

**SPOUSES FLORENTINO S. TOMAS AND FRANCISCA CARIÑO,
PLAINTIFFS-APPELLEES, VS. EUSEBIA TOMAS, DEFENDANT,
PHILIPPINE NATIONAL BANK, SANTIAGO, ISABELA BRANCH,
DEFENDANT-APPELLANT.**

G.R. No. L-36897. June 25, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Plaintiff spouses, Florentino S. Tomas and Francisca Cariño, are the owners of a parcel of land located in Malasian, Santiago, Isabela (now Saguday, Nueva Vizcaya) since 1929, which they obtained through a homestead patent with Original Certificate of Title No. I-4620. Through fraud and mis-representation, one Eusebia Tomas succeeded in having OCT No. I-4620 cancelled, and obtained in her name TCT No. 8779, Isabela, now TCT-350 Nueva Vizcaya, with which she obtained a loan from the Philippine National Bank branch in Santiago, Isabela, as a security, mortgaging the land with the bank for the loan of P2,500.00. Florentino Tomas discovered the fraudulent acts of Eusebia Tomas when he himself applied for a loan from the Philippine National Bank, and offered as a collateral the same land already mortgaged by Eusebia Tomas to the bank.

In the action plaintiffs filed on April 14, 1964 to declare TCT-350, Nueva Vizcaya, null and void, against Eusebia Tomas, it was found by the court (Court of First Instance of Nueva Vizcaya) that Eusebia Tomas succeeded in having plaintiffs' OCT. No. I-4620 (Isabela)[1] cancelled and having TCT No. 8779 (Isabela)[2] issued in her name, by executing a deed of extra-judicial settlement[3] in which she made it appear that she is the lone heir of the registered owner, Florentino Tomas, to whom she was not even known before, and who was at the time very much alive. She then petitioned for the issuance of another owner's duplicate of OCT No. I-4620, alleging loss of said owner's duplicate. On Order of the court (Court of First Instance of Isabela) where the petition was filed, a new owner's duplicate was issued to Eusebia Tomas as the petitioner. Upon the registration of the deed of extrajudicial settlement (Exhibit "J"), OCT No. I-4620 was cancelled, and TCT No. 8779, now TCT-350 Nueva Vizcaya was issued in the name of Eusebia Tomas on March 14, 1957.

In the same action, the Philippine National Bank was made a co-defendant as the mortgagee of the land, the plaintiffs alleging that the mortgage is null and void, the mortgagor not being the owner of the property mortgaged. After trial in which Eusebia Tomas never appeared present any evidence, the court a quo rendered judgment dated June 9, 1967, the dispositive portion[4] of which reads:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, decision is hereby rendered in favor of the plain-tiffs and against the defendants: (a) declaring Transfer Certificate of Title No. T-8779, now Transfer Certificate of Title No. T-350 in the name of defendant Eusebia Tomas null and void; (b) declaring the deed of extra-judicial settlement executed by defendant Eusebia Tomas null and void; declaring Original Certificate of Title No. I-4620 and its file and owner's copy revived; (d) condemning defendant Eusebia Tomas to pay the plaintiffs in the amount of P950.00 as attorney's fee and P55.80 representing the actual expenses of the plaintiffs; (e) declaring the mortgage in favor of the Philippine National Bank without force and effect against

the plaintiffs, and (f) ordering defendant Eusebia Tomas to pay the costs of this proceedings."

From the portion of the foregoing judgment declaring the mortgage in its favor without force and effect, the Philippine National Bank appealed to the Court of Appeals,[5] which, however, certified the appeal to this Court, the issue pre-sented being purely legal.[6]

The only issue to be resolved is whether the mortgage of the land in favor of the appellant bank is valid or not as against appellees.

There is no dispute that the mortgagor Eusebia Tomas is not the owner of the land in question, the true owner being the appellees, who had always been in possession of said land since they applied for it by way of homestead patent. The owner's duplicate of OCT No. I-4620 covering the land in favor of appellee Florentino Tomas had always been with the latter, and was never lost as falsely and fraudulently misrepresented by Eusebia Tomas in her petition for a new owner's duplicate of OCT No. I-4620. Alleging, however, good faith so as to invoke the protective provision of the Land Registration Act (Section 39, Act 496), pointing to the fact that the certificate of title, TCT-350 Nueva Vizcaya presented by Eusebia Tomas as mortgagor was in her name, and showed no encumbrance over the land, the appellant bank contends that its right as mortgagee must be fully respected, as a mortgagee in good faith.

Verily, the resolution of the issue raised in this appeal hinges on whether the appellant is a mortgagee in good faith and for value, for if it is, and without anything to excite suspension as it claims, it is protected in the same way as a purchaser in good faith and for value is protected under Section 39 of Act 496, otherwise known as the Land Registration Act.

