HEIRS OF EDUARDO MANLAPAT, REPRESENTED BY GLORIA MANLAPAT- BANAAG AND LEON M. BANAAG, JR., VS. HON. COURT OF APPEALS, RURAL BANK OF SAN PASCUAL, INC., AND JOSE B. SALAZAR, CONSU...

G.R. No. 125585. June 08, 2005

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is a Rule 45 petition assailing the Decision[1] dated 29 September 1994 of the Court of Appeals that reversed the Decision[2] dated 30 April 1991 of the Regional Trial Court (RTC) of Bulacan, Branch 6, Malolos. The trial court declared Transfer Certificates of Title (TCTs) No. T-9326-P(M) and No. T-9327-P(M) as void ab initio and ordered the restoration of Original Certificate of Title (OCT) No. P-153(M) in the name of Eduardo Manlapat (Eduardo), petitioners' predecessor-in-interest.

The controversy involves Lot No. 2204, a parcel of land with an area of 1,058 square meters, located at Panghulo, Obando, Bulacan. The property had been originally in the possession of Jose Alvarez, Eduardo's grandfather, until his demise in 1916. It remained unregistered until 8 October 1976 when OCT No. P-153(M) was issued in the name of Eduardo pursuant to a free patent issued in Eduardo's name[3] that was entered in the Registry of Deeds of Meycauayan, Bulacan.[4] The subject lot is adjacent to a fishpond owned by one

Ricardo Cruz (Ricardo), predecessor-in-interest of respondents Consuelo Cruz and Rosalina Cruz-Bautista (Cruzes).[5]

On 19 December 1954, before the subject lot was titled, Eduardo sold a portion thereof with an area of 553 square meters to Ricardo. The sale is evidenced by a deed of sale entitled "Kasulatan ng Bilihang Tuluyan ng Lupang Walang Titulo (Kasulatan)"[6] which was signed by Eduardo himself as vendor and his wife Engracia Aniceto with a certain Santiago Enriquez signing as witness. The deed was notarized by Notary Public Manolo Cruz.[7] On 4 April 1963, the Kasulatan was registered with the Register of Deeds of Bulacan.[8]

On 18 March 1981, another Deed of Sale[9] conveying another portion of the subject lot consisting of 50 square meters as right of way was executed by Eduardo in favor of Ricardo in order to reach the portion covered by the first sale executed in 1954 and to have access to his fishpond from the provincial road.[10] The deed was signed by Eduardo himself and his wife Engracia Aniceto, together with Eduardo Manlapat, Jr. and Patricio Manlapat. The same was also duly notarized on 18 July 1981 by Notary Public Arsenio Guevarra.[11]

In December 1981, Leon Banaag, Jr. (Banaag), as attorney-in-fact of his father-in-law Eduardo, executed a mortgage with the Rural Bank of San Pascual, Obando Branch (RBSP), for P100,000.00 with the subject lot as collateral. Banaag deposited the owner's duplicate certificate of OCT No. P-153(M) with the bank.

On 31 August 1986, Ricardo died without learning of the prior issuance of OCT No. P-153(M) in the name of Eduardo.[12] His heirs, the Cruzes, were not immediately aware of the consummated sale between Eduardo and

Ricardo.

Eduardo himself died on 4 April 1987. He was survived by his heirs, Engracia Aniceto, his spouse; and children, Patricio, Bonifacio, Eduardo, Corazon, Anselmo, Teresita and Gloria, all surnamed Manlapat.[13] Neither did the heirs of Eduardo (petitioners) inform the Cruzes of the prior sale in favor of their predecessor-in-interest, Ricardo. Yet subsequently, the Cruzes came to learn about the sale and the issuance of the OCT in the name of Eduardo.

Upon learning of their right to the subject lot, the Cruzes immediately tried to confront petitioners on the mortgage and obtain the surrender of the OCT. The Cruzes, however, were thwarted in their bid to see the heirs. On the advice of the Bureau of Lands, NCR Office, they brought the matter to the barangay captain of Barangay Panghulo, Obando, Bulacan. During the hearing, petitioners were informed that the Cruzes had a legal right to the property covered by OCT and needed the OCT for the purpose of securing a separate title to cover the interest of Ricardo. Petitioners, however, were unwilling to surrender the OCT.[14]

Having failed to physically obtain the title from petitioners, in July 1989, the Cruzes instead went to RBSP which had custody of the owner's duplicate certificate of the OCT, earlier surrendered as a consequence of the mortgage. Transacting with RBSP's manager, Jose Salazar (Salazar), the Cruzes sought to borrow the owner's duplicate certificate for the purpose of photocopying the same and thereafter showing a copy thereof to the Register of Deeds. Salazar allowed the Cruzes to bring the owner's duplicate certificate outside the bank premises when the latter showed the Kasulatan.[15] The Cruzes returned the owner's duplicate certificate on the same day after having copied the same. They then brought the copy of the OCT to Register of Deeds Jose Flores (Flores) of Meycauayan and showed the same to him to secure his legal opinion as to how the Cruzes could legally protect their interest in the property and register the same.[16] Flores suggested the preparation of a subdivision plan to be able to segregate the area purchased by Ricardo from Eduardo and have the same covered by a separate title.[17]

