

**CRISTINA MARCELO VDA. DE BAUTISTA, PLAINTIFF AND APPELLEE,
VS. BRIGIDA MARCOS, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-17072. October 31, 1961*

Ponente: REYES, J.B.L., J.

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The main question in this appeal is whether or not a mortgagee may foreclose a mortgage on a piece of land covered by a free patent where the mortgage was executed before the patent was issued and is sought to be foreclosed within five years from its issuance.

The facts of the case appear to be as follows:

On May 17, 1954, defendant Brigida Marcos obtained a loan in the amount of P2,000 from plaintiff Cristina Marcelo Vda. de Bautista and to secure payment thereof conveyed to the latter by way of mortgage a two (2) hectare portion of an unregistered parcel of land situated in Sta. Ignacia, Tarlac. The deed of mortgage, Exhibit "A", provided that it was to last for three years, that possession of the land mortgaged was to be turned over to the mortgagee by way of usufruct, but with no obligation on her part to apply the harvests to the principal obligation; that said mortgage would be released only upon payment of the principal loan of P2,000 without any interest; and that the mortgagor promised to defend and warrant the mortgagee's rights over the land mortgaged.

Subsequently, or in July, 1956, mortgagor Brigida Marcos filed, in behalf of the heirs of her deceased mother Victoriana Cainglet (who are Brigida herself and her three sisters,), an application for the issuance of a free patent over the land in question, on the strength of the cultivation and occupation of said land by them and their predecessor since July, 1915. As a result, Free Patent No. V-64358 was issued to the applicants on January 25, 1957, and on February 22, 1957, it was registered in their names under Ordinal Certificate of Title No. P-888 of the office of the Register of Deeds for the province of Tarlac.

Defendant Brigida Marcos indebtedness of P2,000 to plaintiff having remained unpaid up to 1959, the latter, on March 4, 1959, filed the present action against Brigida and her husband (Civil Case No. 3382) in the court below for the payment thereof or in default of the debtors to pay, for the foreclosure of her mortgage on the land given as security. Defendants moved to dismiss the action, pointing out that the land in question is covered by a free patent and could not, therefore, under the Public Land Law, be taken within five years from the issuance of the patent for the payment of any debts of the patentees contracted prior to the expiration of said five-year period; but the lower court denied the motion to dismiss on the ground that the law cited does not apply because the mortgage sought to be foreclosed was executed before the patent was issued. Defendants then filed their answer, reiterating the defense invoked in their motion to dismiss, and alleging as well that the real contract between the parties was an antichresis and not a mortgage. Pre-trial of the case followed, after which the lower court rendered judgment finding the mortgage valid to the extent of the mortgagor's pro-indiviso share of 15,333 square meters in the land in question, on the theory that the Public Land Law does not apply in this case because the mortgage in question was executed before patent was issued over the land in question; that the agreement of the parties could not be an

antichresis because the deed Exhibit "A" clearly shows a mortgage with usufruct in favor of the mortgagee; and ordered the payment of the mortgage loan of P2,000 to plaintiff or, upon defendant's failure to do so, the foreclosure of plaintiff's mortgage on defendant Brigida Marcos' undivided share in the land in question. From this judgment, defendants Brigida Marcos and her husband Osmondo Apolonio appealed to this Court.

There is merit in the appeal.

The right of plaintiff-appellee to foreclose her mortgage on the land in question depends not so much on whether she could take said land within the prohibitive period of five years from the issuance of defendant's patent for the satisfaction of the indebtedness in question, but on whether the deed of mortgage Exhibit "A" is at all valid and enforceable, since the land mortgaged was apparently still part of the public domain when the deed of mortgage was constituted. As it is an essential requisite for the validity of a mortgage that the mortgagor be the absolute owner of the thing mortgaged (Art. 2085), the mortgage here in question is void and ineffective because at the time it was constituted, the mortgagor was not yet the owner of the land mortgaged and could not, for that reason, encumber the same to plaintiff-appellee. Nor could the subsequent acquisition by the mortgagor of title over said land through the issuance of a free patent validate and legalize the deed of mortgage under the doctrine of estoppel (cf. Art. 1434, New Civil Code [1]), since upon the issuance of said patent, the land in question was thereby brought under the operation of the Public Land Law that prohibits the taking of said land for the satisfaction of debts contracted prior to the expiration of five years from the date of the issuance of the patent (sec. 118, C.A. No. 141). This prohibition should include not only debts contracted during the five-year period immediately following the issuance of the patent but also those contracted before such issuance, if the purpose and policy of the law, which is "to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him" (*Pascua vs. Talens*, 80 Phil., 792; 45 Off. Gaz., No. 9 (Supp.) 413; *De los Santos vs. Roman Catholic Church of Midsayap*, 94 Phil., 405; 50 Off. Gaz., [4] 1588, is to be upheld.

The invalidity of the mortgage Exhibit "A" does not, however, imply the concomitant invalidity of the collateral agreement in the same deed of mortgage whereby possession of the land mortgaged was transferred to plaintiff-appellee in usufruct, without any obligation on her part to account for its harvests or deduct them from defendants' indebtedness of P2,000. Defendant Brigida Marcos, who, together with her sisters, was in possession of said land by herself and through her deceased mother before her since 1915, had possessory rights over the same even before title vested in her as co-owner by the issuance of the free patent to her and her sisters, and these possessory rights, she could validly transfer and convey to plaintiff-appellee, as she did in the deed of mortgage Exhibit "A". The latter, upon the other hand, believing Tier mortgagor to be the owner of the land mortgaged and not being aware of any flaw which invalidated her mode of acquisition, was a possessor in good faith (Art.-526, N.C.C.), and as such had the right to all the fruits received during the entire period of her possession in good faith (Art. 544, N.C.C.). She is, therefore, entitled to the full payment of her credit of P2,000 from defendants, without any obligation to account for the fruits or benefits obtained by her from the land in question.

Wherefore, the judgment appealed from is reversed insofar as it orders the foreclosure of the mortgage in question, but affirmed in all other respects. Costs against defendant-appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, and De Leon, JJ., concur.

[1]Art. 1434, N.C.C. provides that "When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee."

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