

PAZ SAMANILLA, PETITIONER AND APPELLEE, VS. CENEN A. CAJUCOM, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. 13683. March 28, 1960*

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

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Appeal interposed by respondents Cenén A. Cajucó and José A. Cajucó from the order of the Court of First Instance of Nueva Ecija in Land Registration Case No. 210, G.L.R.O. rec. No. N-6010, requiring them to surrender Original Certificate of Title No. 0-966 within ten days, either to the Register of Deeds or to the Court for the annotation of a mortgage executed by them in favor of petitioner Paz Samanilla.

The case arose out of a petition presented by appellee Samanilla in said registration case alleging that respondents Cajucó had executed in her favor, on December 20, 1955, a real estate mortgage over their rights and participation on the parcel of land covered by Original Certificate of Title No. 0-966 to secure a loan of P10,000.00; that sometime in February, 1956, respondents borrowed the title from her on the excuse that they needed it to segregate from the land the portion claimed by other persons; and that thereafter, petitioner asked for the return of the title so that she could register her mortgage, but respondents refused. Attached to the petition were the deed of mortgage and the affidavits of petitioner and a certain Antonio G. Javier, who allegedly was the one who borrowed the title from petitioner in behalf of respondents.

Respondents opposed the petition, claiming that the mortgage in question was void ab initio for want of consideration, and that the issues should be litigated in an ordinary civil action. The opposition notwithstanding, the lower court entered an order on June 12, 1956 finding the petition well-taken and ordering respondents to surrender their title either to the Register of Deeds or to the Court. From this order, respondents appealed to the Court of Appeals, which forwarded the case to us for raising purely question of law.

The appeal has no merit. Appellants' sole objection to the registration of the deed of mortgage is that the same was executed without any consideration. But there is a legal presumption of sufficient cause or consideration supporting a contract, even if such cause is not stated therein (Art. 1354, New Civil Code; Rule 123, sec. 69 [r], Rules of Court). This presumption appellants cannot overcome by a simple assertion of lack of consideration. Especially may not the presumption be so lightly set aside when the contract itself states that consideration was given, and the same has been reduced into a public instrument with all due formalities and solemnities as in this case. As held by this Court.

"Once a mortgage has been signed in due form, the mortgagee is entitled to its registration as a matter of right. By executing the mortgage the mortgagor is understood to have given his consent to its registration, and he cannot be permitted to revoke it unilaterally. The validity and fulfillment of contracts cannot be left to the will of one of the contracting parties (Article 1254 of the Civil Code)." (*Gonzales vs. Basa, Jr., et al.*, 73 Phil., 704).

To overcome the presumption of consideration, appellants must show the alleged lack of consideration of the mortgage by preponderance of evidence in a proper action.

Appellants assert that they cannot be compelled to surrender their title for registration of the mortgage in question until they are given an opportunity to show its invalidity in an ordinary civil action, because registration is an essential element of a real estate mortgage and the surrender of their title would complete this requirement of registration. The argument is fallacious, for a mortgage, whether registered or not, is binding between the parties, registration being necessary only to make the same valid against third persons (Art. 2125, New Civil Code). In other words, registration only operates as a notice of the mortgage to others, but neither adds to its validity nor convert an invalid mortgage into a valid one between the parties. Appellants still have the right to show that the mortgage in question is invalid for lack of consideration in an ordinary action and there ask for the avoidance of the deed and the cancellation of its registration. But until such action is filed and decided, it would be too dangerous to the rights of the mortgagee to deny registration of her mortgage, because her rights can so easily be defeated by a transfer or conveyance of the mortgaged property to an innocent third person. In *Gurbax Singh Pabla & Co., et al. vs. Reyes, et al.*, 92 Phil., 177; 48 Off. Gaz., 4365, this Court had the occasion to rule that "if the purpose of registration is merely to give notice, the questions regarding the effect or invalidity of instruments are expected to be decided after, not before, registration. It must follow as a necessary consequence that registration must first be allowed and validity or effect litigated afterwards".

Appellants cite the case of *Government of the Philippine Islands vs. Payva*, 44 Phil., 629. However, the appellee correctly points out that the same is inapplicable to this case because the only question raised and decided therein was whether an order of the registration court requiring the holder of a duplicate certificate of title for the purpose of annotating an attachment, lien, or adverse claim under sec. 72 of Act 496 is appealable or not, and we held that it was, because it resolves important questions as to the respective rights of the parties. It should be remembered that the Land Registration Court may summarily pass upon the validity of adverse claims sought to be registered under sections 72 and 110 of the Land Registration Act, if all the parties agree to submit the precise question to the court (see *Gurbax Singh Pabla & Co. vs. Reyes*, supra); and when it is thus submitted, the losing party may appeal the court's ruling, as held in the *Payva* case. But appellants herein, by opposing appellee's petition on the ground that their defense of invalidity of the mortgage sought to be registered is contentious and should be litigated in a separate action, precisely refused to submit said question to the Land Registration Court. The court, then, acted correctly in ordering the recording without passing upon the validity of the mortgage in question.

The order appealed from is affirmed, without prejudice to appellants' right to bring a separate action to question the validity of the mortgage in question and ask for the cancellation of its registration. Costs against appellants.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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