

**LEONORA T. ROXAS, PLAINTIFF-APPELLEE, VS. PEDRO DINGLASAN, DEFENDANT, FRANCISCA MOJICA AND VICTORIA DINGLASAN, INTERVENORS-APPELLANTS.***G.R. No. L-27234. May 30, 1969*

Ponente: CAPISTRANO, J.

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Appeal by intervenors Francisca Mojica and Victoria Dinglasan from the judgment of the Court of First Instance of Batangas in Civil Case No. 1272 ordering fore-closure of the mortgage constituted on a piece of land by defendant Pedro Dinglasan who, by falsifying a public document, had secured a transfer certificate of title in his name to the land previously sold to intervenors by its registered owner, Felisa Kalaw.

Felisa Kalaw was the registered owner with Certificate of Title No. 9125 of Lot No. 15679 with an area of 26,530 square meters, situated at Lipa City. On June 11, 1959, she sold to Francisca Mojica by means of a public instrument an undivided portion of 11,530 square meters of the lot for the price of P938.50. In the same month and year, she sold to Victoria Dinglasan by means of a private instrument the remaining portion of 15,000 square meters for the price of P5,851.40. Long before and at the time of the sales, Francisca Mojica and Victoria Dinglasan were in possession of the lot. The vendor's Certificate of Title No. 9125 was not delivered to the vendees because it was in the possession of another person to whom the lot had been mortgaged by Felisa Kalaw.

Prior to December 29, 1961, Pedro Dinglasan, by falsifying a public document of conveyance, succeeded in having Certificate of Title No. 9125 in the name of Felisa Kalaw cancelled and a new Transfer Certificate of Title No. T-10392 issued in his name. The record does not show when and how he had obtained possession of the owner's duplicate certificate of title.

On December 29, 1961, Pedro Dinglasan mortgaged the lot to Leonora T. Roxas as security for a loan of P7,000.00 with interest at 6% per annum, payable within a period of ninety (90) days. The mortgagor's title having been delivered to the mortgagee, she caused the instrument to be re-registered on the back of the said transfer certificate of title. On April 3, 1962, the mortgagee, Leonora T. Roxas, instituted the instant foreclosure suit against the mortgagor, Pedro Dinglasan, the latter having failed or refused to pay the obligation on its due date. Said defendant was later declared in default. On April 18, 1962, Francisca Mojica and Victoria Dinglasan moved to intervene and that their complaint in intervention annexed to the motion be admitted. The complaint alleged that they were the owners of the lot, having purchased the same from Felisa Kalaw in June, 1959; that title to said land was fraudulently transferred by Pedro Dinglasan in his name; that Pedro Dinglasan mortgaged the land in favor of plaintiff Leonora T. Roxas; that said mortgagor had been convicted of "Falsification of Public Document by a Private Individual," and the document used by him in transferring title in his name was the subject of the said felony. The intervenors prayed that they be declared the true and absolute owners of the parcel of land covered by Transfer Certificate of Title No. T-10392; that whatever document was executed by Pedro

Dinglasan in transferring the ownership of the land in his name be declared null and void; and that Transfer Certificate of Title No. T-10392 be ordered cancelled and another title issued in the intervenors' names.

After trial, the lower court rendered its decision finding that the mortgage was validly constituted and its foreclosure was in order, that "this is not the time and place for them (intervenors) to raise their claim of ownership over the property," and that the intervenors were not entitled to any relief. Judgment was rendered ordering foreclosure of the mortgage. From this judgment the intervenors appealed to the Court of Appeals. Said court, however, certified the appeal to this Court on the ground that it involves only questions of law.

The appellants contend that the lower court erred in not considering the complaint in intervention as timely and appropriate. The contention is tenable. The question of whether the complaint in intervention was seasonably filed is now beside the point, considering that the lower court had previously granted the motion for leave to file the said complaint, and its order allowing the motion has not been questioned. In fact, although the defendant had been declared in default, the court, after the plaintiff had rested her case, allowed the intervenors to present their evidence. The complaint in intervention was appropriate, because the intervenors, as alleged owners of the land sought to be foreclosed by the plaintiff, have an interest in the matter in litigation of such direct and immediate character that they stand to gain or lose by the direct legal operation and effect of the judgment (*Garcia, etc., et al., vs. David, et al.*, 67 Phil., 279).

