

FLORENTINA ALEMAN, ET AL., PLAINTIFFS AND APPELLEES, VS. PRESENTACION DE CATERA, ET AL., DEFENDANTS AND APPELLANTS. CIRILA SAUL, ET AL., PLAINTIFFS AND APPELLEES, VS. PRESENTACI...

G.R. Nos. L-13693 and L-13694. March 25, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

On motion dated 7 and filed on 10 December 1957 by the intervenor-appellant, objected to by the appellees, the Court of Appeals forwarded to this Court the two cases by resolution adopted on 7 January 1958, for only a question of law is raised.

The facts of the two cases heard jointly, as found by the Court of First Instance of Iloilo are, as follows:

Precentacion de Catera is and was the owner and operator of several passenger trucks in the province of Iloilo. One of her trucks was the "Catera No. 5". In the morning of January 21, 1954, said passenger truck was driven by Marianito Amborgo. While it was traveling on the highway at Tabucan, Cabatuan, Iloilo, it fell into the ditch because it was overspeeding as the driver was trying to overtake another truck. Florentina Aleman and her son Antonio Real who at that time were on the lawn in front of their house were hit by said truck thereby causing the instantaneous death of said Antonio Real and the injury of Florentina Aleman. Civil Case No. 2969 is for recovery of damages instituted by Florentina Aleman and her husband Federico Real for the death of their son and for the injury of Florentina Aleman.

One of the passengers of the aforesaid truck was Jose Ontanillas. This man was killed as a result of the mishap. The plaintiffs in civil case No. 2970 are his widow and children.

Another passenger of the ill-fated truck was Zosimo Montefrio. He too was killed in the disaster. His widow and children filed a complaint in intervention for the recovery of damages in civil case No. 2970.

The two separate complaints were filed on 27 January 1954. On 9 February 1954 the defendants filed separate answers, later on amended, to each complaint. By a writ of attachment issued by the Court the provincial sheriff of Iloilo attached one of the buses owned by the defendant Presentation de Catera, a Chevrolet bearing motor No. 0223054T54J, serial No. CAP-MNL-41092, known as "Catera No. 4". On 13 May 1955 the Southern Motors, Inc. filed with the provincial sheriff a third-party claim to the bus. On 16 May in both cases the plaintiffs filed with the court a motion to strike out the third-party claim filed by the motor company. On 17 May the motor company filed a reply and objection to the motion to strike out and on 23 May a supplemental reply and objection. On 13 June it filed a motion to intervene. On 14 June the Court entered an order quashing the third-party claim filed with the sheriff. On 16 June the plaintiffs objected and replied to the motion to intervene. On 18 June the motor company filed a reply to the objection. On 20 June the Court granted the motion to intervene. On 22 June the intervenor motor company filed an answer in intervention setting up a counterclaim and praying that it be

declared the owner of the bus attached by the sheriff to answer for the damages awarded to the plaintiffs; that the writ of attachment be quashed; that the attaching provincial sheriff be ordered to release and deliver to it the aforesaid bus; and that it be paid the sum of P500 for attorney's fees and costs. On 24 June it moved to quash the attachment on the bus. On 1 July the plaintiffs objected to the motion to quash. On 5 July the plaintiffs replied to the answer in intervention. On 11 July the plaintiffs and the intervenor motor company filed a joint motion submitting the cases for judgment as far as the controversy between them was concerned. On 3 October the Court rendered a judgment the dispositive part of which reads, as follows:

Wherefore, judgment is hereby rendered as follows:

Civil Case No. 2969

Presentacion de Cateria is hereby sentenced to pay, jointly and severally with Marianito Amborgo, the plaintiffs in Civil Case No. 2969, for the death of Antonio Real who was a child of 5 years old, the sum of P4,000.00 as compensatory damages, plus P2,000.00 as moral damages, plus P1,000.00 as attorney's fees, plus the costs of the suit. For the injuries suffered by Florentina Aleman, the said Presentacion de Cateria is also sentenced, jointly and severally with Marianito Amborgo, to pay said Florentina Aleman compensatory damages in the amount of P500.00.

