JOSE CARANDANG AND BENITA CARANDANG PETITIONERS, VS. COURT OF APPEALS, RURAL BANK OF LUCENA, INC., APRONIANO MLS. MAGSINO, CENTRAL BANK OF THE PHILIPPINES, HONESTO O. FRANCISCO,...

G.R. No. L-44932. April 15, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Before Us is a petition for review of the decision of the Court of Appeals in CA-G.R. No. 58421-R[1] dated August 16, 1976, and its Resolution of October 11, 1976, affirming the Resolution of the then Court of First Instance of Laguna in Civil Case No. SP-1029 declaring itself to be without jurisdiction to entertain petitioners' complaint for cancellation and nullification of the promissory note and the deed of mortgage allegedly executed by petitioners in favor of Rural Bank of Lucena, Inc. which said court declared earlier to be a forgery in its Decision of September 10, 1974.

The Rural Bank of Lucena, Inc., one of the respondents herein, is a banking institution with principal office and place of business in Lucena City. On February 2, 1962, the Central Bank of the Philippines through the Monetary Board approved Resolution No. 122 requesting the Solicitor General to file the necessary petition for liquidation of the Rural Bank of Lucena. On March 31, 1962, the Solicitor General filed a petition for liquidation in the then Court of First Instance of Manila, Branch I, docketed as Civil Case No. 50019.[2] In the Order of March 28, 1963, then Presiding Judge Francisco Arca directed the liquidator of the Central Bank to take over the assets, books, papers and properties of the Rural Bank of Lucena, Inc.

An inventory of the assets, properties, books, etc. of the said bank was conducted and a corresponding list was prepared. The assets include among others the uncollected loan allegedly procured by herein petitioners in the amount of P9,513.56 inclusive of interest as of December 31, 1971. Said loan appears to have been secured by a real estate mortgage on a parcel of land covered by Tax Declaration No. 27410 of the City of San Pablo. The documents of the insolvent bank show that petitioners filed an application for agricultural loan for P5,000.00 with 9% interest per annum covered by a promissory note allegedly executed by petitioners. According to respondent Central Bank, several demand letters were sent to petitioners but to no avail. Thus, for failure to settle the said obligation, the designated receiver* of the bank petitioned the Sheriff of Laguna to sell the subject property.[3]

Meanwhile, on April 26, 1972, petitioners, upon learning of the petition for the sale of their coconut land, filed a complaint for nullification and cancellation of the promissory note and the mortgage deed with damages and with prayer for a temporary restraining order with the Court of First Instance (CFI) of Laguna on the ground that the said documents were forgeries. On May 2, 1972, said court issued an order restraining the Sheriff of San Pablo and Laguna from conducting the public auction sale of the subject property scheduled on May 11, 1972.

On May 22, 1972, respondent Central Bank of the Philippines filed a motion for intervention stating its legal interest in the case in that for reasons of insolvency, Rural Bank of Lucena is under receivership of Central Bank.

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On June 26, 1972, the motion was granted requiring respondent Central Bank to file its complaint in intervention. Said respondent filed instead a motion to dismiss on the ground of lack of jurisdiction but it was denied. Thus said respondent filed its answer in intervention maintaining that the CFI of Laguna has no jurisdiction.

The issues having been joined the court a quo rendered its decision** declaring the promissory note in question null and void and without any effect, and made permanent the restraining order of May 2, 1972.

On October 4, 1974, respondent Central Bank filed a motion for reconsideration of the above decision alleging that it is contrary to law and that the evidence is insufficient to justify the decision.

In the order of March 3, 1975, the court a quo*** set aside its decision and declared itself to be without jurisdiction to entertain the action and dismissed the complaint and counter-claims.

From this Order petitioners appealed to the Court of Appeals. On August 16, 1976 said court rendered a judgment declaring the documents in question null and void quoting with approval the observations made by the first judge.[4] The appellate court, however, sustained the second judge in the dismissal of the case on the ground of lack of jurisdiction.[5]

Hence this petition.

