BANK OF THE PHILIPPINE ISLANDS IN ITS CAPACITY AS THE EXECUTOR OF THE TESTATE ESTATE OF THE LATE GRACIANA DE JESUS, ET AL., PETITIONERS, VS. ANTONIO NOBLEJAS, IN HIS CAPACITY AS...

G. R. No. 12128. March 31, 1959

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

Appeal from the Resolution of the Commissioner of Land Registration, dated February 9, 1957, in connection with LRC Consulta No. 142.

On November 12, 1952, certain lots in Manila covered by Transfer Certificates of Titles Nos. 30644, 30645 and 30646 were mortgaged by Jose J. Gonzales, the registered owner, to Ramon Eugenio, as security for an obligation of P30,000.00. The deed of mortgage was registered on November 13, 1952. On December 21, 1953, the Bank of the Philippine Islands, as executor of the testate estate of the late Graciana de Jesus, filed a notice of adverse claim to the effect that the transfer of the properties in question in favor of Jose J. Gonzales was forged and fraudulent. This adverse claim was duly annotated on the same day at the back of the aforesaid certificates of title. As Gonzales failed to pay the principal obligation, the mortgage was foreclosed judicially and, in due course, the properties mortgaged were sold on October 10, 1956 at public auction to respondent Consuelo O. Vda. De Eugenio, in her capacity as Administratrix of the Intestate Estate of the deceased Ramon Eugenio, the highest bidder, for a consideration of P36,500.00 (p. 8, Records), and the sheriff's sale was confirmed by the court in an order, dated October 27, 1956. (P. 10, Records)

When the sheriff's deed of sale was presented to the Register of Deeds for registration, Consuelo O. Vda. de Eugenio, the vendee in the auction sale, insisted that the adverse claim be not carried into new transfer certificates of title to be issued in her favor in lieu of Transfer Certificates of Title Nos.'30644, 30645 and 30646, while the Bank of the Philippine Islands, on the other hand, took the contrary stand. Doubtful of the step or procedure to be taken on the matter, under the circumstance, the Register of Deeds elevated the pertinent papers to the Commissioner of Land Registration, by way of consulta, under Sec. 4 of Republic Act No. 1151, for an opinion.

After the parties, through their respective counsel, had manifested willingness to submit the consulta without filing any memorandum (p. 19, Records), the respondent Commissioner, on the theory that "if the notice of adverse claim in this case is to be carried over on the new certificates of title to be issued, it will reverse the legal effects of priority in registration by converting a subordinate which is admittedly a superior lien, and the mortgage which is admittedly a superior lien into a subordinate lien, which is obviously absurd", rendered on February 9, 1957 an opinion holding that the notice of adverse claim may not be carried over to the new transfer certificates of title to be issued to respondent Consuelo Vda. de Eugenio. The dispositive portion of the ruling reads as follows:

> "WHEREFORE, this Commission is of the opinion, and so holds, that the petitioner Register of Deeds may give due course to the registration of the foreclosure sale in favor of Consuelo Vda. de Eugenio as

> Administratrix of the intestate estate of Ramon Eugenio, deceased, for which purpose he may cancel Transfer Certificates of Title Nos. 30644, 30645 and 30646, and issue new certificates of title in lieu thereof, without need of carrying over the annotation of the notice of adverse claim which was registered subsequent to the mortgage that was foreclosed, without prejudice, of course, to the right of the adverse claimant to pursue all lawful remedies against the party or parties who allegedly defrauded the heir or heirs of the late Graciana de Jesus." (p. 24, Records; italics supplied)

Being adversely affected thereby, petitioner Bank, in its capacity as Executor of the Testate Estate of the late Graciana de Jesus, together with the testate heirs, Angustia Jimenez, instituted the instant petition to review the opinion above-referred to, contending that respondent Commissioner erred in (1) not holding that he had no jurisdiction to take cognizance of the consulta, (2) ruling that the notice of adverse claim in favor of petitioner Bank may be cancelled and removed from the new certificates of title to be issued to respondent Consuelo Vda. de Eugenio, and (3) presuming the judicial foreclosure of the mortgage to be valid and binding upon petitioner Bank, notwithstanding that it was not a party thereto.

Petitioner Bank anchors its insistence that respondent Commissioner has no jurisdiction to entertain the con svXta upon the proposition that the controversy is not between the Register of Deeds and respondent Consuelo Vda. de Eugenio, but actually between petitioner Bank, on one side, and respondent Consuelo Vda. de Eugenio, on the other, which falls under Sec. 112 of Act 496 requiring a controversial issue to be threshed out in an ordinary action. We do not subscribe to this view. Sec. 4, Republic Act 1151, provides:

> "when the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration, or where any party in interest does not agree with the Register of Deeds with reference to any such matter, the question shall be submitted to the Commissioner of Land Registration either upon the certification of the Register of Deeds, stating the question upon which he is in doubt, or upon the suggestion in writing by the party in interest; and thereupon the Commissioner, after consideration of the matter shown by the records certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His decision in such cases shall be conclusive and binding upon all Register of Deeds: Provided, further, That when a party in interest disagrees with the ruling or resolution of the Commissioner and the issue involves a question of law, said decision may be appealed to the Supreme Court within thirty days from and after receipt of the notice thereof." (Italics supplied.)