In claiming good faith as a mortgagee, and for value, appellant bank claims that no proof to the contrary was presented by appellees in the trial court.[7] It is a fact, however, that incontrovertible proofs have been adduced showing that Eusebia Tomas, the mortgagor, was not the owner of the property mortgaged. This is all that appellees had to prove that would place appellant bank on obligation to show good faith, as in fact, it was the bank that alleged good faith as its defense.[8] It would be more legally correct, therefore, to say that it was incumbent on appellant to prove its affirmative allegation of good faith rather than appellee to show the contrary. In any case, to the statement in appellees' brief that appellant bank "did not object when appellees presented evidence in the lower court regarding negligence of appellant, like their failure to send field inspector to the land to discover who is the real owner of the land being offered as security to the loan of impostor Eusebia Tomas," no denial was made in a reply brief which appellant should have filed if it wanted to deny this assertion of appellees. The allegation that appellees presented no proof of lack of good faith on the part of appellant bank may, therefore, not altogether be accurate.

The facts as properly taken note of by the lower court would seem to bring the instant case within the ruling of the case of *Pichay vs. Celestino*,[9] the essence of which is as between two innocent persons, the mortgagee and the owner of the mortgaged property, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss. This is a principle that accords more with justice and equity, in the light of the common practice of banking institution, which is a matter of public knowledge, as observed by the trial court in the case *aforecited*, with which this Court agreed, before approving a loan, to send representatives to the premises of the land offered as collateral and investigate who are the true owners thereof. Incidentally, the ruling cited herein was against the same appellant bank, the Philippine National Bank, with reference to a mortgage entered into under similar circumstances. Banks, indeed, should exercise more care and prudence in dealing even with registered lands, than private individuals, for their business is one affected with public interest, keeping in trust money belonging to their depositors, which they should guard against loss by not

committing any act of negligence which amount to lack of good faith by which they would be denied the protective mantle of the land registration statute, Act 496, extended only to purchasers for value and in good faith, as well as to mortgagees of the same character and description. This is evidently the rationale of the doctrine laid down in the case of *Pichay vs. Celestino*, supra, which as in the instant suit, involved also a mortgage of a land covered by a certificate of title, mortgaged by the defendant who was not the owner. The latter, however, succeeded in cancelling the original certificate of title in the name of the real owner, by forging a deed of sale, purportedly executed by the said registered owner in his favor, upon the registration of which, he obtained a transfer certificate of title in his name, presenting a new owner's duplicate certificate he obtained by falsely alleging that the first owner's duplicate was burned in an ex-parte petition with prayer for the issuance of another owner's duplicate which the court granted.

Thus, the facts of the instant case so closely resemble, if they are not exactly the same as, those in the *Pichay vs. Celestino* case, as to make the application of the ruling in said case to the one at bar unavoidable and compelling. There were only 12 days between the cancellation of OCT No. I-4620 on March 14, 1957 and the constitution of the mortgage on March 26, 1957, which shows that the application for the loan must have been filed within days only from the receipt of the new TCT No. 8779 by Eusebia Tomas. This fact should have aroused suspicion for appellant bank to send representative to the premises to ascertain who the true owner is, considering that homestead patents are generally applied for by male applicants, and are very infrequently sold or alienated, the policy of the law being against sale or alienation.

The decision of this Court in the aforecited case promulgated on May 30, 1967 preceded the decision of the lower court in this case dated June 7, 1967, by only a few days. However, the court a quo went along the doctrine as laid down in the *Pichay vs. Celestino* case even perhaps without having actually read the decision, although a similar rule had earlier been laid down in *Blondeau, et al. vs. Nano, et al.*[10] We, therefore, find no error in the holding of the court a quo that the mortgage executed by Eusebia Tomas, appellant's co-defendant in favor of said appellant bank over the land in question which the former never owned, is without effect as against appellees herein.

We, indeed, find more weight and vigor in a doctrine which recognizes a better right for the innocent original registered owner who obtained his certificate of title through perfectly legal and regular proceedings, than one who obtains his certificate from a totally void one, as to prevail over judicial pronouncements to the effect that one dealing with a registered a land, such as a purchaser, is under no obligation to look beyond the certificate of title of the vendor, for in the latter case, good faith has yet to be established by the vendee or transferee, being the most essential condition, coupled with valuable consideration, to entitle him to respect for his newly acquired title even as against the holder of an earlier and perfectly valid title. There might be circumstances apparent on the face of the certificate of title which could excite suspicion as to prompt inquiry, such as when the transfer is not by virtue of a voluntary act of the original registered owner, as in the instant case, where it was by means of a self-executed deed of extra-judicial settlement, a fact which should be noted on the face of Eusebia Tomas' certificate of title. Failing to make such inquiry would hardly be consistent with any pretense of good faith, which the appellant bank invokes to claim the right to be protected as a mortgagee, and for the reversal of the judgment rendered against it by the lower court.

WHEREFORE, the judgment appealed from is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, and Fernandez, JJ., concur.

Melencio-Herrera, J., in the result.

Guerrero, J., took no part.

[1] Exhibit "A", p. 1, Records of Exhibits.

[2] Exhibit "K", p. 14, *ibid*.

[3] Exhibit "J", p. 13, *ibid*.

[4] p. 37, Record on Appeal, p. 22, Rollo.

[5] p. 64, *Id.*, p. 22, Rollo.

[6] p. 52, Rollo.

[7] p. 8, Appellant's Brief, p. 46, Rollo.

[8] p. 19, Record on Appeal, p. 22, Rollo.

[9] No. L-19292-94, May 30, 1967, 20 SCRA 314.

[10] 61 Phil. 625; Notes, 20 SCRA 324.

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