Thereafter, the Cruzes solicited the opinion of Ricardo Arandilla (Arandilla), Land Registration Officer, Director III, Legal Affairs Department, Land Registration Authority at Quezon City, who agreed with the advice given by Flores.[18] Relying on the suggestions of Flores and Arandilla, the Cruzes hired two geodetic engineers to prepare the corresponding subdivision plan. The subdivision plan was presented to the Land Management Bureau, Region III, and there it was approved by a certain Mr. Pambid of said office on 21 July 1989.

After securing the approval of the subdivision plan, the Cruzes went back to RBSP and again asked for the owner's duplicate certificate from Salazar. The Cruzes informed him that the presentation of the owner's duplicate certificate was necessary, per advise of the Register of Deeds, for the cancellation of the OCT and the issuance in lieu thereof of two separate titles in the names of Ricardo and Eduardo in accordance with the approved subdivision plan.[19] Before giving the owner's duplicate certificate, Salazar required the Cruzes to see Atty. Renato Santiago (Atty. Santiago), legal counsel of RBSP, to secure from the latter a clearance to borrow the title. Atty. Santiago would give the clearance on the condition that only Cruzes put up a substitute collateral, which they did.[20] As a result, the Cruzes got hold again of the owner's duplicate certificate.

After the Cruzes presented the owner's duplicate certificate, along with the deeds of sale and the subdivision plan, the Register of Deeds cancelled the OCT and issued in lieu thereof TCT No. T-9326-P(M) covering 603 square meters of Lot No. 2204 in the name of Ricardo and TCT No. T-9327-P(M) covering the remaining 455 square meters in the name of Eduardo.[21]

On 9 August 1989, the Cruzes went back to the bank and surrendered to Salazar TCT No. 9327-P(M) in the name of Eduardo and retrieved the title they had earlier given as substitute collateral. After securing the new separate titles, the Cruzes furnished petitioners with a copy of TCT No. 9327-P(M) through the barangay captain and paid

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the real property tax for 1989.[22]

The Cruzes also sent a formal letter to Guillermo Reyes, Jr., Director, Supervision Sector, Department III of the Central Bank of the Philippines, inquiring whether they committed any violation of existing bank laws under the circumstances. A certain Zosimo Topacio, Jr. of the Supervision Sector sent a reply letter advising the Cruzes, since the matter is between them and the bank, to get in touch with the bank for the final settlement of the case.[23]

In October of 1989, Banaag went to RBSP, intending to tender full payment of the mortgage obligation. It was only then that he learned of the dealings of the Cruzes with the bank which eventually led to the subdivision of the subject lot and the issuance of two separate titles thereon. In exchange for the full payment of the loan, RBSP tried to persuade petitioners to accept TCT No. T-9327-P(M) in the name of Eduardo.[24]

As a result, three (3) cases were lodged, later consolidated, with the trial court, all involving the issuance of the TCTs, to wit:

> (1) Civil Case No. 650-M-89, for reconveyance with damages filed by the heirs of Eduardo Manlapat against Consuelo Cruz, Rosalina Cruz-Bautista, Rural Bank of San Pascual, Jose Salazar and Jose Flores, in his capacity as Deputy Registrar, Meycauayan Branch of the Registry of Deeds of Bulacan;
>
> (2) Civil Case No. 141-M-90 for damages filed by Jose Salazar against Consuelo Cruz, et. [sic] al.; and
>
> (3) Civil Case No. 644-M-89, for declaration of nullity of title with damages filed by Rural Bank of San Pascual, Inc. against the spouses Ricardo Cruz and Consuelo Cruz, et al.[25]

After trial of the consolidated cases, the RTC of Malolos rendered a decision in favor of the heirs of Eduardo, the dispositive portion of which reads:

> WHEREFORE, premised from the foregoing, judgment is hereby rendered:
>
> 1.–Declaring Transfer Certificates of Title Nos. T-9326-P(M) and T-9327-P(M) as void ab initio and ordering the Register of Deeds, Meycauayan Branch to cancel said titles and to restore Original Certificate of Title No. P-153(M) in the name of plaintiffs' predecessor-in-interest Eduardo Manlapat;
>
> 2.-Ordering the defendants Rural Bank of San Pascual, Jose Salazar, Consuelo Cruz and Rosalina Cruz-Bautista, to pay the plaintiffs Heirs of Eduardo Manlapat, jointly and severally, the following:
> a)P200,000.00 as moral damages;
> b)P50,000.00 as exemplary damages;
> c)P20,000.00 as attorney's fees; and
> d)the costs of the suit.
>
> 3.–Dismissing the counterclaims.
>
> **SO ORDERED."[26]**