Thus Republic Act 1151 expressly empowers the Commissioner of Land Registration to entertain a consulta either upon the certification of the Register of Deeds or upon the suggestion in writing of a party in interest (1) when the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration and (2) where any party in interest does not agree with the Register of Deeds with reference to such matter.

In the instant case, respondent Register of Deeds brought the consulta to respondent Commissioner, in view of the insistence of respondent Consuelo Vda. de Eugenio that the notice of adverse claim be not annotated at the back of the new certificates of title to be issued to her in lieu of the old ones, which insistence created a doubt in the mind of the Register of Deeds as to the proper step or procedure to be taken therein. The matter does not therefore come under Section 112 of Act No. 496, which authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title upon the ground that registered interest have terminated or ceased (Tangunan, et al. vs. Republic, 94 Phil., 171), but is clearly within the competence of the respondent Commissioner of Land Registration to resolve, pursuant to Section 4 of Republic Act 1151.

Petitioners question the legality of respondent Commissioner's ruling that the annotation of the notice of adverse claim need not be carried on the new certificates of title to be issued to respondent Consuelo Vda. de Eugenio. In

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their petition, they stressed the fact that the mortgagor, Jose J. Gonzales, is not the absolute owner of the properties mortgaged and, therefore, the mortgage in question is null and void and "is as devoid of value and force as if it had not been made" (Petition, p. 6). Petitioners also contend that the notice of adverse claim which antedated the foreclosure and sale at public auction of the property subject thereto—charges all strangers with notice of the particular litigation or claim and, therefore, any right that may be acquired thereafter on the property is subject to the eventuality of the third party claim, is not sustainable in the present controversy. It is well to note that the mortgage in favor of the late Ramon Eugenio was annotated on November 13, 1952 at the back of the certificates of title in controversy, while the adverse claim was only annotated on the same certificates more than one year later, on December 21, 1953. Hence, the adverse claim could not affect the rights of the mortgagee; and the fact that the foreclosure of the mortgage and the consequent public auction sale have been effected long after the annotation of the adverse claim is of no moment, because the foreclosure sale retroacts to the date of registration of the mortgage (See Cruz vs. Sandoval, 39 Phil., 736; and Lopez vs. Vijandre, 72 Phil., 56.)

> "A person who takes a mortgage in good faith and for a valuable consideration, the record showing a clear title in the mortgagor, will be protected against any equitable titles to the premises, or equitable claims on the title, in favor of third persons, of which he had no notice, actual or constructive and that protection extends to a purchaser at a Sheriff's sale under proceedings on the mortgage although such purchaser had notice of the alleged equity." (59 C.J.S., Sec. 233, pp. 303-304)

Any subsequent lien or encumbrance annotated at the back of the certificates of title can not in any way prejudice the mortgage previously registered, and the lots subject thereto pass to the purchaser at the public auction sale free from any lien or encumbrance. Otherwise, the value of the mortgage could be easily destroyed by a subsequent record of an adverse claim, for no one would purchase at a foreclosure sale if bound by the posterior claim.

> ". . . Consequently, the lots passed to the purchaser free from the mortgage (second) in favor of the bank. The bank's claim that the second mortgage stands to the prejudice of the purchaser is untenable, particularly because, as the purchaser in this case is the first mortgagee itself, the result, inverting the legal effects of the two mortgages, would practically be to convert the second mortgage, constituted in favor of the Philippine National Bank, into a first mortgage and the first mortgage, constituted in favor of El Hogar Filipino, into a second mortgage. . ." (El Hogar Filipino vs. Philippine National Bank, 64 Phil., 582; italics supplied.)

It is therefore clear that the adverse claim of the petitioners did not affect respondent Consuelo Vda. de Eugenio's right as purchaser in the foreclosure sale. This alone is sufficient justification for the dropping of the adverse claim from the new certificates of title to be issued to her, as directed by respondent Commissioner in his opinion subject of this appeal.

Finally, it is argued for petitioners that they are indispensable parties and that the foreclosure proceeding does not bind them since they were not made parties thereto. We can not sustain this view. Not only was their claim recorded after the mortgage was registered but the settled rule is that adverse claimants are neither necessary nor proper parties to a foreclosure suit (Diaz, et al. vs. Reynolds, et al., 96 U. S. 430; 24 L. Ed. 644), unless they are asserting a right or interest acquired by them prior to the registration of the mortgage sought to be foreclosed in which case they may be considered necessary (but not indispensable) parties. (Hampshire vs. Greeves, 143 S. W. 147.)

> "A person, setting up a claim of title to the mortgaged premises adverse and paramount to that of the mortgagor, and not derived from him, is not a proper party to the foreclosure suit, as he has no interest in the subject matter of the action and his rights or title could not properly be litigated therein; (42 C. J., Sec. 1577, p. 55.)

But where, as in the instant case, such persons are merely asserting titles antagonistic to the mortgagor, they are

not necessary parties in the foreclosure proceedings. (See Orient Bldg. & Loan Ass'n vs. Gould, et al., 86 Atl. 863)

Wherefore, the Resolution appealed from is affirmed in toto. Costs shall be charged against petitioners. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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