

**NATIONAL INVESTMENT AND DEVELOPMENT CORPORATION,
PETITIONER, VS. HONORABLE WALFRIDO DE LOS ANGELES, IN HIS
CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL,
BRANCH IV (...)**

G.R. No. L-30150. August 31, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

By the instant petition for certiorari and mandamus with pre-liminary injunction, the petitioner National Investment and Development Corporation (hereinafter referred to as the NIDC) impugns three orders issued by the respondent Court of First Instance of Rizal in civil case Q-8407, namely, (1) an order dated May 28, 1968 dismissing the appeal of the NIDC from that court's order dated March 31, 1967 which directed the cancellation of the annotation, on several certificates of title involved in the said case, of the assignment of mortgage rights made by the Philippine Commercial and Industrial Bank (hereinafter referred to as the PCIB), a defendant in the said civil case, in favor of the NIDC, the respondent Judge stating that since the NIDC had not been properly substituted for PCIB and the latter had failed to perfect an appeal from the order of March 31, 1967, therefore, the appeal which was taken by the NIDC was ineffective, and moreover filed out of time; (2) an order dated November 9, 1968 directing the NIDC to surrender to the Register of Deeds of Quezon City the certificates of title over parcels of land involved in the said civil case which the lower court, in a judgment rendered therein which had already become final and executory, ordered reconveyed to the herein private respondents (the spouses Basilisa Roque and Francisco Bautista, Leonila Sanchez and Benjamin N. Bonus, Aurora Sanchez and Bonifacio Eugenio, Carmelita Sanchez and Francisco Ignacio, Bienvenido Sanchez, Leonardo Sanchez and Roque Village Subdivision), plaintiffs in the case below, subject, however, to the mortgage executed in favor of the PCIB by the defendant therein, Araceli W. Vda. de del Rosario; and (3) an order dated January 27, 1969 declaring as cancelled and null and void the certificates of title involved in the mentioned civil case which were then held by the NIDC, for failure of the latter to comply with the respondent Judge's order of November 9, 1968 requiring the NIDC to surrender the said title certificates to the Register of Deeds of Quezon City.[1]

The essential facts are undisputed.

Sometime in July, 1963 the private respondents herein sold several lots registered in their names to Araceli W. vda. de del Rosario who, after securing registration of the said lots in her name, mortgaged them to the PCIB. Del Rosario failed to complete payment of the purchase price agreed upon, for which reason, on November 17, 1964, the herein private respondents filed a complaint against her and the PCIB for reconveyance to them of the said lots or rescission of the contracts of sale executed thereon and the cancellation of the mortgages held by the PCIB.

On January 25, 1965 the court a quo rendered summary judgment directing the rescission of the contracts of sale adverted to above and the reconveyance of the lots in dispute covered by TCTs 70809, 70813, 70814 and 76401

to 76472. The rescission of the purchase contracts on the lots was, however, declared to be without prejudice to the rights of the PCIB thereon which was adjudged as a mortgagee in good faith. The lower court reserved for a separate hearing the parties' respective claims for damages.

This decision of the trial court was appealed to this Court by del Rosario in L-24873. The appeal was, however, dismissed on September 23, 1966 because it was taken out of time. No appeal was interposed by the private respondents herein with respect to the portion of the lower court's decision in favor of the PCIB.

On June 16, 1965 the PCIB foreclosed its mortgage on the lots covered by TCTs 70809, 70813 and 70814. At the auction sale, it appeared as the highest bidder; on December 2, 1965 the certificate of sale issued in its favor was duly registered.

On May 4, 1966 the PCIB assigned its mortgage rights over the lots covered by TCTs 70809, 70813, 70814 and 76401 to 76472 to the NIDC, as well as its rights as highest bidder for the lots covered by the first three titles mentioned. This assignment was duly inscribed and annotated at the back of the certificates of title concerned on May 16, 1966.

On November 16, 1966 the private respondents filed with the trial court, in the same civil case Q-8407, a motion to cancel the encumbrance held by the NIDC appearing at the back of TCTs 76401 to 76472 and 70809. The private respondents alleged in their motion that del Rosario had negotiated a loan with the NIDC by virtue of which the latter assumed the payment of, and did pay, del Rosario's mortgage indebtedness to the PCIB. For this reason, and for the further reason that there was no privity of contract between them and del Rosario and the PCIB concerning the said indebtedness, the private respondents maintained that the mortgage lien of the PCIB over the lots sub-ject of their motion was thereby discharged. They further argued that the mortgage lien has been extinguished because when it as-sumed payment of the indebtedness of del Rosario to the PCIB, the NIDC was aware of the respondents' claim over the lots in question which was annotated at the back of the certificates of title in dispute. Lastly, the respondents contended that their claim is superior to that of the NIDC under the provisions of articles 2242 (2) and 2243 of the new Civil Code. The respond-ents served a copy of this motion on the NIDC.

On November 19, 1966, at the hearing on the above motion, the NIDC, through counsel, having been notified thereof, entered its appearance. The respondent Judge at the said hearing gave the NIDC opportunity to file its written opposition to the motion.

