

CLAEO B. LIZARDO, PETITIONER AND APPELLANT, VS. AQUILINO HERRERA, LUCIA L. HERRERA, AND ADELAIDA ORETA DE UNSON, RESPONDENTS AND APPELLEES.*G.R. No. L-6401. March 14, 1956*

Ponente: ENDENCIA, J.

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The decisive question involved in this case is whether the petitioner-appellant has right to secure the registration of the deed of mortgage (Annex A of the petition) executed in his favor by the respondent spouses Aquilino Herrera and Lucia L. Herrera on October 31, 1944, in the City of Baguio, over a parcel of land originally covered by Transfer Certificate of Title No. 2402, issued in their names.

Before the war, this land was mortgaged to the Agricultural and Industrial Bank by said spouses and upon their failure to pay their indebtedness to the Bank it was extra judicially foreclosed under the provisions of Act No. 3135, as amended by Act No. 4118, and sold at public auction by the Sheriff of Baguio on December 19, 1941 and adjudicated to said bank as the best bidder in that auction sale. The spouses had one year to redeem the property, but they failed to do so, hence, on June 5, 1943, the Agricultural and Industrial Bank secured the cancellation of Transfer Certificate of Title No. 2402 and the issuance in its name of Transfer Certificate of Title No. 2954.

Subsequently, the spouses made efforts to repurchase the land and on June 18, 1943, the Agricultural and Industrial Bank entered into a contract of "Promise to Sell" with Aquilino Herrera and to that effect a deed was executed whereby the land in question was conveyed to the latter for the sum of P19,739.01, of which the sum of P1,907.01 was paid on the signing of the contract and the remaining P17,832.00 to be paid on the basis of a 10-year quarterly amortization, plan with interest at the rate of six per centum per annum, its amortization to be in the amount of P592.53 including interest. It was also stipulated in this contract that the title to the property should remain in the name of the vendor, the Agricultural and Industrial Bank, until the purchase price has been fully paid and that, during the term of the contract, the vendee Aquilino Herrera could not sell, cede, encumber transfer or in any manner dispose of the rights granted him by the contract. Nevertheless, on October 31, 1944, Aquilino Herrera, with his wife Lucia L. Herrera mortgaged the property in favor of the petitioner LizarDO for the sum of P6,000 in Japanese notes and executed the deed of mortgage Annex A of the petition.

During the Japanese occupation, Aquilino Herrera made several payments to the Bank in compliance with the contract of "Promise to Sell" mentioned above. After liberation, the Agricultural and Industrial Bank was abolished and its assets and liabilities were transferred to the Rehabilitation Finance Corporation. Aquilino Herrera tried to continue to comply with the contract and to make further payments, but the Rehabilitation Finance Corporation disputed the validity of his previous payments in Japanese money, hence Aquilino Herrera filed Civil Case No. 96 with the Court of First Instance of Baguio to compel the Rehabilitation Finance Corporation to recognize the validity of said previous payments. That case was decided by said court in favor of

Aquilino Herrera and, on appeal, upheld by the Court of Appeals in its decision promulgated on June 27, 1950.

On December 7, 1950, the disputed payments were credited in favor of Aquilino Herrera but still there remained as of December 7, 1950, a balance of P2,660.23 in favor of the Rehabilitation Finance Corporation and to pay this amount Aquilino Herrera borrowed from Mabasa & Co., Inc. the sum of P6,000. On the same day, Aquilino Herrera paid the sum of P2,660.23 to the Rehabilitation Finance Corporation; the latter executed the corresponding deed of sale, and Aquilino Herrera signed the deed of mortgage in favor of Mabasa & Co., Inc. Both the sale and mortgage were duly registered, and Transfer Certificate of Title No. 2954 in the name of the Agricultural and Industrial Bank was cancelled, and a new Transfer Certificate, of Title No. T-1271 issued in the name of Aquilino Herrera, bearing an annotation of the mortgage in favor of Mabasa & Co., Inc.

On December 12, 1950, Atty. Francisco S. Reyes, in behalf of petitioner, presented to the Register of Deeds of Baguio the aforementioned deed of mortgage, Annex A of the petition, dated October 31, 1944, for registration purpose but without the Owner's Duplicate Transfer Certificate of Title No. 2402 or the Transfer Certificate of Title No. T-1271; hence, he requested the Register of Deeds of Baguio to require Aquilino Herrera and Mabasa & Co., Inc. to surrender Transfer Certificate of Title No. T-1271 so that the deed of mortgage may be annotated therein. Accordingly, the Register of Deeds of Baguio demanded from Aquilino Herrera and Mabasa & Co., Inc. to surrender the title, but the latter failed to comply with the demand, so the Register of Deeds filed, on January 12, 1951, a motion in the Court of First Instance of Baguio in Civil Res. No. 1, G.L.R.O. No. 211, praying for an order directing Aquilino Herrera and Mabasa & Co., Inc. to surrender said Transfer Certificate of Title No. T-1271. Due to the opposition of Aquilino Herrera and Mabasa & Co., Inc., said motion was heard and at the hearing petitioner-appellant was represented by his attorney, Francisco S. Reyes. After the hearing, the motion was denied by the court in its order dated March 26, 1951. Neither the Register of Deeds nor the herein petitioner-appellant appealed from that order, consequently it became final.

