

ANTONIETTA O. DESCALLAR, PETITIONER, VS. THE HON. COURT OF APPEALS AND CAMILO F. BORROMEO, RESPONDENTS.

G.R. No. 106473. July 12, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Assailed in this petition for review on certiorari is the decision dated July 29, 1992 of the Court of Appeals in CA-G.R. SP No. 27977, affirming the orders dated March 17, 1992 and April 27, 1992 of the trial court in Civil Case No. MAN-1148, granting respondent's petition for receivership and denying petitioner's motion for reconsideration thereof.

On August 9, 1991, respondent Camilo Borrromeo, a realtor, filed against petitioner a civil complaint for the recovery of three (3) parcels of land and the house built thereon in the possession of the petitioner and registered in her name under Transfer Certificates of Title Nos. 24790, 24791 and 24792 of the Registry of Deeds for the City of Mandaue. The case was docketed as Civil Case No. MAN-1148 of the Regional Trial Court, Branch 28, Mandaue City.

In his complaint, Borrromeo alleged that he purchased the property on July 11, 1991 from Wilhelm Jambrich, an Austrian national and former lover of the petitioner for many years until he deserted her in 1991 for the favors of another woman. Based on the deed of sale which the Austrian made in his favor, Borrromeo filed an action to recover the ownership and possession of the house and lots from Descallar and asked for the issuance of new transfer certificates of title in his name.

In her answer to the complaint, Descallar alleged that the property belongs to her as the registered owner thereof; that Borrromeo's vendor, Wilhelm Jambrich, is an Austrian, hence, not qualified to acquire or own real property in the Philippines. He has no title, right or interest whatsoever in the property which he may transfer to Borrromeo.

On March 5, 1992, Borrromeo asked the trial court to appoint a receiver for the property during the pendency of the case. Despite the petitioner's opposition, Judge Mercedes Golo-Dadole granted the application for receivership and appointed her clerk of court as receiver with a bond of P250,000.00.

Petitioner filed a motion for reconsideration of the court's order, but it was denied.

Petitioner sought relief in the Court of Appeals by a petition for certiorari (CA-G.R. SP No. 27977 "Antonietta O. Descallar vs. Hon. Mercedes G. Dadole, as Judge, RTC of Mandaue City, Branch 28, and Camilo F. Borrromeo").

On July 29, 1992, the Court of Appeals dismissed the petition for certiorari.

In due time, she appealed the Appellate Court's decision to this Court by a petition for certiorari under Rule 45 of the Rules of Court.

In a nutshell, the issue in this appeal is whether the trial court gravely abused its discretion in appointing a receiver for real property registered in the name of the petitioner in order to transfer its possession from the

petitioner to the court-appointed receiver. The answer to that question is yes.

The Court is amazed that the trial court and the Court of Appeals appear to have given no importance to the fact that the petitioner herein, besides being the actual possessor of the disputed property, is also the registered owner thereof, as evidenced by TCTs Nos. 24790, 24791, and 24792 issued in her name by the Register of Deeds of Mandaue City on December 3, 1987. Her title and possession cannot be defeated by mere verbal allegations that although she appears in the deed of sale as vendee of the property, it was her Austrian lover, Jambrich, who paid the price of the sale of the property (*Sinoan vs. Soroñgan*, 136 SCRA 407). Her Torrens certificates of title are indefeasible or incontrovertible (Sec. 32, P.D. 1529).

Even if it were true that an impecunious former waitress, like Descallar, did not have the means to purchase the property, and that it was her Austrian lover who provided her with the money to pay for it, that circumstance did not make her any less the owner, since the sale was made to her, not to the open-handed alien who was, and still is, disqualified under our laws to own real property in this country (Sec. 7, Art. XII, 1987 Constitution). The deed of sale was duly registered in the Registry of Deeds and new titles were issued in her name. The source of the purchase money is immaterial for there is no allegation, nor proof, that she bought the property as trustee or dummy for the monied Austrian, and not for her own benefit and enjoyment.

