

EMMA VILLASOR, PLAINTIFF AND APPELLANT VS. GABRIEL B. CAMON, ANTONIO M. A. LIZARES AND MARIANO CORDOVA, REGISTER OF DEEDS FOR THE PROVINCE OF OCCIDENTAL NEGROS, DEFENDANTS AND A...

R-C.A. No. 8551. June 29, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal by Emma Villasor from a decision of the Court of First Instance of Negros Occidental which absolved the defendant Antonio M. A. Lizares from the complaint, and sentenced the plaintiff to return to said defendant Lot No. 746 of the Cadastral Survey of Murcia, together with the improvement thereon, and to pay said defendant a rent of thirty (P30) pesos a month from August 5, 1939, and sentenced the defendant Gabriel B. Camon to pay the plaintiff the sum of three thousand four hundred ninety-two (P3,492) pesos, which is the total amount of the debt that said defendant Camon acknowledges to be indebted to the plaintiff.

The appellant assigns several errors of the lower court, but the assignments which deserve consideration by this Court are the 3rd and the 7th assignments of error, which read as follows:

"III. The Lower Court erred in holding that the notation of a deed of assignment of rights in the entry book of the Register of Deeds was not a sufficient registration.

"VII. The Lower Court erred in condemning plaintiff Emma Villasor to pay defendant Antonio M. A. Lizares a rental of thirty pesos (P30) a month from August 5, 1939".

The lot No. 746 in question was the property and registered in the name of the Philippine National Bank. The defendant Camon bought from said Bank in July, 1936, said lot for the sum of two thousand five hundred (P2,500) pesos under the terms and conditions stipulated in the contract between them, among which was that the title to said lot will be transferred to said defendant after the latter had paid all the purchase price thereof, which was payable by instalments. The defendant Camon built a house thereon, and as he was indebted to the plaintiff for three thousand four hundred ninety-two (P3,492) pesos, he sold in a public instrument, exhibit "A", to the latter all his rights and interests in the said lot with the improvement or house thereon, for the sum of two thousand five hundred (P2,500) pesos. After its execution, the attorney for the plaintiff sent said document exhibit "A" to the Register of Deeds of Negros Occidental, but without the corresponding duplicate certificate of title of the Philippine National Bank, for registration.

In July, 1937, defendant Camon got a loan guaranteed with a mortgage of the lot, from Antonio M. A. Lizares for one thousand six hundred (Pi,600) pesos, in order to make a partial payment of the lot to the Bank and pay his other obligations, but the so-called mortgage was rather only a mere loan because the document evidencing the same was not registered. And in July, 1938, as S. Camon was required by the Bank to pay the third instalment, he sold his rights and interests in said land to his co-defendant Lizares, who paid the sum of two thousand ninety-six

and 65/100 (P2,096.65) pesos to the Bank, and after the payment the Bank transferred the lot to Camon and the latter transferred it to Lizares, who obtained a transfer certificate of title No. 30433 of said lot in his name, and had been paying the corresponding land taxes thereof.

(a) The question raised in the third assignment of error which we have to decide, is whether the mere registration by the Register of Deeds in the entry or diary book of the exhibit "A" in which the defendant Camon sold or assigned all his rights and interests in the lot in question, without the presentation of the duplicate certificate of the owner for the annotation of such assignment thereon and on the original certificate, had the effect of a conveyance of the said lot to the plaintiff and a notice thereof to all other persons from the time of such registering, filing, or entering, under Sections 50 and 51 of Act No. 496. These two sections provide only for the effect of registration of deeds, mortgage, lease or other voluntary conveyance, as well as of lien, attachment, notice of lis pendens and other involuntary instruments on registered land. But they do not provide for the requisites or conditions for such registration in order to have that effect, which is provided for in the subsequent sections of the same Act, which we shall quote later on in their proper places depending upon whether the instrument to be registered is voluntary or involuntary one.

A cursory examination of the provisions of Sections 52, 57, 61, and 64 of Act No. 496 and the decisions of this Court in the cases of *Fidelity and Surety Co. vs. Pastora Conejero*, 41 Phil., 396; *Director of Lands vs. Addison*, 49 Phil., 19; and *Philippine National Bank vs. Fernandez*, 61 Phil., 448, clearly show that the answers to said questions must be in the negative. That is, that for the registration of voluntary instruments, such as the one under consideration, it is necessary, not only to register the deed, instrument of assignment, mortgage, or lease in the entry book of the Register of Deeds, but a memorandum thereof shall also be made by the Register of Deeds on the owner's duplicate certificate and its original.

Section 52 provides that "all interests in registered land less than an estate in fee simple shall be registered by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by the register of deeds upon the certificate of title, signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner."

Section 57 prescribes that "An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, which the grantor or grantee may present to the register of deeds in the province where the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. * * * The register of deeds shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to the last prior certificate."