The trial court found that petitioners were entitled to the reliefs of reconveyance and damages. On this matter, it ruled that petitioners were bona fide mortgagors of an unclouded title bearing no annotation of any lien and/or encumbrance. This fact, according to the trial court, was confirmed by the bank when it accepted the mortgage unconditionally on 25 November 1981. It found that petitioners were complacent and unperturbed, believing that the title to their property, while serving as security for a loan, was safely vaulted in the impermeable confines of RBSP. To their surprise and prejudice, said title was subdivided into two portions, leaving them a portion of 455 square meters from the original total area of 1,058 square meters, all because of the fraudulent and negligent acts of respondents and RBSP. The trial court ratiocinated that even assuming that a portion of the subject lot was sold

by Eduardo to Ricardo, petitioners were still not privy to the transaction between the bank and the Cruzes which eventually led to the subdivision of the OCT into TCTs No. T-9326-P(M) and No. T-9327-P(M), clearly to the damage and prejudice of petitioners.[27]

Concerning the claims for damages, the trial court found the same to be bereft of merit. It ruled that although the act of the Cruzes could be deemed fraudulent, still it would not constitute intrinsic fraud. Salazar, nonetheless, was clearly guilty of negligence in letting the Cruzes borrow the owner's duplicate certificate of the OCT. Neither the bank nor its manager had business entrusting to strangers titles mortgaged to it by other persons for whatever reason. It was a clear violation of the mortgage and banking laws, the trial court concluded.

The trial court also ruled that although Salazar was personally responsible for allowing the title to be borrowed, the bank could not escape liability for it was guilty of contributory negligence. The evidence showed that RBSP's legal counsel was sought for advice regarding respondents' request. This could only mean that RBSP through its lawyer if not through its manager had known in advance of the Cruzes' intention and still it did nothing to prevent the eventuality. Salazar was not even summarily dismissed by the bank if he was indeed the sole person to blame. Hence, the bank's claim for damages must necessarily fail.[28]

The trial court granted the prayer for the annulment of the TCTs as a necessary consequence of its declaration that reconveyance was in order. As to Flores, his work being ministerial as Deputy Register of the Bulacan Registry of Deeds, the trial court absolved him of any liability with a stern warning that he should deal with his future transactions more carefully and in the strictest sense as a responsible government official.[29]

Aggrieved by the decision of the trial court, RBSP, Salazar and the Cruzes appealed to the Court of Appeals. The appellate court, however, reversed the decision of the RTC. The decretal text of the decision reads:

> THE FOREGOING CONSIDERED, the appealed decision is hereby reversed and set aside, with costs against the appellees.
>
> SO ORDERED.[30]

The appellate court ruled that petitioners were not bona fide mortgagors since as early as 1954 or before the 1981 mortgage, Eduardo already sold to Ricardo a portion of the subject lot with an area of 553 square meters. This fact, the Court of Appeals noted, is even supported by a document of sale signed by Eduardo Jr. and Engracia Aniceto, the surviving spouse of Eduardo, and registered with the Register of Deeds of Bulacan. The appellate court also found that on 18 March 1981, for the second time, Eduardo sold to Ricardo a separate area containing 50 square meters, as a road right-of-way.[31] Clearly, the OCT was issued only after the first sale. It also noted that the title was given to the Cruzes by RBSP voluntarily, with knowledge even of the bank's counsel.[32] Hence, the imposition of damages cannot be justified, the Cruzes themselves being the owners of the property. Certainly, Eduardo misled the bank into accepting the entire area as a collateral since the 603-square meter portion did not anymore belong to him. The appellate court, however, concluded that there was no conspiracy between the bank and Salazar.[33]

Hence, this petition for review on certiorari.

Petitioners ascribe errors to the appellate court by asking the following questions, to wit: (a) can a mortgagor be compelled to receive from the mortgagee a smaller portion of the originally encumbered title partitioned during the subsistence of the mortgage, without the knowledge of, or authority derived from, the registered owner; (b) can the mortgagee question the veracity of the registered title of the mortgagor, as noted in the owner's duplicate certificate, and thus, deliver the certificate to such third persons, invoking an adverse, prior, and unregistered claim against the registered title of the mortgagor; (c) can an adverse prior claim against a registered title be

noted, registered and entered without a competent court order; and (d) can belief of ownership justify the taking of property without due process of law?[34]

The kernel of the controversy boils down to the issue of whether the cancellation of the OCT in the name of the petitioners' predecessor-in-interest and its splitting into two separate titles, one for the petitioners and the other for the Cruzes, may be accorded legal recognition given the peculiar factual backdrop of the case. We rule in the affirmative.

