

FERMIN DE LA VICTORIA, ET AL., PETITIONERS, VS. LEVY HERMANOS, INC., ET AL., RESPONDENTS.

G.R. No. L-19766. August 31, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Fermin de la Victoria, et al. filed an action before the Court of First Instance of Negros Occidental against Levy Hermanos, Inc., et al. praying that the proceedings had in Civil Case No. 8176 of the same court concerning the foreclosure of the mortgage executed in favor of Levy Hermanos, Inc. on Lot No. 121-A of San Carlos cadastre covered by Transfer Certificate of Title No. RT-1349 be nullified, and that plaintiffs be declared owners of said lot and awarded damages in the sum of P20,000.00, as well as attorney's fees in the sum of P5,000.00.

Defendants, in their answer, set up the defense that the foreclosure of the mortgage executed in favor of Levy Hermanos, Inc. for the purpose of satisfying the debt contracted by the Ortegas was made in accordance with Law and, as a consequence, the mortgaged property was acquired by said company and later transferred to the Concha spouses in good faith and for value. They claimed that the action of the plaintiffs, if any, has already prescribed.

After due hearing, during which both parties presented their respective evidence, the court a quo rendered judgment dismissing the complaint. It declared defendants Jovencio Concha and his wife owners of the portion of Lot No. 121-A formerly belonging to Juan, Anacleto, Marcelino, and Irene, all surnamed Ortega, covered by Transfer Certificate of Title No. RT-1349 and, consequently, it ordered Fermin de la Victoria and his wife to restore to said spouses the possession of the property or whatever part may be actually occupied by them.

Fermin de la Victoria and his wife Concepcion Nemenzo, including their co-plaintiffs Juan Ortega, et al., appealed to the Court of Appeals which, in due time, affirmed in toto the decision of the court a quo.

Hence, the present petition for review.

As may be gathered from the statement of facts quoted in the decision of the Court of Appeals, the following appear to be uncontroverted:

Juan, Marcelino, Irene, and Anacleto, all surnamed Ortega, were the registered owners pro-indiviso of a portion of Lot No. 121-A, containing 8,250.50 sq. m., of San Carlos cadastre, which was covered by Transfer Certificate of Title No. RT-1349 of the Register of Deeds of Negros Occidental.

On October 3, 1934, Anacleto Ortega transferred to spouses Fermin de la Victoria and Concepcion Nemenzo his one-eighth (1/8) undivided share in said lot having annotated the corresponding deed of conveyance on said certificate of title on February 20, 1936 as Entry No. 48677.

On December 29, 1934, Marcelino Ortega likewise transferred to spouses Fermin de la Victoria and Concepcion Nemenzo his one-eighth (1/8) portion of the same lot the corresponding deed of conveyance having also been annotated on the same certificate of title on February 20, 1936 as Entry No. 48679.

On October 23, 1939, Juan, Anacleto and Marcelino, all surnamed Ortega, similarly sold their rights, interests and participation over the same lot for P1,050.00 to spouses Fermin de la Victoria and Concepcion Nemenzo, the corresponding deed of conveyance having been annotated on the same certificate of title on February 2, 1949 as Entry No. 10138. And on December 8, 1939 Juan Ortega also sold to the same spouses his right, interest and participation over the same lot for P1,050.00 the deed of conveyance having been annotated on the certificate of title on February 2, 1949 as Entry No. 10139.

However, on August 6, 1936, Marcelino, Juan, Irenear and Anacleto, all surnamed Ortega, mortgaged the lot abovementioned to Levy Hermanos, Inc. as a security for the payment of a car which was purchased by the Ortegas, which deed of mortgage was registered on the certificate of title as Entry No. 51609. And on October 13, 1939, the Levy Hermanos, Inc. instituted foreclosure proceedings before the Court of First Instance of Negros Occidental against the Ortegas for the collection of their indebtedness, but in said case Fermin de la Victoria and his spouse were not included as party-defendants inspite of the interest they had on the mortgaged land and the fact that they were its actual occupants and owners of the improvements standing thereon.

On the strength of the facts related above there is no doubt that when the lot in question was mortgaged by the Ortegas on August 6, 1936 to Levy Hennanos, Inc. to secure the payment of a car which they had purchased from it the right, interest and participation therein belonging to Anacleto and Marcelino had already been conveyed to Fermin de la Victoria and his wife, and the corresponding deeds of conveyance annotated on the back of its title, as a consequence of which said spouses took possession of the portions conveyed to them and constructed thereon two buildings, one for residence and the other for business. However, when the foreclosure case was instituted the company only impleaded the Ortegas but failed to include Fermin de la Victoria and his wife with the result that after the property was sold to Jovencio Concha and his wife these spouses were declared with the right to take possession of the land and eject therefrom Fermin de la Victoria and his wife. This is now assigned as error by appellants.

We find merit in this contention. While it is true that under Rule 70, Section 3, of our Rules of Court the sale of a mortgaged property shall not affect the rights of persons holding prior incumbrances and in this instance Fermin de la Victoria and his wife were holding an incumbrance prior to that of Levy Hermanos, Inc., it should not however be overlooked that said spouses were placed immediately in possession of the land after the conveyance and have erected thereon two buildings one for residence and the other for business at their cost. Hence, said spouses cannot be deprived of the possession of the two buildings without due process for apparently they acted on the matter in good faith. In fact, their possession remained undisturbed until the foreclosure case was started by the Levy Hermanos, Inc. Evidently, the court a quo acted unfairly when it ordered them to deliver to spouses Concha the possession of the property not being parties to the case.

We believe, however, that appellants' claim that the whole proceedings held in the foreclosure case is null and void for the reason that the court a quo did not acquire jurisdiction over the Ortegas for lack of proper summons has no merit, for both the court a quo and the Court of Appeals have found that the Ortegas were properly served with summons as evidenced by the certification of the deputy provincial sheriff, apart from the fact that in that case they were properly represented by their counsel, Jose M. Estacion, who confessed judgment in their behalf. This counsel is presumed to be authorized unless the contrary appears (Section 20, Rule 127). Here instead of disauthorizing him they gave him their implied conformity when they kept silent when the confession was made in their presence, more so when they have not taken any step to dispute his authority notwithstanding the lapse of more than ten years. They cannot, therefore, disown what their counsel did at this late hour.

Wherefore, the decision appealed from is modified in the sense that Civil Case No. 8176 of the Court of First Instance of Negros Occidental is declared without effect insofar as the right, interest and participation of spouses

Fermin de la Victoria and his wife Concepcion Nemenzo over Lot 121-A of San Carlos cadastre is concerned, especially the portion belonging to them as well as the improvements they constructed thereon. No pronouncement as to costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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