On December 31, 1961, Aquilino Herrera sold the property to Adelaida Oreta Unson who presented the Deed of Sale together with Transfer Certificate of Title No. T-1271 to the Register of Deeds of Baguio for registration purposes and paid the statutory fees, but the Register of Deeds of Baguio did not act immediately and elevated, in accordance with section 200 of the Revised Administrative Code, a consulta to the Fourth Branch of the Court of First Instance of Manila to secure an opinion as to whether the registration of the deed of sale in favor of Adelaida Oreta Unson should be given course notwithstanding petitioner's re-amended petition wherein it was prayed that Adelaida Oreta Unson be ordered to surrender to the Register of Deeds of Baguio the aforementioned Transfer Certificate of Title No. T-1271, which petition was opposed by the latter on the ground that she bought the land described in said certificate from Aquilino Herrera in good faith; that at the time she bought the land covered by Transfer Certificate of Title No. T-1271, there was neither any lis pendens annotated in its original and in the owner's duplicate nor any lien or encumbrance except the mortgage in favor of Mabasa & Co., Inc. This consulta, was resolved in the sense that in the transfer certificate of title that may be issued in favor of Adelaida Oreta Unson, it be annotated that it is subject to the result of the present petition.

In his original petition, petitioner prayed that Aquilino Herrera and Lucia L. Herrera be compelled to surrender to the Register of Deeds of Baguio the Transfer Certificate of Title No. 2402 for the annotation of Annex A. Later on, he amended the petition and prayed that Aquilino Herrera and Lucia L. Herrera as well as Mabasa & Co., Inc. be ordered to surrender to the Register of Deeds of Baguio Transfer Certificate of Title No. T-1271. Lastly, in the re-amended petition, the relief sought was to compel not only the aforementioned respondents Aquilino Herrera and Mabasa & Co., Inc. but especially Adelaida Oreta Unson, as purchaser of the property, to surrender the aforesaid Transfer Certificate of Title No. T-1271 in order that the deed of mortgage, Annex A of the petition, may be annotated therein.

On July 30, 1952, the last amended petition was heard and on the same day it was denied. Petitioner filed a motion for reconsideration of the decision, but the Court denied it, hence this appeal.

Petitioner contends that he has right to secure the annotation of his mortgage either in Transfer Certificate of Title No. T-1271 or in the title that may be issued in favor of Adelaida Oreta Unson, as purchaser of the land involved in this litigation, while respondents hold the contrary view. Upon the facts of the case, we find petitioner's contention to be untenable, firstly,, because the right of the petitioner to secure the registration of his mortgage Transfer Certificate of Title No. T-1271 was denied by the court of Baguio in its order dated March 26, 1951, which became final and executory for lack of appeal. Secondly, because Adelaida Oreta Unson bought the land in question, free from any encumbrance, in good faith and therefore the transfer certificate of title that should be issued in her favor should not contain any annotation of any encumbrance, otherwise her absolute and exclusive ownership over the property in question will be affected. Thirdly,, because the pretended right of the herein petitioner,, if any, to an annotation of the mortgage in Transfer Certificate of Title No. T-1271 cannot prevail over the right of Adelaida Oreta Unson to the cancellation of Transfer Certificate of Title No. T-1271 and the issuance in lieu thereof of a new title¹ completely free from any annotation of any lien or encumbrance, for the law protects her as a purchaser in good faith who relied on what appeared on the Transfer Certificate of Title No. T-1271 at the time of the purchase of the land described therein.

In conclusion, we find that petitioner Lizardo did not present to the Register of Deeds his deed of mortgage, dated October 31, 1944, but on January 12, 1951; that said deed of mortgage was never registered nor annotated in the Original Certificate of Title No. 2402 and neither on Transfer Certificate of Title No. T-1271; that the present petition is a repetition of the motion filed by the Register of Deeds of Baguio upon his (petitioner's) instance on January 12, 1951 which was denied by the court of Baguio; that the petitioner never filed a notice of lis pendens with the Register of Deeds of Baguio about said mortgage; and that Adelaide Oreta Unson is a purchaser in good faith, having bought the land described in Transfer Certificate of Title No. T-1271 without being aware of the mortgage which the petitioner seeks to register.

Wherefore, the order appealed from is hereby affirmed, with costs against the petitioner.

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

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