Private respondents (Cruzes) own
the portion titled in their names

Consonant with law and justice, the ultimate denouement of the property dispute lies in the determination of the respective bases of the warring claims. Here, as in other legal disputes, what is written generally deserves credence.

A careful perusal of the evidence on record reveals that the Cruzes have sufficiently proven their claim of ownership over the portion of Lot No. 2204 with an area of 553 square meters. The duly notarized instrument of conveyance was executed in 1954 to which no less than Eduardo was a signatory. The execution of the deed of sale was rendered beyond doubt by Eduardo's admission in his Sinumpaang Salaysay dated 24 April 1963.[35] These documents make the affirmance of the right of the Cruzes ineluctable. The apparent irregularity, however, in the obtention of the owner's duplicate certificate from the bank, later to be presented to the Register of Deeds to secure the issuance of two new TCTs in place of the OCT, is another matter.

Petitioners argue that the 1954 deed of sale was not annotated on the OCT which was issued in 1976 in favor of Eduardo; thus, the Cruzes' claim of ownership based on the sale would not hold water. The Court is not persuaded.

Registration is not a requirement for validity of the contract as between the parties, for the effect of registration serves chiefly to bind third persons.[36] The principal purpose of registration is merely to notify other persons not parties to a contract that a transaction involving the property had been entered into. Where the party has knowledge of a prior existing interest which is unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him.[37]

Further, the heirs of Eduardo cannot be considered third persons for purposes of applying the rule. The conveyance shall not be valid against any person unless registered, except (1) the grantor, (2) his heirs and devisees, and (3) third persons having actual notice or knowledge thereof.[38] Not only are petitioners the heirs of Eduardo, some of them were actually parties to the Kasulatan executed in favor of Ricardo. Thus, the annotation of the adverse claim of the Cruzes on the OCT is no longer required to bind the heirs of Eduardo, petitioners herein.

Petitioners had no right to constitute
mortgage over disputed portion

The requirements of a valid mortgage are clearly laid down in Article 2085 of the New Civil Code, viz:

> ART. 2085. The following requisites are essential to the contracts of pledge and mortgage:
>
> (1)
>
> That they be constituted to secure the fulfillment of a principal obligation;
>
> (2)

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> That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
>
> (3)
>
> That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.
>
> Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. (emphasis supplied)

For a person to validly constitute a valid mortgage on real estate, he must be the absolute owner thereof as required by Article 2085 of the New Civil Code.[39] The mortgagor must be the owner, otherwise the mortgage is void.[40] In a contract of mortgage, the mortgagor remains to be the owner of the property although the property is subjected to a lien.[41] A mortgage is regarded as nothing more than a mere lien, encumbrance, or security for a debt, and passes no title or estate to the mortgagee and gives him no right or claim to the possession of the property.[42] In this kind of contract, the property mortgaged is merely delivered to the mortgagee to secure the fulfillment of the principal obligation.[43] Such delivery does not empower the mortgagee to convey any portion thereof in favor of another person as the right to dispose is an attribute of ownership.[44] The right to dispose includes the right to donate, to sell, to pledge or mortgage. Thus, the mortgagee, not being the owner of the property, cannot dispose of the whole or part thereof nor cause the impairment of the security in any manner without violating the foregoing rule.[45] The mortgagee only owns the mortgage credit, not the property itself.[46]

Petitioners submit as an issue whether a mortgagor may be compelled to receive from the mortgagee a smaller portion of the lot covered by the originally encumbered title, which lot was partitioned during the subsistence of the mortgage without the knowledge or authority of the mortgagor as registered owner. This formulation is disingenuous, baselessly assuming, as it does, as an admitted fact that the mortgagor is the owner of the mortgaged property in its entirety. Indeed, it has not become a salient issue in this case since the mortgagor was not the owner of the entire mortgaged property in the first place.

Issuance of OCT No. P-153(M), improper

It is a glaring fact that OCT No. P-153(M) covering the property mortgaged was in the name of Eduardo, without any annotation of any prior disposition or encumbrance. However, the property was sufficiently shown to be not entirely owned by Eduardo as evidenced by the Kasulatan. Readily apparent upon perusal of the records is that the OCT was issued in 1976, long after the Kasulatan was executed way back in 1954. Thus, a portion of the property registered in Eduardo's name arising from the grant of free patent did not actually belong to him. The utilization of the Torrens system to perpetrate fraud cannot be accorded judicial sanction.

