

MANUEL LIM AND EMILIA QUINTOS DE LIM, PETITIONERS AND APPELLANTS, VS. THE REGISTER OF DEEDS OF RIZAL, OPPOSITOR AND APPELLEE.*G.R. No. L-1739. February 03, 1949*

Ponente: FERIA, J.

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Manuel Lim and Emilia Quintos de Lim mortgaged on December 2, 1940, four parcels of land with, its improvements thereon, described in the transfer certificate of title no. 21783 of the office of the Register of Deeds of Rizal, with the Agricultural and Industrial Bank for P10,500, payable by installments. The mortgagors had been making partial payments on account of the mortgage obligation. On June 5, 1944, the mortgagors paid in full the balance due to the mortgagee, and the latter executed a deed of cancellation of the mortgage. The deed of cancellation together with the mortgagors' duplicate of said transfer certificate No. 21783 were filed with the Register of Deeds for the City of Manila on October 3, 1944, and upon payment of the corresponding registration fees by the mortgagors, official receipt No. 0508458 was issued to them. The deed of cancellation was entered in the Day Book, Volume 9, of the Registry of Deeds on October 3, 1944, 11:05 a. m., according to the certificate issued by the Register of Deeds of Manila, presented as Annex A in this case, which reads as follows:

"At the instance of Mr. Potenciano Villegas, Jr., I, Mariano Villanueva, Register of Deeds for the City of Manila, do hereby certify that in the Day Book, Volume 9 of this Registry, there appears the following entry, to wit:

"Number of Entry 25716
Date of Filing October 3, 1944
Hour of Filing 11:05 a. m.
Nature of Document Cancellation
Executed by Agricultural and Industrial Bank
In favor of Manuel Lim
Date of Instrument June 5, 1944
Certificate of title 21783
Presented by A. Francisco
Postal address 401 Cu Unjieng
Contract value P10,500
Remarks Pasay

and that the document object of the foregoing entry does not appear among the salvaged records of this Office.

"In witness whereof I have hereunto set my hand and affixed hereto the seal of my Office this 8th day of May, 1947, in the City of Manila, Philippines."

On February 24, 1947, the Court of First Instance of the Province of Rizal, Rizal City Branch, acting upon a verified petition of the mortgagors, issued an order requiring the Register of Deeds of said province to issue a new

duplicate of transfer certificate of title No. 21783, in lieu of the owner's copy which was either burned or lost during the liberation of the City of Manila, in which the cancellation of the mortgage of the property in favor of the Agricultural and Industrial Bank was not registered or annotated. In order to facilitate the annotation of the deed of cancellation of said mortgage, the mortgagors asked and obtained from the R. F. C., successor of the Agricultural and Industrial Bank, a new deed of cancellation of the mortgage, and said R. F. C. has executed a new deed of cancellation in favor of the mortgagors with the following annotation: "* * * subject to such further disposition as the Government may adopt regarding transactions consummated during the Japanese occupation."

The mortgagors demanded from the Register of Deeds of Rizal the registration of the deed of cancellation without the annotation above quoted, but the latter refused to do so, and for that reason the petitioners filed a petition with the Court of First Instance of Rizal, Rizal City Branch, to compel the respondent to register the cancellation of the mortgage, but without the annotation in question, on the following grounds:

"(a) That had the annotation of the Deed of Cancellation of mortgage in the petitioners' Certificate of Title No. 21783 for ten thousand five hundred pesos (P10,500) by the Agricultural & Industrial Bank been accomplished in due time by the Register of Deeds of Manila under its Primary Entry No. 25716, the annotation in the title of the said Deed of Cancellation would not bear any such annotation, the non-fulfillment of which, your petitioners should not be blamed; and

"(b) That the annotation intended and mentioned in paragraph 8 hereof, which is being done by the Rehabilitation Finance Corporation and also by every Register of Deeds, in accordance with Circular No. 14 of the Department of Justice, is illegal and, for that effect, null and void, because it is not based on any provision of law."