On December 20, 1966 the NIDC filed its written opposi-tion, claiming that it merely stepped into the shoes of the PCIB as an assignee and that the private respondents must respect its rights as such assignee in the same manner that they would respect the rights of the PCIB the adjudication regarding which, it was alleged, had already long become final when they were acquired by the NIDC, citing article 1625 of the new Civil Code.

On January 5, 1967 the private respondents filed a rejoinder on the above opposition, furnishing the NIDC a copy of the same.

On March 31, 1967 the respondent Judge issued an order granting the private respondents' motion to cancel the encum-brance of the NIDC from the certificates of title in dispute, reasoning as follows:

"... There is no question that the deed of assignment in question is valid between the defendant Bank and the National Investment & Development Corporation. But this court, however, is not inclined to sustain incumbrancer's view; first, it should have submitted the deed of assignment for approval of the Court knowing that the sub-ject-matter of the said deed of assignment is in custodia legis, and so that the consent of all the parties plaintiffs could be taken; second, the payment of the mortgage debt of defendant Del Rosario by the National Investment & Development Corporation to the PCI Bank extin-guished the plaintiff's obligation to respect the mortgage lien of the PCI Bank; and third, the NIDC could ask for reimbursement of its ex-penses

and the amount it has paid to the PCI Bank from defendant Del Rosario. Moreover, it is more on equity and justice as well as in law that the incumbrancer should not enforce its rights against the plaintiffs who, in the first place, were not benefited by the mort-gage debt incurred by defendant Del Rosario."

A copy of this order was, however, not furnished the NIDC, although the PCIB was served a copy thereof.

On April 22, 1967 the respondent Judge issued another order directing the NIDC to surrender the certificates of title in dispute to the Register of Deeds of Quezon City in order that its order of March 31, 1967 could be implemented. The NIDC filed a motion for reconsideration on the ground that the issuance of the order was premature for it had not yet received a copy of the court's order of March 31, 1967. The private respondents opposed the said motion.

On September 19, 1967 the NIDC received a copy of the respondent court's order dated March 31, 1967. The NIDC then filed, on October 16, 1967, Or 27 days from its receipt of the said order, a motion for reconsideration thereof. On January 8, 1968 the NIDC received another order from the respondent court dated December 29, 1967 denying its motion for reconsideration "for lack of merit."

On January 9, 1968 the NIDC filed with the court below a notice of appeal on "purely questions of law" from the order of March 31, 1967 and an appeal bond; on January 11, 1968 it filed its record on appeal.

On February 7, 1968 the private respondents filed with the lower court a motion to dismiss the appeal of the NIDC stating (a) that the appeal was filed out of time since the PCIB did not appeal from the appealed order and the NIDC had not been pro-perly substituted for the PCIB as a party in the case (citing section 20, Rule 3 of the Rules of Court and *Oria Hermanos vs. Gutierrez Hermanos*, 52 Phil. 156 (1928) and *Feltalino vs. Sanz*, 44 Phil. (1923)); and (b) that the appeal is frivolous and dilatory because the trial court's decision ordering reconveyance to the private respondents of the lots in dispute by del Rosario had long become final and executory. The NIDC opposed this motion, contending that it had acquired the necessary personality in civil case Q-8407 by virtue of the respondents' and the lower court's recognition thereof.

On May 28, 1968 the respondent Judge issued an order dismissing the appeal interposed by the NIDC for reasons substantially identical to those adduced by the private respondents in their motion to dismiss the appeal.

On July 3, 1968 the NIDC filed a motion for reconsideration of the dismissal of its appeal. This motion was denied on December 18, 1968.

Meanwhile, on September 12, 1968, the NIDC received a copy of a petition of the private respondents to declare TCTs 70809, 70813, 70814 and 76401 to 76472 null and void for failure of the NIDC to surrender the certificates of title in question to the Register of Deeds of Quezon City "in order that the deeds of reconveyance executed by the Clerk of Court and orders of this Honorable Court may be given due course for registration..."

The NIDC opposed this petition, alleging that to grant it will amount to enforcement of the lower court's order of March 31, 1967 which had not yet become final and executory as the NIDC had appealed within the prescribed period. It was also pointed out by the NIDC that its motion for reconsideration of the order dismissing its appeal had not as yet been resolved.

On November 9, 1968 the respondent Judge issued another title order requiring the NIDC to surrender the certificates of title in dispute to the Register of Deeds of Quezon City within five days, otherwise the said certificates would be declared null and void. The NIDC filed a motion for reconsideration of this order on the ground that its motion for reconsideration of the order dismissing its appeal had not up to that time been resolved.

