

JESUS GIGANTE, PLAINTIFF-APPELLANT, VS. REPUBLIC SAVINGS BANK AND ROLANDO MALLARI, DEFENDANTS-APPELLEES.

G.R. No. L-29696. November 29, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The following facts control the issues herein, namely, plaintiff's right to damages and to the owner-ship and possession of a house in Caloocan City, the subject of the suit:

In Civil Case 3412 of the Municipal Court of Caloocan, Rizal, judgment was, on May 6, 1958, rendered ordering defendant therein, Dominador Mallari, to pay plaintiff Jesus Gigante P1,570 with interest and attorneys' fees. Pursuant to the writ of execution there issued, the Sheriff levied - on May 29, 1961 - the house in question situate at 551 Nadurata Street, Grace Park, Caloocan City, valued at P3,040. On June 23, 1961, said house was sold at public auction to plaintiff Gigante. Thereafter, on September 1, 1962, the Municipal Court of Caloocan granted Gigante's motion for a writ of possession of that house. But the writ of possession was successfully blocked in the Municipal Court of Caloocan by Republic Savings Bank (hereinafter referred to merely as the Bank) which asserted ownership of the house upon facts hereinafter to be related.

It is undisputed that the house in question was originally entered in the assessment rolls of Caloocan as Tax Declaration 34783 in the name of Dominador Mallari, judgment debtor of Jesus Gigante. Across the face of this tax declaration, however, the following entry appears: "Cancelled (by) Tax No. 52622 Rolando D. Mallari". Tax Declaration 52622, on its face and according to a certi-fication of the Office of the Assessor of Rizal, was taken by Rolando Mallari on October 8, 1958.

On March 29, 1959, said Rolando Mallari applied for a loan of P25,000 with the Bank. He offered as collateral therefor that house then already declared for taxation pur-poses in his name under Tax Declaration 52622 as well as the land on which it stands covered by Transfer Certificate of Title 59922 issued in his favor. On this application, the Bank granted Rolando Mallari a loan of P18,000 secured by a real estate mortgage dated April 23, 1959 on the land covered by the Torrens title just mentioned "together with all the buildings and improvements now existing or which may hereafter be constructed on the mortgaged property." This mortgage was recorded on April 24, 1959. Rolando Mallari failed to pay the loan. The Bank foreclosed. On June 28, 1960, the Bank bought the land "together with all the buildings and improvements thereon" for P23,631.19. Thereafter, title to the land and all the improvements thereon was consolidated in the name of the Bank. And, on July 5, 1961, Transfer Certificate of Title 88233 was issued to the Bank by the Register of Deeds of Rizal, in lieu of Rolando Mallari's Torrens Title No. 59922.

And now to the present suit.[1] Plaintiff Jesus Gigante charges that any transfer from Dominador to his son Rolando is fictitious, fraudulent and null and void. He prays that defendants Rolando Mallari and the Bank turn over to him the possession and ownership of the house, and jointly and severally pay him P5,000 by way of actual losses and damages, P2,000 for exemplary damages, and P2,000 as attorneys' fees.

Defendants' answer traversed the allegations of the complaint, averred that defendant Bank purchased said house and the lot at a sale on foreclosure of the mortgage executed by Rolando Mallari in its favor.

On the issues, judgment was rendered below dismissing the complaint with costs against plaintiff; declaring the house and lot in question as the Bank's property; and ordering plaintiff to pay defendants P300 each by way of attorneys' fees. Plaintiff appealed.

1. Plaintiff's claim to the house rests on the judgment in his favor and against Dominador Mallari of May 6, 1958, and the Sheriff's levy of May 29, 1961 and sale of the house on June 23, 1961, both in Civil Case 3412 of the Municipal Court of Caloocan. But neither judgment nor levy nor sale was recorded on the Torrens title. Upon the other hand, the Bank's right is based on a real estate mortgage duly recorded on April 24, 1959. The Bank's registered mortgage is thus superior to both said judgment and levy and sale. And, by virtue of the foreclosure sale of the land and the improvements thereon, the house on said land is beyond the reach of plaintiff's action to nullify the transfer from Dominador to Rolando Mallari. Because, the house - the subject matter thereof - has lawfully passed into the ownership and possession of the Bank which has not acted in bad faith.[2]

2. Neither would the action for rescission of the transfer of the house - alleged to be fraudulent - from Dominador Mallari to his son Rolando Mallari prosper. Nor the action for damages against herein defendants Rolando Mallari and the Bank. The reason is plain. Dominador Mallari, the vendor, is not a party to the present suit. He is an indispensable party. The action for rescission and the claim for damages cannot be finally determined without the presence in court of Dominador Mallari. For, any decision on either would affect him. He is entitled to be heard, to defend the validity of the transfer to his son Rolando.[3] Judgment in the present suit would not be binding upon Dominador Mallari, cannot be executed against him.

FOR THE REASONS GIVEN, the judgment under review is hereby affirmed.

Costs against plaintiff.

SO ORDERED.

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

[1] Civil Case Q-7057, Court of First Instance of Rizal (Quezon City Branch), entitled "Jesus Gigante, Plain-tiff, versus Republic Savings Bank and Rolando Mallari, Defendants."

[2] Sikatuna vs. Guevarra, 43 Phil. 371, 375; Gatchalian vs. Manalo 68 Phil. 708, 711; Abaya vs. Enriquez, L-8988, May 17, 1957. See: Second paragraph of Article 1385, Civil Code.

[3] Balanga vs. Manalang, L-18830, October 30, 1965.

In Alberto vs. Mananghala, 89 Phil. 188, 191-192, this Court said:

"In an action for rescission of sale because of non-payment of price, the vendee is an indispensable party. (Ocejo, Perez & Co. vs. International Banking Corporation, 37 Phil. 631.) In an action for recovery of property against a person who purchased it from another who in turn acquired it from others by the same means or by donation or otherwise, the predecessors of defendants, are indispensable parties if the transfers if not voided, may bind plaintiff. (Garcia vs. Reyes, 17 Phil. 127.) In the latter case, this Court held:

'In order to bring this suit duly to a close, it is imperative to determine the only question raised in connection with the pending appeal, to wit, whether al/ the persons who intervened in the matter of the transfers and donation herein referred to, are or are not necessary parties to this suit, since it is asked in the complaint that the said

transfers and donation be declared null and void - an indispensable declaration for the purpose, in a proper case, of concluding the plaintiff to be the sole owner of the house in dispute.

If such a declaration of annulment can directly affect the persons who made and who were concerned in the said transfers, nothing could be more proper and just than to hear them in the litigation, as parties interested in maintaining the validity of those transactions, and therefore, whatever be the nature of the judgment rendered, Francisco Reyes, Dolores Carvajal, Alfredo Chicote, Vicente Miranda, and Rafael Sierra, besides the said minors, must be included in the case as defendants.' (Garcia vs. Reyes, 17 Phil. 130-131.)."

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