Petitioners contend that since the land in question is within the territorial jurisdiction of Laguna, then it is the Court of First Instance of Laguna that has jurisdiction over the case. They argue further that the question of jurisdiction is determined by the allegations of the complaint, not by the averments in the answer or by the evidence adduced in the trial. In support of their contention petitioners cited Section 44(b) Judiciary Act of 1948 and Section 2(e) Rule 4 of the Old Rules of Court**** as well as the case of Fernandez vs. De Gala Sison, and Manlapaz vs. Pagdanganan.[6]

On the other hand, respondent Central Bank contends that the pendency of the liquidation proceedings before the Court of First Instance of Manila vested in the said court exclusive jurisdiction over all matters pertaining to the assets, properties, funds, etc. of the Rural Bank of Lucena, Inc., citing Section 29***** of Presidential Decree No. 72. It argued further that the action for cancellation and nullification of the contract of loan is a personal action and hence the jurisdiction of the Court of First Instance of Laguna is only concurrent with the liquidation court, and that since it was the liquidation court that first acquired jurisdiction over the subject matter of the instant case, it should retain the same to the exclusion of others.

We will first resolve the nature of action. Section 2(a), Rule 4 of the Revised Rules of Court provides that real actions like actions affecting title to or for recovery of possession, or for partition or condemnation of or foreclosure of mortgage on real property shall be commenced and tried in the province where the property or any part thereof lies. All other civil actions are personal actions which may be commenced and tried where the defendant or any of the defendants reside or may be found, or where the plaintiff or any of the plaintiffs reside at the election of the plaintiff.[7]

In the case of Hernandez vs. Rural Bank of Lucena Inc.,[8] this Court ruled that an action for cancellation of real estate mortgage is a personal action. The said case was primarily an action to compel the mortgagee bank to accept payment of the mortgage debt and to release the mortgage. It appears that no foreclosure of mortgage took place and that the plaintiffs remained in possession of the mortgaged lot. Hence it was ruled that the action for cancellation of real estate mortgage is a personal action as it is not expressly included in the enumeration found in Section 2(a) of Rule 4, and does not involve title to the mortgaged lot.[9]

However, We are not convinced that the ruling in Hernandez[10] in this respect is applicable in the case before Us

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considering that the subject property herein was already foreclosed extrajudicially. If not for the timely issuance of a restraining order sought by petitioners the same would have already been sold at a public auction sale. Moreover, it should be borne in mind that in the action for nullification of the mortgage documents petitioners questioned the validity of the mortgage in favor of the insolvent bank over which respondent Central Bank claimed title seeking the collection and eventually the foreclosure of the mortgaged property. Thus, it is a real action as the action affects the title to a property. Applying the rules on venue of the matter, the action should be brought before the court having jurisdiction over the territory in which the subject property or part thereof lies which in this case should properly be in the then Court of First Instance of Laguna.[11]

On the other hand, it should be recalled that the subject property appears to be included in the assets of the Rural Bank of Lucena, Inc., which is an insolvent bank. Under Section 29 of the Central Bank Act[12] when the Monetary Board finds out that the insolvent bank cannot resume business with safety to its creditors, it shall, through the Solicitor General, file a petition in the Court of First Instance praying for the assistance supervision of the court in the liquidation of the bank's affairs.

In Hernandez,[13] We held that where an insolvent bank is forbidden to do business, its assets are turned over to the Superintendent of Banks as receiver for conversion into cash and its liquidation is undertaken with judicial intervention as far as lawful and practicable so that all claims against the insolvent bank should be filed in the liquidation proceeding. This is intended to prevent multiplicity of actions against the insolvent bank and that for convenience, only one court should, if possible, pass upon all claims against the insolvent bank, where the liquidation court should assist the Superintendent of Banks and control his operations.[14]

From the foregoing discussions it appears that both courts have concurrent jurisdiction over the subject matter. Respondent Central Bank stressed the rule that where several courts have concurrent jurisdiction over the same case, the court which first acquired jurisdiction retains it to the exclusion of the others.

However, this case presents a novel situation so that the accepted rule on concurrent jurisdiction may not apply. As above stated, in petitioners' action before the court a quo respondent Central Bank filed a motion to intervene. After the motion was granted it filed a motion to dismiss on the ground of lack of jurisdiction, but this was denied. Respondent Central Bank then filed an answer in intervention reiterating lack of jurisdiction and at the same time upholding the authenticity of the mortgage documents. It participated in the trial. Unfortunately, the mortgage documents were found by the trial court to be forgeries.