Section 61 provides that "Registration of a mortgage shall be made in the manner following, to wit: The owner's duplicate certificate shall be presented to the register of deeds with the mortgage deed, and he shall enter upon the original certificate of title and also upon the owner's duplicate certificate a memorandum of the purport of the mortgage deed, the time of filing and the file number of the deed, and shall sign the memorandum."

Section 64 prescribes that "Lease of registered land shall be registered in the manner provided in section fifty-two of this Act, in lieu of recording."

This Supreme Court in the case of *Fidelity and Surety Co., vs. Pastora Conejero*, 41 Phil., 401, held that "The steps by which registration is accomplished are fully set out in section 57 of the same Act; and by reference thereto, it will be seen that registration of the transfer of registered land depends upon several vital conditions, among which is the requirement that the grantor's duplicate certificate, upon which the title is founded, shall be

produced before the register of deeds for cancellation; and that he shall also have before him the original certificate, likewise to be cancelled. This prerequisite condition was not complied with when the deed to Thomas was presented for registration. On the other hand, the conveyance of the land covered by certificate No. 194, by way of mortgage to the Fidelity and Surety Company, was effected in compliance with all legal requirements. As a consequence it must be held that the title acquired by the Fidelity and Surety Company is superior to that acquired by Samuel Thomas."

In the case of the Director of Lands vs. Addison, 49 Phil., 19, 26, it was held that "In fact the register of deeds has no authority to register a conveyance in fee without the presentation of the conveyor's duplicate certificate unless he is ordered to do so by a court of competent jurisdiction (see Land Registration Act, section 55)."

And in the case of Philippine National Bank vs. Fernandez, 61 Phil., 448, this Supreme Court ruled that, "As to the share of Leonor Villaranda, appellant's deed from her could not prejudice third persons, because it was not registered on transfer certificate of title No. 2207 in the office of the register of deeds, and the reason therefor was the failure of the appellant to present the owner's duplicate of said certificate to the register of deeds, as required by section 55 of Act No. 496. The appellant did not therefore acquire any right to the issuance of a new transfer certificate of title in his favor with respect to the interest of Leonor Villaranda (Fidelity and Surety Co. vs. Conegero Vda. de Lizarraga, 41 Phil., 396; Director of Lands vs. Addison, 49 Phil., 19)." Niblack, in his well known book "An Analysis of the Torrens System of Conveying Land", has the following to say on the necessity of producing the certificate of title:

"Production of Certificate of Title with Instrument Affecting Title.—Under the scheme of the Torrens system, and as a protection to the registered owner, the certificate of title must be produced with any voluntary instrument purporting to affect the title. In some acts it is expressly provided that no new certificate of title shall be entered, and no memorandum shall be made upon the register by the registrar, in pursuance of any voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases specifically provided for in the act, or upon the order of a court for cause shown. The other acts in this country provide that on the filing of such instrument and the production of the owner's duplicate certificate, the transfer or memorial may be registered. It is evident that under these acts the registrar has no authority to make registration without the production of the certificate of title with the voluntary instrument. Where there is no specific provision in an act that the production of the owner's duplicate certificate is to be a condition precedent to the right of the registrar to make a registration or a memorial, such provision may be inferred from the other requirements or statements of the act. A requirement that the owner's certificate shall be cancelled when a new registration is made, or that a memorial, when registered, shall be noted on the duplicate certificate, is an implication that the owner's duplicate must be presented before a new registration may be made." (Italics ours.)

The appellant cannot invoke in support of her contention the ruling laid down in the case of Government of the Philippine Islands vs. Aballe, 60 Phil., 986, which was followed in Director of Lands vs. Abad, 61 Phil., 479, to the effect that an attachment entered upon the entry book is duly registered although the duplicate certificate is not presented at the time of registration to the register of deeds. Appellant cannot invoke said ruling, not because it has been abandoned by the Supreme Court during the Japanese occupation in the case of Bass vs. De la Rama, et al, (1, Off. Gaz., [12] p. 889), in which it was said that "we are constrained to abandon the ruling in said two cases,"—it was not abandoned for the decision was concurred by only two justices or less than a majority, and said statement was not necessary or an obiter dictum and against the law, as correctly stated by the two associate justices who dissented and only concurred in the result, but because said ruling, subsisting and in force, does not support appellant's contention, for it is only applicable to registration of involuntary instruments, such as attachment, or other liens and adverse claims of any description. This ruling is correct or in conformity with the provisions of section 72 of Act No. 496, which do not require the production by the registrant of the duplicate

certificate of the land to be affected, and was also followed in the case of *National Bank vs. Fernandez* quoted *supra*, in which this Supreme Court in passing upon the second ground of appellant's contention, held the following:

"Coming now to the second ground on which the appellant bases his claims, we find that when Simona Fausa executed the document, Exhibit 3, on October 17, 1928, conveying her interest in the land to the appellant, her interest therein had already been attached by the provincial sheriff and sold by him at public auction to the Philippine National Bank, and the certificate of sale filed in the office of the register of deeds in accordance with the law (sections 429 and 450 of the Code of Civil Procedure). It was not necessary for the sheriff to present the owner's duplicate of the certificate of title when he filed notice of attachment with the register of deeds, nor was it necessary for the Philippine National Bank to present the owner's duplicate when the bank filed its certificate of sale for registration (sections 71 and 72 of Act No. 496)."