Time and again, this Court has ruled that the principle of indefeasibility of a Torrens title does not apply where fraud attended the issuance of the title, as was conclusively established in this case. The Torrens title does not furnish a shied for fraud.[47] Registration does not vest title. It is not a mode of acquiring ownership but is merely evidence of such title over a particular property. It does not give the holder any better right than what he actually has, especially if the registration was done in bad faith. The effect is that it is as if no registration was made at all.[48] In fact, this Court has ruled that a decree of registration cut off or extinguished a right acquired by a person when such right refers to a lien or encumbrance on the land—not to the right of ownership thereof—which was not annotated on the certificate of title issued thereon.[49]

Issuance of TCT Nos. T-9326-P(M)
and T-9327-P(M), Valid

The validity of the issuance of two TCTs, one for the portion sold to the predecessor-in-interest of the Cruzes and the other for the portion retained by petitioners, is readily apparent from Section 53 of the Presidential Decree (P.D.) No. 1529 or the Property Registration Decree. It provides:

> SEC 53. Presentation of owner's duplicate upon entry of new certificate. – No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.
>
> The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.
>
> In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or instrument, shall be null and void. (emphasis supplied)

Petitioners argue that the issuance of the TCTs violated the third paragraph of Section 53 of P.D. No. 1529. The argument is baseless. It must be noted that the provision speaks of forged duplicate certificate of title and forged deed or instrument. Neither instance obtains in this case. What the Cruzes presented before the Register of Deeds was the very genuine owner's duplicate certificate earlier deposited by Banaag, Eduardo's attorney-in-fact, with RBSP. Likewise, the instruments of conveyance are authentic, not forged. Section 53 has never been clearer on the point that as long as the owner's duplicate certificate is presented to the Register of Deeds together with the instrument of conveyance, such presentation serves as conclusive authority to the Register of Deeds to issue a transfer certificate or make a memorandum of registration in accordance with the instrument.

The records of the case show that despite the efforts made by the Cruzes in persuading the heirs of Eduardo to allow them to secure a separate TCT on the claimed portion, their ownership being amply evidenced by the Kasulatan and Sinumpaang Salaysay where Eduardo himself acknowledged the sales in favor of Ricardo, the heirs adamantly rejected the notion of separate titling. This prompted the Cruzes to approach the bank manager of RBSP for the purpose of protecting their property right. They succeeded in persuading the latter to lend the owner's duplicate certificate. Despite the apparent irregularity in allowing the Cruzes to get hold of the owner's duplicate certificate, the bank officers consented to the Cruzes' plan to register the deeds of sale and secure two new separate titles, without notifying the heirs of Eduardo about it.

Further, the law on the matter, specifically P.D. No. 1529, has no explicit requirement as to the manner of acquiring the owner's duplicate for purposes of issuing a TCT. This led the Register of Deeds of Meycauayan as well as the Central Bank officer, in rendering an opinion on the legal feasibility of the process resorted to by the Cruzes. Section 53 of P.D. No. 1529 simply requires the production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, and the same shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

Quite interesting, however, is the contention of the heirs of Eduardo that the surreptitious lending of the owner's duplicate certificate constitutes fraud within the ambit of the third paragraph of Section 53 which could nullify the eventual issuance of the TCTs. Yet we cannot subscribe to their position.

Impelled by the inaction of the heirs of Eduardo as to their claim, the Cruzes went to the bank where the property was mortgaged. Through its manager and legal officer, they were assured of recovery of the claimed parcel of land since they are the successors-in-interest of the real owner thereof. Relying on the bank officers' opinion as to the legality of the means sought to be employed by them and the suggestion of the Central Bank officer that the matter could be best settled between them and the bank, the Cruzes pursued the titling of the claimed portion in the name of Ricardo. The Register of Deeds eventually issued the disputed TCTs.

The Cruzes resorted to such means to protect their interest in the property that rightfully belongs to them only because of the bank officers' acquiescence thereto. The Cruzes could not have secured a separate TCT in the name of Ricardo without the bank's approval. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands.[50] The highest degree of diligence is expected, and high standards of integrity and performance are even required of it.[51]

Indeed, petitioners contend that the mortgagee cannot question the veracity of the registered title of the mortgagor as noted in the owner's duplicate certificate, and, thus, he cannot deliver the certificate to such third persons invoking an adverse, prior, and unregistered claim against the registered title of the mortgagor. The strength of this argument is diluted by the peculiar factual milieu of the case.