Upon respondent Central Bank's motion for reconsideration the lower court took a total turn-about by ruling, this time, that it is without jurisdiction over the case. When petitioners appealed to the Court of Appeals despite the argument of respondent Central Bank that the documents in question are genuine and that the mortgage is Appeals despite the argument of respondent Central Bank that the documents in question are genuine and that the mortgage is valid the appellate court affirmed the lower court's findings that the questioned documents are null and void. Nevertheless, the Court of Appeals also affirmed the dismissal of the case on the ground of lack of jurisdiction.

The court is not persuaded that the Laguna Court is without jurisdiction over the case and that it is the Manila Court where the Central Bank instituted the liquidation proceedings that has jurisdiction.

Respondent Central Bank's allegation of convenience as that all suits against the insolvent bank should be brought before the liquidation court is untenable. The action for nullification of the mortgage deed before the liquidation court after the case was fully litigated below would only mean more inconvenience to the parties, entailing waste of more money and precious time. Indeed, it is an action in futility. Respondent Central Bank was already accorded a full-dress hearing in the Laguna court where it defended its cause. However, it failed to establish its

theory upholding the validity of the questioned documents and the genuineness of petitioners' thumbmarks thereon.

Moreover, the role of the liquidation court which is a court of limited jurisdiction is to assist the Central Bank in the liquidation of a certain bank. It cannot pass upon the validity of contracts as the mortgage deed in question in this case. This matter should be litigated before the regular courts with general jurisdiction.

The Court of Appeals affirmed the findings of the lower court on this aspect as it held:

> "Upon a factual analysis of the evidence on record, this Court is fully convinced that the real estate mortgage sought to be foreclosed extra-judicially by intervenors, bearing the supposed thumbmarks of Jose Carandang and Benita Carandang, is a forgery (Exhs. B & 2). As seen on the face of the mortgage deed itself, Benita Carandang was therein referred to as widow and Jose Carandang as single. However, uncontradicted is the evidence that on August 31, 1959, when the mortgage deed was supposedly executed, both Benita and Jose Carandang were very much married. Obviously, their status entered on the mortgage deed was the product of mere 'guesswork'.

Then the testimony of both plaintiffs that thumbmarks on the mortgage deed were not their thumbmarks stands unrefuted on the record. The evidence moreover shows that they had not appeared before the Notary Public Jose B. Hernandez to acknowledge said deed. Neither they have been in Lucena City at anytime in their lives (sic). They also had not secured any loan from the Rural Bank of Lucena. Nor have they authorized anyone to transact business for and in their behalf.

Ironically, intervenors witnesses even supported plaintiffs' cause. The bank examiner, Mr. Napoleon Cruz, admitted that he was assigned at the Rural Bank of Lucena City Inc., as deputy of the receiver because of numerous anomalies of said bank. In fact, he testified that all officers of the bank were prosecuted for the anomalies. And that the cases filed in the City Court and Court of First Instance of Lucena, for falsification of documents and estafa, in connection with said bank anomalies, already numbered around fifty. Another intervenors' witness Lucena CFI Clerk of Court and Notary Public who notarized the mortgage deed in question, Mr. Jose V. Hernandez (sic) confirming the aforesaid revelation of Mr. Cruz, testified that there were around 50 cases of falsification, or estafa thru falsification, filed in court regarding anomalous transactions in said Rural Bank. In fact, he claimed that the witnesses to the real estate mortgage in question are among those charged for the anomalies. In the atmosphere of such an anomalous surrounding, and the vehement claims and evidence of plaintiffs that the mortgage deed is a forgery, we wonder why if it were not so, intervenors did not counteract plaintiffs' evidence. Not even the witness to the deed, nor even the investigators of the bank, were presented when the authenticity of the thumbmarks in said deed were vigorously denied and assailed by plaintiffs. And the very Notary Public who notarized the deed did not say that plaintiffs were the ones who acknowledged said deed or affixed the thumbmarks. What is more, there is no check shown or introduced by intervenors to indicate that plaintiffs or anyone of them ever received, at least something, from the mortgage. In the face of all these, the presumed regularity, validity, or genuineness of the document is overcome. And the claim of plaintiffs that they have not borrowed money from defendant Rural Bank stands valid. Quite understandably, intervenors, in their responsive pleading, did not put up 'genuineness' of the document as a defense.