The respondent Register of Deeds filed an opposition to the petition alleging only as defense:

"That the annotation sought to be eliminated in the certificate of title is inserted therein as a precautionary measure and in compliance with Circular No. 14, series of 1945, of the Department of Justice;

"That the annotation 'subject to such disposition as the government may adopt regarding transactions consummated during the Japanese occupation' is by instruction and direction of the Secretary of Justice inserted in all cases of registrations filed during or after the Japanese occupation;

"That the Register of Deeds is a subordinate of the Secretary of Justice and has to comply with Circular No. 14;

"That said annotation has to be inserted or written in all certificates issued by the register of deeds in compliance with said circular until said circular is either revoked and set aside or altered or amended by competent authority;

"That the duty of the Register of deeds in this matter is ministerial in nature;

"That this requirement contained in Circular No. 14 is made as precautionary measure based on reasons of public policy for the protection of all concerned and is valid exercise by the State of its police power."

The lower court, after considering the petition, answer of the respondent, and petitioners' reply to the answer, rendered or issued an order upholding the respondent's contention or defense, and denying the petition that the respondent be ordered to register the deed of cancellation without the annotation therein contained.

The petitioners appealed from the order of the lower Court to this Court, and the case is now before us on appeal.

There is no doubt that the above-quoted annotation in the deed of cancellation of the mortgage would be an encumbrance on the title or a charge on the property of the petitioners, because it would make the title to the

property subject to any action which the government may take on the validity of the payments made with Japanese war notes, so that in case the Government, through Congress or the Supreme Court of the Philippines, declares those payments invalid the property would have to continue as a security for the payment of the mortgage obligation.

According to section. 39 of Act No. 496, as amended, every subsequent purchaser of a registered land under the Torrens System who takes a transfer certificate of title for value in good faith, shall hold the same free of all incumbrance, except those noted on the certificate and any of the legal incumbrances enumerated in said section. It is obvious, and of judicial notice, that such incumbrance was not and could not have been noted on the transfer certificate of title No. 21783 nor on the deed of cancellation of the mortgage executed by the Agricultural and Industrial Bank on June 5, 1944, and filed for registration on October 3, 1944, which were lost or destroyed during the liberation according to Annex A, above quoted. Therefore, the Secretary of Justice had no power or authority to order or direct, by Circular No. 14, series of 1945, the respondent Register of Deeds to insert such annotation, and reciprocally the latter is not bound to comply with such instruction.

Under section 79 (B) of the Administrative Code the Secretary of Justice is only empowered to promulgate rules, regulations, orders, circulars and other instructions not contrary to law, to all offices and dependencies of his department; and compliance with the instruction in question would be contrary to the Constitution, for it would impair the obligations of contract or deprive a person of his property without due process of law. It can not be contended that the Secretary of Justice issued said circular in the exercise of the police power of the State, because Congress has not delegated such power to the Secretary of Justice. The sovereign police power is exercised by the State through its legislative branch; and its valid exercise may be and are, generally, delegated to towns, municipalities, and cities, and sometimes also to the Chief Executive in case of national emergency. (*Primicias vs. Fugoso*, L-1800, promulgated January 27, 1948, 45 Off. Gaz., 3280.[1]) But is it a well settled rule that a legislative power delegated to a body or person cannot be delegated by the latter to another.

But even if the annotation in question were not an incumbrance, and the Secretary of Justice had power to issue the aforesaid Circular No. 14, such annotation would have no longer any effect and, therefore, the insertion thereof in documents relating to transactions consummated during the Japanese occupation would not serve any purpose, in view of the ruling laid down by this Supreme Court in the case of *Haw Pia vs. China Banking Corporation*, L-554, 45 Off. Gaz. [Supp. to No. 9], 229[2]; *Hongkong and Shanghai Banking Corporation vs. Perez Samanillo*, G. R. No. L-1345[3], in which it was held that payments made with Japanese war notes during the occupation of obligations contracted before the war to the creditor or his legal representative, and accepted by the latter, are valid and release the said obligations. Philippine Congress having not enacted any act on the matter, the ruling of this Court in the cases aforementioned is the disposition adopted by our government regarding transactions consummated during the Japanese occupation, to which said annotation refers.