A mortgagee can rely on what appears on the certificate of title presented by the mortgagor and an innocent mortgagee is not expected to conduct an exhaustive investigation on the history of the mortgagor's title. This rule is strictly applied to banking institutions. A mortgagee-bank must exercise due diligence before entering into said contract. Judicial notice is taken of the standard practice for banks, before approving a loan, to send representatives to the premises of the land offered as collateral and to investigate who the real owners thereof are.[52]

Banks, indeed, should exercise more care and prudence in dealing even with registered lands, than private individuals, as their business is one affected with public interest. Banks keep in trust money belonging to their depositors, which they should guard against loss by not committing any act of negligence that amounts to lack of good faith. Absent good faith, banks would be denied the protective mantle of the land registration statute, Act 496, which extends only to purchasers for value and good faith, as well as to mortgagees of the same character and description.[53] Thus, this Court clarified that the rule that persons dealing with registered lands can rely solely on the certificate of title does not apply to banks.[54]

Bank Liable for Nominal Damages

Of deep concern to this Court, however, is the fact that the bank lent the owner's duplicate of the OCT to the Cruzes when the latter presented the instruments of conveyance as basis of their claim of ownership over a portion of land covered by the title. Simple rationalization would dictate that a mortgagee-bank has no right to deliver to any stranger any property entrusted to it other than to those contractually and legally entitled to its possession. Although we cannot dismiss the bank's acknowledgment of the Cruzes' claim as legitimized by instruments of conveyance in their possession, we nonetheless cannot sanction how the bank was inveigled to do the bidding of virtual strangers. Undoubtedly, the bank's cooperative stance facilitated the issuance of the TCTs. To make matters worse, the bank did not even notify the heirs of Eduardo. The conduct of the bank is as dangerous as it is unthinkably negligent. However, the aspect does not impair the right of the Cruzes to be recognized as legitimate owners of their portion of the property.

Undoubtedly, in the absence of the bank's participation, the Register of Deeds could not have issued the disputed TCTs. We cannot find fault on the part of the Register of Deeds in issuing the TCTs as his authority to issue the

same is clearly sanctioned by law. It is thus ministerial on the part of the Register of Deeds to issue TCT if the deed of conveyance and the original owner's duplicate are presented to him as there appears on theface of the instruments no badge of irregularity or nullity.[55] If there is someone to blame for the shortcut resorted to by the Cruzes, it would be the bank itself whose manager and legal officer helped the Cruzes to facilitate the issuance of the TCTs.

The bank should not have allowed complete strangers to take possession of the owner's duplicate certificate even if the purpose is merely for photocopying for a danger of losing the same is more than imminent. They should be aware of the conclusive presumption in Section 53. Such act constitutes manifest negligence on the part of the bank which would necessarily hold it liable for damages under Article 1170 and other relevant provisions of the Civil Code.[56]

In the absence of evidence, the damages that may be awarded may be in the form of nominal damages. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[57] This award rests on the mortgagor's right to rely on the bank's observance of the highest diligence in the conduct of its business. The act of RBSP of entrusting to respondents the owner's duplicate certificate entrusted to it by the mortgagor without even notifying the mortgagor and absent any prior investigation on the veracity of respondents' claim and character is a patent failure to foresee the risk created by the act in view of the provisions of Section 53 of P.D. No. 1529. This act runs afoul of every bank's mandate to observe the highest degree of diligence in dealing with its clients. Moreover, a mortgagor has also the right to be afforded due process before deprivation or diminution of his property is effected as the OCT was still in the name of Eduardo. Notice and hearing are indispensable elements of this right which the bank miserably ignored.

Under the circumstances, the Court believes the award of P50,000.00 as nominal damages is appropriate.

Five-Year Prohibition against alienation
or encumbrance under the Public Land Act

One vital point. Apparently glossed over by the courts below and the parties is an aspect which is essential, spread as it is all over the record and intertwined with the crux of the controversy, relating as it does to the validity of the dispositions of the subject property and the mortgage thereon. Eduardo was issued a title in 1976 on the basis of his free patent application. Such application implies the recognition of the public dominion character of the land and, hence, the five (5)-year prohibition imposed by the Public Land Act against alienation or encumbrance of the land covered by a free patent or homestead[58] should have been considered.

The deed of sale covering the fifty (50)-square meter right of way executed by Eduardo on 18 March 1981 is obviously covered by the proscription, the free patent having been issued on 8 October 1976. However, petitioners may recover the portion sold since the prohibition was imposed in favor of the free patent holder. In Philippine National Bank v. De los Reyes,[59] this Court ruled squarely on the point, thus:

> While the law bars recovery in a case where the object of the contract is contrary to law and one or both parties acted in bad faith, we cannot here apply the doctrine of in pari delicto which admits of an exception, namely, that when the contract is merely prohibited by law, not illegal per se, and the prohibition is designed for the protection of the party seeking to recover, he is entitled to the relief prayed for whenever public policy is enhanced thereby. Under the Public Land Act, the prohibition to alienate is predicated on the fundamental policy of the State to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him, and recovery is allowed even where the land acquired under the Public Land Act was sold and not merely encumbered, within the prohibited period.[60]

The sale of the 553 square meter portion is a different story. It was executed in 1954, twenty-two (22) years before the issuance of the patent in 1976. Apparently, Eduardo disposed of the portion even before he thought of applying for a free patent. Where the sale or transfer took place before the filing of the free patent application, whether by the vendor or the vendee, the prohibition should not be applied. In such situation, neither the prohibition nor the rationale therefor which is to keep in the family of the patentee that portion of the public land which the government has gratuitously given him, by shielding him from the temptation to dispose of his landholding, could be relevant. Precisely, he had disposed of his rights to the lot even before the government could give the title to him.

