

PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLANT, VS. ANGELA PURUGANAN AND CONSOLACION R. WARNICK, DEFENDANTS-APPELLEES.*G.R. No. L-25472. January 31, 1968*

Ponente: BENGZON, J.P., J.

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Angela Puruganan and Consolacion R. Warnick obtained on September 26, 1950 a P1,000-loan from the Philippine National Bank, secured by a real estate mortgage executed by them and registered. Said debtors not having made any payment on the loan, the Philippine National Bank filed on February 9, 1953 a complaint before the Court of First Instance of Ilocos Norte[1] to recover the same. Puruganan and Warnick defaulted. After submission of evidence by the bank, the court in its decision of December 22, 1953, ordered the aforesaid defendants to pay jointly and severally the Philippine National Bank P1,414.85 - the amount due the bank as of that day which already includes the principal, the accrued interest, filing and sheriff's fees and the stipulated attorney's fees of P200 - plus daily interest, of P.1644 on the principal, until full payment.

To satisfy the judgment, the mortgage, which purportedly covered a parcel of land situated in San Juan, Barrio Culao, Dingras, Ilocos Norte, was foreclosed. Said property was thereupon sold at public auction on August 15, 1955 for P1,814.45 to the Philippine National Bank as highest bidder at the auction.

On January 15, 1963, the Philippine National Bank filed the present complaint for revival and enforcement of the judgment of December 22, 1953, alleging, among others, that the property mortgaged was really a part of Bimornay River and thus, far from being owned by the debtors-mortgagors, was beyond the commence of man; and that the judgment was therefore, never really satisfied, since the debtors had no title to the land, contrary to and in breach of their warranty. The bank sought to recover P2,220.83 - the amount due as of January 3, 1963 plus P.1644 daily interest until payment is made. On January 15, 1963, the Philippine National Bank asked for a writ of preliminary attachment ex parte, alleging that the defendants were disposing or about to dispose of their properties, to its prejudice. The writ was, however, denied.

The defendants answered that Puruganan had always owned the land which she acquired from Eliseo Castro; that there was no breach of warranty because the land was not part of public domain at the time the Philippine National Bank bought it; that if the mortgaged property was later overflowed by the river, it was due to a fortuitous event for which they should not be held liable. Defendants likewise argued that by January 15, 1963 when revival was sought, 10 years had lapsed and the action has prescribed. In a counterclaim they also prayed for P1,000 as actual damages and P500 attorney's fees.

On January 14, 1965, after a pre-trial conference, the lower court dismissed the complaint, declaring that the washing away of the land by the river was an act of God, for which defendants were not liable; that if a warranty was breached, the action to enforce the same within six months under Art. 1571, New Civil Code, had already prescribed. The court observed that the Philippine National Bank had its examiners to see to it that the land sought

to be mortgaged was worth the loan. It believed that the sheriff would not have sold nor the Philippine National Bank bought the land, if it did not really exist. From this dismissal order, the Philippine National Bank appealed to Us.

The Philippine National Bank argues that the dismissal deprived it of its right to adduce evidence in support of its complaint. We find its position tenable. If the land mortgaged was really part of the river as appellant alleges, then there could not have been a mortgage or sale at public auction,[2] for such property of the public domain would be outside the commerce of man. Upon the other hand, if the defendants are right that the land did exist, as private land, and that defendant. Puruganan was in possession thereof as owner prior to and at the time of the loan, mortgage and foreclosure, then the judgment was properly satisfied. It is necessary then to determine the truth as regards the respective allegations of the complaint and the answer, and this calls for trial on the merits.

WHEREFORE, the appealed order of dismissal is here-by set aside and the case is remanded to the lower court for further proceedings. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Civil Case No. 1713.

[2] Article 1409(4), New Civil Code.

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