The fact that the new deed of cancellation executed by the Rehabilitation Finance Corporation, which is not a party in this case, contains also such annotation, can not be a bar to the rendering of this decision for the following reasons: First, because the annotation was not and could not have been inserted in the deed of cancellation executed on June 5, 1944, by its predecessor in interest, the Agricultural and Industrial Bank, and filed with the respondent on October 3, 1944 (Annex A); and the respondent appellant could and would have registered the cancellation without such annotation, had it not been for the Circular No. 14, because he alleges, as the only ground for his refusal to do so, the existence of said circular and not the annotation in the new deed of cancellation. Secondly, because it is to be presumed that such annotation, which is identical to that contained in Circular No. 14 of the Department of Justice, was only inserted in the new deed of cancellation in conformity with said circular, for the mortgagee is a government banking institution. And lastly, because although the

Rehabilitation Finance Corporation is not a party, and therefore it can not legally be bound by the judgment in this case, the said Rehabilitation Finance Corporation can not suffer and, therefore can not claim against anybody, any damage because of the omission of said annotation in the deed of cancellation of the mortgage, for the reasons already set forth in the preceding paragraph.

Therefore, the order of the lower court is reversed, and the respondent Register of Deeds is ordered to register the deed of cancellation of the mortgage without the annotation under consideration.

So ordered.

Pablo, Perfecto, Briones, and Reyes, JJ., concur.

Paras, J., concurs in the result.

[1] 80 Phil., 71;

[2] 80 Phil., 604;

[3] *infra* p. 851

CONCURRING

BENGZON, J.:

For the reasons explained by Mr. Justice Feria, I agree that the Secretary of Justice has no power to issue the Circular No. 14, series of 1945.

I must add, however, that although I believe that when the deed of cancellation submitted for registration contains the reservation herein described or any other similar reservation, the Register of Deeds may not, by himself, disregard or eliminate such contractual clause, in this particular instance I concur in the disposition of the case because I am sure, as explained by the ponente, that the original deed of cancellation did not contain the reservation, and, in my opinion, the cancellation should be done in accordance with the original deed, the new deed issued by the Rehabilitation Finance Corporation being merely an evidence of the said original deed of cancellation.

CONCURRING AND DISSENTING

TUASON, J.:

I concur in the ruling that Circular No. 14, Series of 1945, of the Secretary of Justice is null and void, in that it requires the registers of deeds to perform an act not authorized by law. It is the register of deeds' ministerial duty to record without any material alteration such instruments as are by law entitled to be recorded. It is beyond his power to add to or detract from the registration anything not stipulated in voluntary instruments thus filed and recorded. This must be especially the case, where the alien matter intended to be inserted in or omitted from the registration is calculated to protect a party or parties who do not ask protection. Registers of deeds are not guardians entrusted with watching over the private interests of contracting parties who are fully capable of looking after their own affairs.

But precisely because the register of deeds has no discretion to deviate from the tenor of the instruments presented

for registration, he may not be compelled to register the cancellation of a mortgage without the condition set out thereon. Such condition he has to include in the registration, not by virtue of the Secretary of Justice's circular, but because it is embodied and imbedded in the deed of cancellation.

On this ground, I dissent from this Court's decision. I think it is a serious mistake to order the register of deeds to disregard the condition stated in the cancellation deed without the knowledge and consent of the Rehabilitation Finance Corporation. The elimination of an asserted lien in this deed, which the appellants themselves secured and presented to the register of deeds, without giving the mortgagee an opportunity to be heard, violates the fundamental rules of due process. In its consequences, this case is not between the appellants and the register of deeds; it is between them and the Rehabilitation Finance Corporation.

The cases of *Haw Pia vs. China Banking Corporation*,^[4] and *Hongkong and Shanghai Banking Corporation vs. Perez Samanillo*, *infra* p. 851, do not govern this case. There are fundamental differences in the facts and in the principles involved between those two cases, on the one hand, and the present case, on the other.

