action would not have been brought if the scheme and plan of the organizers or incorporators of the Tavera-Luna, Inc. should have met with success.

The judgment appealed from is reversed, the complaint dismissed, with costs against the appellee.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

[1] Lerma vs. Antonio et al., 6 Phil. 2S6, 239; Vicente et al. vs. Lucas et al., G. R. No. L-6745, SI August 1964; Lessee of Robert Grignon et al., vs. Astor et-al., 43 U. S. 319; and Thaw vs. Falls, 136 U.S. 519.

[2] Ellsworth vs. Hall, 12 N.W. 512; Hamiel vs. Donnely, 39 N.W. 210; Myers vs. McGavoe, 58 N.W. 522; and Ancel et al. vs. So. 111. & Bridge Co., 122 S.W. 709.

[3] Lerma vs. Antonio et al., supra; Vicente et al. vs. Lucas et al., supra; Lessee of Robert Grignon et al. vs. Astor et al., supra; and Tliaw vs. Falls, supra.

[4] Section 569, Act No. 190.

[5] Lopez vs. Teodoro, 47 Off. Gaz. (Supp., 12) 188.

[1] Esguerra vs. De Leon, et al., 69 Phil., 493.

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