According to Section 72 of Act No. 496, which provides for the requisites in order that the registration of involuntary instruments may be validly affected, "In every case where an attachment or other lien or adverse claim of any description is registered, and the duplicate certificate is not presented at the time of registration to the register of deeds, he shall within twenty-four hours thereafter send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce the duplicate certificate in order that a memorandum of the attachment or other lien or adverse claim shall be made thereon. If the owner neglects or refuses to comply within a reasonable time, the register of deeds shall suggest the fact to the court, and the court, after notice, shall enter an order to the owner to produce his certificate at a time and place to be named therein, and may enforce the order by suitable process."

The reason for the difference between the conditions required for the registration of a voluntary and that of an involuntary instrument, is obvious. The law requires the production of the owner's duplicate certificate by the registrant by a voluntary instrument together with the deed or instrument to be registered, because as a voluntary instrument is a willful act of the registered owner of the land to be affected by the registration, it is to be presumed that he is interested in registering the instrument, and would willingly surrender, present or produce his duplicate certificate of title to the register of deeds in order to accomplish such registration. And this is the reason why the second paragraph of Section 55 provides that "The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument".

But in case of involuntary instrument such as an attachment, or other lien or adverse claim of any description, as the registration thereof is contrary to the interests of the registered owner or will affect him adversely, it is but natural that he will not willingly present or produce his duplicate certificate or at least delay his production as long as possible. For that reason, the law does not require its presentation together with the involuntary instrument, as in the case of voluntary instrument, and considers the annotation of such instrument upon the entry book as sufficient to affect the real estate to which it relates; but section 72 of Act No. 496 imposes upon the register of deeds the duty, within twenty-four hours thereafter, to request or require the registered owner to send or produce his duplicate certificate in order to make thereon a memorandum of the attachment or other lien or adverse claim.

To provide or hold that an attachment or other involuntary instrument entered in the entry book is not to be considered as duly registered unless and until the duplicate certificate is produced, would defeat the purpose of the registration law.

Wherefore, the lower court did not commit any error in holding that the mere registration in the entry book of the

deed of sale or assignment of all his rights and interests in the lot in question by the defendant Camon to the appellant, without the production of the owner's duplicate certificate of title and annotation of such assignment thereon and on the original, did not have the effect of a conveyance of Camon's right and interest on said lot to the plaintiff, and a notice of such conveyance to all other persons or the defendant Lizares from the time of such registration.

(b) The question raised in the seventh assignment of error involves the determination of the time when the possession by the plaintiff of the lot under consideration, which was presumed to be in good faith, was civilly interrupted or the plaintiff was judicially advised of the defect of her title (Article 433 Civil Code); for one who originally took possession of a house in good faith is not obliged to pay rent until he is advised of the defect in his title (*Valeriano vs. Jimenez*, 11 Phil., 492).

According to Article 1951 of the Civil Code "the provisions of Articles 433, 434, 435 and 436 of this Code with respect to possession in good faith shall be equally applicable for the purpose of determining the existence of the element of good faith in the prescription of ownership and other real rights." And Articles 1943 and 1945 of the same Code provide that "with respect to prescription possession may be interrupted either naturally or civilly," and "civil interruption is caused by the service of a summons upon the possessor," who is sued on the ground that the defendant's title is null or defective, of which the defendant possessor is notified in the summons. In the present case the summons served upon the defendant Antonio M. A. Lizares, by which the latter was notified of the complaint filed by the plaintiff, did not civilly interrupt the possession in good faith of the lot in question by the plaintiff Emma Villasor, because in the complaint it is precisely alleged that she was the owner of said lot and there is no defect in her title.

The plaintiff's possession in good faith was interrupted when the defendant Lizares filed, and the lower court admitted on December 2, 1949, Lizares' amended answer in which he alleged by way of cross-complaint against the plaintiff, that it is the former and not the latter who is the owner of the property, and therefore entitled to the possession thereof.

Therefore the lower court erred in sentencing the plaintiff to pay rent to the defendant Lizares from August 5, 1939, when the defendant Lizares showed the certificate of title of said lot issued in his name, to the plaintiff before the filing of the latter's complaint on August 19, 1939, and the decision appealed must be modified sentencing the plaintiff to pay the rent of thirty (P30) pesos a month from December 2, 1939, until she returns or delivers the property to the defendant Antonio M. A. Lizares.

With this modification the judgment appealed from is affirmed, with costs against the plaintiff. So ordered.
Paras, C. J., Pabto, Bengzon, Padilfa, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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