The mortgage executed in favor of RBSP is also beyond the pale of the prohibition, as it was forged in December 1981 a few months past the period of prohibition.

Respondent Rural Bank of San Pascual is hereby ORDERED to PAY petitioners Fifty Thousand Pesos (P50,000.00) by way of nominal damages. Respondents Consuelo Cruz and Rosalina Cruz-Bautista are hereby DIVESTED of title to, and respondent Register of Deeds of Meycauayan, Bulacan is accordingly ORDERED to segregate, the portion of fifty (50) square meters of the subject Lot No. 2204, as depicted in the approved plan covering the lot, marked as Exhibit "A", and to issue a new title covering the said portion in the name of the petitioners at the expense of the petitioners. No costs.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

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[1] Rollo, pp. 51-65. Decision penned by Associate Justice Bernardo Ll. Salas and concurred in by Justices Jorge S. Imperial and Hector L. Hofileña.

[2] Id. at 42-48. Decision penned by Judge Pablo S. Villanueva.

[3] The Sinumpaang Salaysay signed by Eduardo on 24 April 1963 shows that he is the only heir of his grandfather Jose Alvarez who died in 1916. Eduardo's mother, daughter of Alvarez, predeceased her father. The sworn statement also shows that the subject lot was in the possession of his grandfather at the time of his death. See also Exhibit 2 - E, p. 4.

[4] The Bureau of Lands issued Free Patent No. 111-6 in the name of Eduardo which became the basis for the issuance of OCT No. P-153(M) by the Register of Deeds dated October 8, 1976.

[5] Rollo. p. 28.

[6] Exhibits, p. 3.

[7] Records, p. 30. See also Rollo, p. 213. The deed was entered in the notarial book of the notary public as Document No. 29, Page 6, Book No. I, Series of 1954.

[8] Rollo, p. 213. The deed was recorded as Inscription No. 16707, Page No. 257, Volume 89, File No. 21819.

[9] Records, p. 10. Annex A.

[10] Rollo, p. 97.

[11] Records, p. 11. See also Rollo, p. 97. The deed was entered in the notarial book of the notary public as Document No. 261, Page 54, Book XIII, Series of 1981.

[12] Rollo, p. 98.

[13] Records, p. 4.

[14] Rollo, p. 99. See also Exhibit, p. 21. The Sinumpaang Salaysay of Barangay Captain Bonifacio Enriquez of Panghulo, Obando, Bulacan attested to the fact that on July 1989 the Cruzes lodged a complaint with his office regarding a lot with an area of 1,058 square meters, 553 square meters of which was sold to Ricardo on 19 December 1954. This sale was confirmed by Eduardo through a Sinumpaang Salaysay dated 24 April 1963.

[15] Id. at 52 and 100.

[16] Id. at 100.

[17] Ibid.

[18] Id. at 101.

[19] Ibid.

[20] Id. at 102.

[21] Id. at 28-29.

[22] Id. at 103-104.

[23] Exhibit, p. 18.

[24] Rollo, p. 29.

[25] Supra notes 1 and 2.

[26] Rollo, p. 48.

[27] Id. at 46.

[28] Id. at 47-48.

[29] Id. at 48.

[30] Id. at 65.

[31] Id. at 56.

[32] Id. at 57.

[33] Id. at 65.

[34] Id. at 31-32.

[35] Exhibit No. 4.

[36] Samanilla v. Cajucom, et al., 107 Phil. 432 (1960).

[37] Lagandaon v. Court of Appeals, G.R. Nos. 102526-31, 21 May 1998, 290 SCRA 330.

[38] PEÑA, REGISTRATION OF LAND TITLES AND DEEDS, 1994 ed., p. 28.

[39] Lagrosa v. Court of Appeals, 371 Phil. 225 (1999).

[40] National Bank v. Palma Gil, 55 Phil. 639 (1930-1931); Contreras v. China Banking Corporation, 76 Phil. 709

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(1946).

An agent cannot therefore mortgage in his own name the property of the principal, otherwise the contract is void. But the agent can do so, in the name of the principal, for here the mortgagor is the principal. Hence, if the agent is properly authorized, the contract is valid. See Arenas v. Raymundo, 19 Phil. 46 (1911).