There is no law which declares null and void a sale where the vendee to whom the title of the thing sold is transferred or conveyed, paid the price with money obtained from a third person. If that were so, a bank would be the owner of whatever is purchased with funds borrowed from it by the vendee. The holding of the trial court and the Court of Appeals that Jambrich, notwithstanding his legal incapacity to acquire real property in the Philippines, is the owner of the house and lot which his erstwhile mistress, Antonietta, purchased with money she obtained from him, is a legal heresy.

In view of the above circumstances, we find the order of receivership tainted with grave abuse of discretion. The appointment of a receiver is not proper where the rights of the parties (one of whom is in possession of the property), are still to be determined by the trial court.

"Relief by way of receivership is equitable in nature, and a court of equity will not ordinarily appoint a receiver where the rights of the parties depend on the determination of adverse claims of legal title to real property and one party is in possession." (*Calo, et al. vs. Roldan*, 76 Phil. 445).

Only when the property is in danger of being materially injured or lost, as by the prospective foreclosure of a mortgage thereon for non-payment of the mortgage loans despite the considerable income derived from the property, or if portions thereof are being occupied by third persons claiming adverse title there-to, may the appointment of a receiver be justified (*Motoomul vs. Arrieta*, 8 SCRA 172).

In this case, there is no showing that grave or irremediable damage may result to respondent Borromeo unless a receiver is appointed. The property in question is real property, hence, it is neither perishable or consummable. Even though it is mortgaged to a third person, there is no evidence that payment of the mortgage obligation is being neglected. In any event, the private respondent's rights and interests, may be adequately protected during the pendency of the case by causing his adverse claim to be annotated on the petitioner's certificates of title.

Another flaw in the order of receivership is that the person whom the trial judge appointed as receiver is her own clerk of court. This practice has been frowned upon by this Court:

"The respondent judge committed grave abuse of discretion in connection with the appointment of a receiver. x x x. The instant case is similar to *Paranete vs. Tan*, 87 Phil. 678 (1950) so that what was there said can well apply to the actuations of the respondent judge. x x x 'We hold that the respondent judge has acted in excess of his

jurisdiction when he issued the order above adverted to. That order, in effect, made the clerk of court a sort of a receiver charged with the duty of receiving the proceeds of sale and the harvest of every year during the pendency of the case with the disadvantage that the clerk of court has not filed any bond to guarantee the faithful discharge of his duties as deposi-tary; and considering that in actions involving title to real property, the appointment of a receiver cannot be entertained because its effect would be to take the property out of the possession of the defendant, except in extreme cases when there is clear proof of its necessity to save the plaintiff from grave and irremediable loss or damage, it is evident that the action of the respondent judge is unwarranted and unfair to the de-fendants. (Mendoza vs. Arellano, 36 Phil. 59; Agonoy vs. Ruiz, 11 Phil. 204; Aquino vs. Angeles David, 77 Phil. 1087; Ylarde vs. Enriquez, 78 Phil. 527; Arcega vs. Pecson, 44 Off. Gaz., [No. 12], 4884, 78 Phil. 743; De la Cruz vs. Guinto, 45 Off. Gaz. pp. 1309, 1311; 79 Phil. 304).'" (Abrigo vs. Kayanan, 121 SCRA 20.)

During the pendency of this appeal, Judge Dadole rendered a decision in Civil Case No. MAN-1148 upholding Borromeo's claim to Descallar's property, annulling the latter's TCTs Nos. 24790, 24791 and 24792 and ordering the Register of Deeds of Mandaue City to issue new ones in the name of Borromeo. This circumstance does not retroactively validate the receivership until the decision (presumably now pending appeal) shall have attained finality.

WHEREFORE, finding grave abuse of discretion in the order of receivership which the respondent Court of Appeals affirmed in its decision of July 29, 1992 in CA--G.R. SP No. 27977, the petition for certiorari is hereby GRANTED and the decision of the appellate court, as well as the order dated March 17, 1992 of the Regional Trial Court of Mandaue City, Branch 28, in Civil Case No. MAN?1148, are hereby ANNULLED and SET ASIDE. Costs against the private respondent.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.
Davide, Jr., J., no part.

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