Civil Case No. 2970

Presentacion de Cateria is hereby sentenced to pay, jointly and severally with Marianito Amborgo, the plaintiffs in Civil Case No. 2970, for the death of Jose Ontanillas the sum of P6,000.00 as compensatory damages, plus P2,000.00 as moral damages, plus P1,000.00 as attorney's fees, plus costs of suit.

Presentacion de Cateria, jointly and severally with Marianito Amborgo, is likewise sentenced to pay the plaintiffs in the complaint in intervention, for the death of Zosimo Montefrio, the sum of P6,000.00 as compensatory damages, plus P2,000.00 as moral damages, plus P1,000.00 as attorney's fees.

* * * * *

The counter-claim of Southern Motors, Inc. is dismissed.

From the dismissal of the counterclaim the intervenor Southern Motors, Inc. on 17 October 1955 filed in both cases a notice of appeal, an appeal bond in the sum of P120 and a record on appeal. On 25 October the defendant Presentacion de Cateria also filed a notice of appeal and on 11 November an appeal bond in the sum of P60 and a record on appeal. On 29 November the trial court entered an order allowing the record on appeal filed by Presentacion de Cateria in civil case No. 2969 but disallowing that filed in civil case No. 2970, because only one appeal bond in the sum of P60 had been filed.

In the Court of Appeals, on 5 January 1956 the appellees moved for the dismissal of the appeal (CA-G. R. No. 17516-R which is that in civil case No. 2969), for failure of the appellants to file and serve a brief within the time provided for by the Rules to which motion the latter filed an objection. By a resolution adopted on 4 February 1957 the Court of Appeals denied the motion to dismiss, the same being premature. On 10 June the appellees filed anew a motion to dismiss the appeal which on 18 June was objected to by the appellants. On 20 June the appellees replied to the objection. On 14 August 1957 the Court of Appeals resolved to declare the appeal taken by Presentacion de Cateria in CA-G. R. No. 17516-R abandoned and dismissed.

Hence, the appeal before the Court is that taken by the intervenor Southern Motors, Inc. in both cases from that part of the judgment dismissing its counterclaim. The question for determination is: which has a preferred right to the bus under attachment—the Southern Motors, Inc. in whose favor, as seller of the bus, a chattel mortgage thereon had been executed and recorded in the corresponding registry of deeds, or the families of the vehicular

accident victims who, having been awarded damages for death and injuries, had caused an attachment on the said bus owned by the operator whose purchase and ownership thereof had been recorded in the Motor Vehicles Office.

The intervenor-appellant contends that, being the one that sold by installment the bus to one Wenceslao Defensor who, to secure the payment of the remaining unpaid installments, mortgaged the same in its favor, a chattel mortgage registered in the Registry of Deeds, it should be preferred to and over the claim of the appellees who are just judgment creditors. On the other hand, the appellees argue that by allowing the vendee-mortgagor Wenceslao Defensor to sell the bus to Presentacion de Catera and the latter to record in the Motor Vehicles Office the sale in her favor, the intervenor-appellant had waived its mortgage lien on the bus, and for that reason the money judgment rendered for the appellees is preferred.

In *Olaf N. Borlough vs. Fortune Enterprise, Inc. et al.*, 100 Phil., 1063; 53 Off. Gaz. 4070, this Court held that "A mortgage in order to affect third persons should not only be registered in the Chattel Mortgage Registry, but the same should also be recorded in the Motor Vehicles Office as required by section 5 (e) of the Revised Motor Vehicles Law." Here, the Southern Motors, Inc. did not record in the Motor Vehicles Office the mortgage executed in its favor. Such being the case the mortgage is ineffective as far as the appellees are concerned. Its right or interest, therefore, in the truck, because of the mortgage constituted in its favor, cannot prevail over that of the appellees who though mere judgment creditors may be deemed innocent purchasers, deriving their right from an innocent purchaser, the bus owner-operator Presentacion de Catera, who had her purchase of the bus from Wenceslao Defensor recorded in the Motor Vehicles Office.

The part of the judgment appealed from is affirmed, with costs against the intervenor-appellant Southern Motors, Inc.

Bengzon, Acting C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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