[41] Ching Sen Ben v. Court of Appeals, 373 Phil. 544 (1999).

[42] Lagrosa v. Court of Appeals, supra note 39, citing Adlawan v. Torres, 233 SCRA 645.

That is why Article 2130 of the New Civil Code provides that a stipulation forbidding the owner from alienating the immovable mortgaged shall be void.

[43] "Ownership is retained by the mortgagor since the latter merely subjects it to a lien. In case of nonpayment of debt secured by a mortgage, the mortgagee has the right to foreclose the mortgaged property and have it sold to satisfy the outstanding indebtedness to enforce his right and consolidation of ownership is not an appropriate remedy. Only upon the lapse of the redemption period and the judgment debtor failed to exercise his right of redemption, ownership will vest or be consolidated in the purchaser." (Dr. Igmidio Cuevas Lat, LAW ON MORTGAGE, 2001 ed., p. 1)

[44]Article 428 of the Civil Code of the Philippines provides:

> ART. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.
>
> The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[45] Article 2088 of the Civil Code of the Philippines provides:

> ART. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

[46] Article 2128 of the Civil Code of the Philippines provides:

> ART. 2128. The mortgage credit may be alienated or assigned to a third person, in whole or in part, with the formalities required by law.

[47] Sacdalan v. Court of Appeals, G.R. No. 128967, 20 May 2004, 428 SCRA 586; Republic v. Court of Appeals, G.R. No. 60169, 23 March 1990, 183 SCRA 620; Adille v. Court of Appeals, G.R. No. 44546, 29 January 1988, 157 SCRA 455; Amerol v. Bagumbaran, G.R. No. 33261, 30 September 1987, 154 SCRA 396.

[48] Avila v. Tapucar, G.R. No. 45947, 27 August 1991, 201 SCRA 148; Miranda v. Court of Appeals, G.R. No. 46064, 7 September 1989, 177 SCRA 303, citing De Guzman v. Court of Appeals, 156 SCRA 701.

[49] Development Bank of the Philippines v. Court of Appeals, 387 Phil. 283 (2000).

[50] Development Bank of the Philippines v. Court of Appeals, 387 Phil. 283 (2000), citing Cavite Development Bank v. Lim, G.R. No. 13169, 1 February 2000, 324 SCRA 346, citing Tomas v. Tomas, 98 SCRA 280(1980).

[51] Bank of the Philippine Islands v. Casa Montessori Internationale, et al, G.R. No. 149454 and Casa Montessori Internationale v. Bank of the Philippine Islands, G.R. No. 149507, 28 May 2004, 430 SCRA 261.

[52] Tomas v. Tomas, No. L-36897, 25 June 1980, 98 SCRA 280.

[53] Government Service Insurance System v. Court of Appeals, G.R. No. 128471, 6 March 1998, 287 SCRA

204, 209, citing Tomas v. Tomas, supra note 50.

[54] Id. at 210, citing Rural Bank of Compostela v. Court of Appeals, et al, G.R. No. 122801, 8 April 1997.

[55] See PEÑA, REGISTRATION OF LAND TITLES AND DEEDS, 1994 ed., p. 519 citing Tinatan v. Serilla, 54 O.G. 23, September 15, 1958, Court of Appeals; Gonzales v. Basa, Jr., 73 Phil. 704 (1942).

[56] The following Civil Code provisions are pertinent:

> Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.
>
> Article 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.
>
> Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
>
> Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.
>
> Article 1973. . . . . The depositary is responsible for the negligence of his employees.

[57] Article 2221 of the Civil Code.

See also my Separate Opinion in the case of Agabon v. NLRC, G.R. No. 158693, November 17, 2004: "Nominal damages are adjudicated in order that a right of a plaintiff which has been violated or invaded by another may be vindicated or recognized without having to indemnify the plaintiff for any loss suffered by him. Nominal damages may likewise be awarded in every obligation arising from law, contracts, quasi-contracts, acts or omissions punished by law and quasi-delicts, or where any property right has been invaded.

. . . [I]t should be recognized that nominal damages are not meant to be compensatory, and should not be computed through a formula based on actual losses. Consequently, nominal damages are usually limited in pecuniary value. This fact should be impressed upon the prospective claimant, especially one who is contemplating seeking actual/compensatory damages."

[58] SECTION 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds.

[59] G.R. Nos. 46898-99, 28 November 1989, 179 SCRA 619.

[60] Id. at 628-629, citing Pascua v. Talens, 80 Phil. 792 (1949); Delos Santos v. Roman Catholic Church of Midsayap, et al., 94 Phil. 405 (1954); Ras v. Sua, et al., 25 SCRA 153 (1968).

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