But this is not here or there. Granting that the present case falls within the rule laid down in those two cases, it does not follow that this Court or any other court may proceed without trial and render a decision, the effect of which would deprive a third party of his asserted property right, without being given his day in court. To be heard according to established procedure in the defense of one's right, regardless of the merits of his defense, is both a constitutional precept and a rule founded on the first principles of natural justice, a rule older than written constitutions. The belief of judges that an accused in a criminal case or a defendant in a civil suit has no defense, is never a legal justification in a government of laws for discarding the prescribed forms and solemnities from which alone judicial decisions derive their sanctity, force and validity. In truth, court decisions and the interpretation of laws by the courts are far from infallible, and do not provide a permanent measuring stick of right and conduct. Witness the not infrequent modification, abandonment and reversal of settled and new doctrines, not only by other judges but by the same judges that announced them.

The entry in the daybook of the first cancellation deed has not changed this aspect of the case. The scope of an entry in the daybook has been defined in *Fidelity and Surety Co. vs. Conegero*, 41 Phil., 396, in which this Court, through Mr. Justice Street, speaking for a unanimous Court in banc, said:

"We think that, where the statute says that an instrument shall be regarded as registered from the time the annotation is made in the entry book, these words must be understood to apply to such instruments as are competent to transfer, or affect, the Torrens title and upon which a new certificate is in fact issued in due course. What is here really meant, we suppose, is that wherever registration is actually effected, and a new certificate issued, the registration is retroactive and takes effect by relation as of the date when the annotation in the entry book was made. In the light of this interpretation it is quite evident that the mere annotation of a contract relating to land covered by a Torrens title, which is not followed by registration and the emission of a new certificate, is without significance as regards its effect upon such title. To put the point another way, it might be said that the constructive registration if such it be, which results from the notation of a document in the entry-book cannot be given effect in the case where actual registration, or the actual issuance of a new certificate, is impossible."

The entry in question, as all such entries, is at best incomplete. It does not show that the cancellation was absolute; it might be conditional. It does not show the personal status of the parties and their places of residence, the name of the notary public before whom it was acknowledged, the description, of the land mortgaged, and other circumstances which by law have to be noted. The entry names Manuel Lim alone as the person in whose favor the document was executed, when the pleadings state that his wife was one of the mortgagors. That the entry is not enough basis for the register of deeds to make the registration in the registry book or on the original

certificate of title, is demonstrated by the fact that the mortgagors obtained and presented a new cancellation deed in substitution of the old one. If the new deed was presented merely to facilitate the registration, we do not see in what way it would have helped or did help in this connection.

The requirement that a new deed be presented when the instrument first presented is lost before it is registered or noted in the title, is not an empty formality. The annotation of a voluntary instrument in the registry book and/or on the certificate of title, does not fulfill the whole scheme and purpose of registration of conveyances and mortgages. The register of deeds as the repository of all documents presented for registration is charged with the duty of keeping them on file. His is a ministerial duty and those documents are his exclusive authority to make the final entry. At the same time, they are his protection against charges of fraudulent registration. In the same manner, the requirement that these documents be preserved serve to protect title-holders against distorted registration of genuine transactions and registration of forged documents.

In view of all these, registers of deeds, by practice and necessity if not by express provision of law, are forbidden to make registration of documents that have been lost or destroyed after their presentation and entry in the daybook, irrespective of the cause of and the blame for the loss and destruction. The invariable step taken when this happens, is for the interested parties either to produce an authenticated copy of the lost or destroyed document, or to secure a order to the register of deeds from the proper court. The latter is the only course open when, as in this instance, the parties are in disagreement as to the terms and conditions of the cancellation. And any motion filed with the court seeking an order against a register of deeds, has to be set for hearing with notice to all the parties in interest. (See Section 112 of Land Registration Act [No. 496].) Without hearing or adequate notice thereof, no court order can have any binding effect on the adverse parties. That the mortgagors, the provincial fiscal and the lower court conducted the proceeding on an erroneous assumption of the issue did not operate to deprive the Rehabilitation Finance Corporation of its right to a hearing. Only its action or inaction after proper summon could work to forfeit this right. If the mortgagors had sought their remedy, as probably they should have done, under Republic Act No. 2526, approved September 25, 1946, which prescribes the procedure for reconstruction of lost or destroyed certificates of title and liens and encumbrances affecting them, the mortgagee would no less have been entitled to an opportunity to be heard.

[4] 80 Phil., 604.

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