The appellants also contend that the lower court erred "in not declaring the contract of mortgage between the plaintiff and defendant as null and void and consequently in not dismissing forthwith plaintiff's action for foreclosure of mortgage." The contention is unmeritorious in view of the following considerations:

1. The complaint in intervention was to vindicate ownership of the land in the intervenors. The deeds of sale involving the parcel of land covered by Certificate of Title No. 9125 in the name of the vendor, Felisa Kalaw, not having been registered, the said intervenors did not acquire ownership of the land. It is well settled that in case of sale of a piece of land titled under the Torrens System, it is the act of registration, and not tradition, that transfers the ownership of the land sold. (*Agbulos vs. Alberto*, G.R. No. L-17483, July 31, 1962, citing Sec. 50, Act 496; *Tuason vs. Raymundo*, 28 Phil., 635; *Sikatuna vs. Guevarra*, 43 Phil., 371; *Worcester vs. Ocampo* 34 Phil., 646.)

The vendees-intervenors not having acquired the ownership of the land, their action to vindicate ownership must fail because such action can prosper only upon proof by plaintiff that he is the owner. As pointed out, the intervenors did not acquire ownership of the land because their deeds of sale were not registered.

2. The next question before us is whether the mortgage was valid. Article 2085 of the New Civil Code requires that the mortgagor be the owner of the property mortgaged. Although Pedro Dinglasan was not the owner of the property mortgaged because he had secured title thereto thru fraud or falsification of a public document (*C.N. Hodges vs. Dy Buncio & Co., Inc., et al.*, G.R. No. L-16096, October 30, 1962), the mortgage was valid because Leonora T. Roxas was an innocent mortgagee for value, having relied upon the mortgagor's transfer certificate of title which according to the Register of Deeds was genuine and free from any objection. In the case of *De Lara, et al. vs. Ayrosa*, G.R. No. L-6122, May 31, 1954, this Court held that where the certificate of title was already in the name of the forger when the land was sold to an innocent purchaser, the vendee had the right to rely on what appeared in the certificate and, in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. In the recent case of *Morales Development Company, Inc. vs. Court of Appeals, et al.*, G.R. No. L-26572, March 28, 1969, this Court, speaking thru Mr. Chief Justice Concepcion, said:

"Morales argues that it was not enough for the Deeds to have gone to the office of the Register of Deeds and

found therein that there were no flaws in the title of the Abellas \* \*\*. [T]he Deseos were not bound to check the deeds of conveyance by Reyes to the Abellas, and by Montinola to Reyes. Having found that 'the own-er's duplicate copy of TCT No. 21037, in the name of the Abellas, was a genuine copy of the original on file with the office of the Register of Deeds, the Deseos were fully justified in re-lying upon said TCT No. 21037, and had no legal obligation to make further investigation."

The principles enunciated in these cases are, in our opi-nion, applicable to a mortgagee in good faith and for va-lue.

Moreover, the intervenors were negligent. As the ven-dor did not deliver to them her duplicate certificate of title, they should have consulted a good lawyer who could have advised them to protect their rights by filing with the Office of the Register of Deeds an adverse claim un-der Section 110 of Act No. 496,as amended. Had they filed an adverse claim, Pedro Dinglasan would not have been able to obtain cancellation of Felisa Kalaw's certificate of title and the issuance of a new transfer certificate of title in his name. They were, thus, negligent, and their negligence was the proximate cause of their loss.

PREMISES CONSIDERED, the judgment appealed from is affirmed without prejudice to allowing the intervenors-appellants to make the deposit mentioned in the appealed judgment within ninety (90) days from date of finality of the judgment of this Court, and without prejudice to the vendees, Francisca Mojica and Victoria Dinglasan, bring-ing an action against the vendor, Felisa Kalaw, for the enforcement of said vendor's warranty against eviction. No special pronouncement as to costs.

Reyes, (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Barredo, JJ., concur.

Teehankee, J., did not take part.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

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