On January 27, 1969 the NIDC received a copy of a "Mani-festation" dated January 21, 1969 wherein the private

respondents prayed for the cancellation of the mentioned certificates of title on the ground that the NIDC had already received a copy of the order of the respondent Judge dated December 18, 1968 denying the motion for reconsideration of the NIDC dated November 19, 1968. It turned out, however (as explained by the NIDC in one of its pleadings filed with this Court), that while the NIDC did receive on January 13, 1969 the said order dated December 18, 1968, the same was overlooked because the copy of the said order sent by the respondent Judge was stapled beneath two other orders also dated December 18, 1968. One of these orders which was stapled on top of the others, was in connection with another case (civil case 10636) involving the same parties herein. According to the NIDC, it was thought that the papers stapled beneath were mere copies of the order in the said civil case. The third order, similarly dated, was an order denying the NIDC's motion for reconsideration of the respondent Judge's order dismissing its appeal from the order of March 31, 1967.

On January 30, 1969 the counsel of the NIDC went to the lower court to inquire if it had already acted upon the said "Manifestation"; and there and then he was served a copy of an order dated January 27, 1969, declaring TCTs 70809, 70813, 70814 and 76401 to 76472 null and void and cancelled.

The submission of the parties for resolution by this Court involves mainly the question of whether the petitioner has legal personality to appeal the order a quo dated March 31, 1967. If the answer be in the affirmative, then the order of the respondent Judge dismissing the appeal and all his subsequent orders adverse to the petitioner will not avail the private respondents any.

We do not think, however, that this is the real issue that should first be resolved in order to bundle properly the contending claims of the parties. Of basic crucial importance, in our opinion, is an inquiry into, and resolution of, whether, in the first place, the lower court had jurisdiction to entertain the motion of the private respondents that led to the issuance of the order of March 31, 1967. Obviously, it will not be necessary to resolve the question posited by the parties if, from the facts which the instant petition opened for inquiry by this Court, it will be determined that the lower court was devoid of jurisdiction to take cognizance of the mentioned motion of the private respondent.

After a painstaking study of the matter, we reach the view and we so hold that the respondent Judge's assumption of jurisdiction over the private respondents' motion that led to the order of March 31, 1967 dismissing the appeal of the NIDC, is completely devoid of legal authority. The judgment of the court a quo in civil case Q-8407, on the matter of the recognition of the mortgage rights of the PCIB over the lots in question, had already become final and executory when the said bank assigned its rights to the NIDC. It had, in fact, foreclosed its mortgage rights over some of the lots and had purchased them at an auction sale before it executed the deed of assignment to the NIDC. Such being the case, the lower court no longer had jurisdiction in the said case to resolve, by a mere motion therein, issues having to do with the disposition made by the PCIB of its rights over the lots in question, which rights were then no longer in litigation as they had been adjudged with finality.

An independent action, or any other appropriate remedy, securing to all the real parties in interest the processes and due opportunities afforded by the Rules of Court will be of the essence if the private respondents, as the judicially declared owners of the lots in question by final judgment prior to the present controversy, believe that they have a right of action to cause the extinguishment by judicial fiat of the mortgage constituted over those lots on account of the assignment by the mortgagee and/or purchaser at public auction of its rights to the parcels in question.

The necessity for such an independent action or other appropriate remedy becomes more patent, as a matter of due process, when it is considered that the NIDC, as assignee after a final adjudication of the rights of the PCIB over the said lots, will be the real party to be affected directly by any action which the private respondents will

commence whose object is to render inutile the legal efficacy of the PCIB's assignment of its rights thereon. In such an action, the NIDC will clearly be an indispensable party, which it will be the duty of the private respondents to include as a party in the case, otherwise, it will not be bound by any adjudication which will adversely affect its rights over the lots in dispute.

It would appear, however, from the facts admitted by the parties, that a valid assignment, binding upon the private respondents, has been made by the PCIB to the NIDC of its mortgage rights as well as its rights as purchaser of the lots in question. There does not appear to be anything in our statutes or juris-prudence which prohibits a creditor without the consent of the debtor from making an assignment of his credit and the rights accessory thereto; and, certainly, an assignment of credit and its accessory rights does not at all obliterate the obligation of the debtor to pay, but merely puts the assignee in the place of his assignor. Indeed, article 1634 of the new Civil Code definitely recognizes the likelihood that credits and other incorporeal rights in litigation may be assigned *pendente lite*, and, in such event, provides that the debtor may extinguish his obligation by making appropriate reimbursement to the assignee.[2] In other words, an assignment of credit *pendente lite*, contrary to the respondent Judge's opinion of March 31, 1967, under which it was construed that the mortgage rights and rights as purchaser of the PCIB over the lots in question were still in custodia legis at the time of their assignment to the NIDC, does not extinguish the credit or accessory rights assigned, but simply changes the bag into which the debtor must empty his money in payment.

ACCORDINGLY, the order of the court *a quo* dated March 31, 1967, and its subsequent orders dated May 28, 1968, November 9, 1968 and January 27, 1969, and all related orders are hereby declared null and void and without legal effect, for having been issued without jurisdiction. The preliminary injunction issued by this Court on March 11, 1970 is hereby made permanent. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] On March 11, 1970 we granted the writ of preliminary injunction prayed for by the NIDC.

[2] Art. 1634 provides: "When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid..."

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