Another circumstance indicating that plaintiffs are not actual mortgagors nor loan borrowers of defendant Rural Bank can be gleaned from the fact that even the purported application for agricultural loan was falsified. (Exhs. a & 1). As so categorically testified by the plaintiffs Jose and Benita Carandang, they never applied for agricultural loan in said Bank. And again, no witness was presented by intervenors to show otherwise. Then contrary to the entries in said application, plaintiffs clearly proved that they were not regular credit customers of said bank; they have not been in said bank or at Lucena City even for once in their lifetime; they have no coconut lands at Bo.

Sta. Isabel, San Pablo City, and that the thumbprints in the application for agriculture loan above were (sic) not their thumbprints.

Then even the purported report of Inspection and Credit investigation submitted by intervenor as part of defendant Banks (sic) record appeared to be evident falsification (Exh. 13). For instance, in said report, it was made to appear that plaintiffs owned a riceland at Alaminos, Laguna, and (a) sari-sari store elsewhere, when the facts clearly show that they do not own such properties. And neither were they ever investigated by any bank investigator in connection with the purported loan.

Plainly, plaintiffs were themselves victims of defendant bank's anomalies. The mortgage deed being an evident forgery, there is no valid contract to speak of (Art. 1313, NCO). Consequently, the mortgage deed become prohibitive in law (sic). It is a deed absolutely simulated or fictitious, hence inexistent and void from the beginning. (Art. 1409, (1) & (7) NCC). A fortiori, it cannot and will not affect the rights of plaintiffs.

In passing, this Court is not unaware that the Cacthloscopic report of the NBI shows that (in) so far as the promissory note is concerned, the thumbprint in the name of Benita Carandang thereon and her sample right thumbprint were impressed by the same finger of the same person. (Exh. ‘f 01; 6 a). But such finding is not decisive of the issue, not only because the NBI examiner was not presented as witness and his report and conclusion subject to (cross) examination, but also because of other proof to the contrary. Thus, considering the established fact that plaintiffs are not actual mortgagors or loan borrowers of defendant bank, it is incomprehensible why Benita’s thumbmark should appear in the promissory note? (sic) What is she to pay for when she is not a mortgagor or loan borrower? Surely, it would be the height of injustice to require her to pay and answer for something she does not owe’, pp. 110-114, Record on Appeal."[15]

The foregoing findings of facts of the appellate court are conclusive in this proceeding.

Considering that the claim to title of respondent Central Bank over petitioners' property had been found to be null and void, it cannot now lawfully contend that the property is under receivership as its property and is in custodia legis of the receivership court. Said court is bereft of jurisdiction over this property.

WHEREFORE, the petition for review is GRANTED and the questioned decision of the Court of Appeals in so far as it affirmed the decision of dismissal of the court a quo is hereby REVERSED and SET ASIDE, but it is affirmed in all other respects. The questioned promissory note and real estate mortgage pertaining to the subject property are hereby declared null and void. No pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, and Grino-Aquino, JJ., concur.
Teehankee, C.J., did not take part in deliberations.

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[1] Penned by Mr. Justice Magno S. Gatmaitan and concurred in by Messrs. Justices Sixto A. Domondon and Samuel S. Reyes.

[2] Entitled "In Re: Liquidation of Lucena Rural Bank, Inc. vs. Central Bank of the Philippines.

[*] Carlota P. Valenzuela through Deputy Napoleon Cruz.

[3] Page 33, Rollo.

[**] The name of the judge who penned the decision cannot be found in the record of the case.

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[***] The judge who penned the decision of September 10, 1974 was later on replaced by another judge whose name does not appear likewise in the record of the case.

[4] Pages 35-38, Rollo.

[5] Pages 40-42, Rollo.

[****] Now Section 2(a), Rule 4, Revised Rules of Court.

[6] 50 O.G. 5960 & G.R. No. L-9640, Nov. 26, 1957, respectively.

[*****] The correct reference should be Section 21, P.D. No. 72, amending Section 29 of Republic Act No. 265, otherwise known as The Central Bank Act.

[7] Section 2(b), Rule 4, Rules of Court.

[8] 81 SCRA 75, 1978.

[9] Page 84, supra.

[10] Supra.

[11] Section 2(a), Rule 4, Rules of Court.

[12] Republic Act No. 265.

[13] Supra.

[14] 81 SCRA 87 and 88.

[15] Pages 35-38, Rollo.

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