

**THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,
REPRESENTED BY THE BOARD OF LIQUIDATORS, PETITIONER AND
APPELLEE, VS. ROBERTO LAPERAL, OPPOSITOR AND APPELLANT.**

G.R. No. 14228. June 30, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by Roberto Laperal, from an order of the Court of First Instance of Manila in L. R. C. (G.L.R.O.) Cadastral Record No. 917, the dispositive part of which reads as follows:

"WHEREFORE, the opposition is hereby denied and the Register of Deeds of Manila ordered and directed upon payment of his fees and presentation of the owners duplicates of Transfer Certificates of Title Nos. 11307, 11308 and 11309, to cancel from said titles the annotation of a mortgage in favor of Roberto Laperal under Entries Nos. 7593 and 7899; provided, that no document or transaction registered or pending registration in his office shall be adversely affected thereby."

The case was certified to us by the Court of Appeals upon the ground that only questions of law are raised in the appeal. In fact, the jurisdiction of the lower court is, likewise, assailed in this case.

The pertinent facts are not disputed. On January 27 and February 16, 1937, Giichi Yasugami, a Japanese subject, borrowed from Roberto Laperal, hereinafter referred to as the appellant, the sums of P8,000 and P2,000, respectively, to secure payment of which the former executed in favor of the latter two (2) separate deeds of mortgage on twenty-three (23) parcels of land located in the City of Manila and covered by Transfer Certificates of Title Nos. 40133, 41295, 41693 and 54337, in the name of Giichi Yasugami, issued in said L.R.C. (G.L.R.O.) Cadastral Record No. 917. These deeds of mortgage were, on said dates, duly registered in the office of the Register of Deeds of Manila and annotated on the back of the aforementioned transfer certificates of title as primary entries Nos. 7593 and 7879.

After the liberation of the Philippines, or on February 12, 1946, said properties were vested in the Alien Property Custodian of the United States, subject to the aforementioned mortgages in favor of appellant, by virtue of Vesting Order No. P-11, issued in pursuance of the Trading with the Enemy Act of the United States and filed with the Federal Register on April 14, 1946, as well as with the Office of the Register of Deeds of Manila. Accordingly, the said transfer certificates of title were cancelled and, in lieu thereof, Transfer Certificates of Title Nos. 11307 to 11310 were issued in the name of the Philippine Alien Property Administration. Subsequently, or on May 7, 1953, the Attorney General of the United States, through Stanley Gilbert, manager of the Philippine Office, Office of the Alien Property Custodian of the United States, transferred, in conformity with law, to the Republic of the Philippines, the twenty-three (23) parcels of land aforementioned.

Soon thereafter, or on June 12, 1953, the Republic of the Philippines, represented by its Board of Liquidators, filed with the Court of First Instance of Manila, in the aforementioned L.R.C. (G.L.R.O.) Cadastral Record No. 917, a petition for the cancellation of said primary entries Nos. 7593 and 7879, corresponding to the

aforementioned mortgages in favor of appellant, from Transfer Certificates of Title Nos. 11307, 11308 and 11309, upon the ground that, whatever cause of action he may have had to foreclose said mortgages had prescribed already, more than ten (10) years having elapsed since the accrual of his cause of action.

Appellant opposed the petition upon the ground that the statute of limitations had been interrupted by an acknowledgment of said mortgages, as well as by extra-judicial demands made by the creditor and by the Moratorium Law, and that a mortgage lien does not prescribe. After due hearing, the lower court issued the order complained of. Thereupon, the appellant filed a motion for reconsideration, predicated, among other grounds, upon the alleged lack of jurisdiction of the lower court as a land registration court to hear and decide the controversy between the parties. The motion having been denied, the appellant seeks a review of said order by record on appeal.

The first question raised in the appeal is the jurisdiction of the lower court to settle the issue between the parties, under the provisions of section 112 of Act No. 496, it appearing that appellee's petition has been filed as an incident of the cadastral proceedings in which the mortgaged properties were registered, and that said court had acted, therefore, as a land registration court. In *Tañunan and Tañunan vs. Republic of the Philippines* (94 Phil., 171; 50 Off. Gaz., 115), we held:

"We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act No. 496. While this section, among other things, 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 interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased', and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs. Thus, it was held that 'It is not proper to cancel an original certificate of Torrens Title issued exclusively in the name of a deceased person, and to issue a new certificate in the, name of his heirs, under the provisions of Section 112 of Act No. 496, when the surviving spouse claims right of ownership over the land covered by said certificate.' (*Jimenez vs. de Castro*, 40 Off. Gaz., [No. 3] 1st Supp. p. 80.) And, in another case, where there was a serious controversy between the parties as to the right of ownership over the properties involved, this Court held, 'that following the principle laid down in the decision above cited, the issues herein should be ventilated in a regular action, as was done in the case of *Montilla vs. Jalandoni* (TA-R.G. No. 3133), above mentioned.' (*Government of the Philippines vs. Jalandoni*, 44 Off. Gaz. 1837.)" (*Italics ours.*)

The doctrine laid down in the *Tanguñan* case was applied in *Garcia vs. Belzunce*, 84 Phil., 802; 47 Off. Gaz., 1820; *Miraflor vs. Leaño*, 94 Phil., 466; 49 Off. Gaz. [7] 2775; *Laguia vs. Casimiro*, 98 Phil., 102; 52 Off. Gaz. (1) 196; *Enriquez vs. Atienza*, 101 Phil., 1072; 53 Off. Gaz. [20] 7231; *Angeles vs. Razon*, 106 Phil., 384; 57 Off. Gaz. [5] 840) and *Rehabilitation Finance Corporation vs. Alto Surety & Insurance Co.*, 107 Phil., 386 (see, also, *Bank of the P.I. vs. Ty Cameo Sobrino*; 57 Phil., 801; *Lopez vs. Constantino*, 74 Phil., 160,; *Garchitorena vs. Dir. of Lands*, 91 Phil., 514; *Castillo vs. Ramos*, 45 Off. Gaz. 183; *Cabangcala vs. Domingo*, 96 Phil., 124; 50 Off. Gaz., 5319; *Mendoza vs. Abiera*, 105 Phil., 611; 56 Off. Gaz. [33] 5170; and is equally applicable to the case at bar.

Indeed, some of the issues therein raised are highly controversial. The decisions on the question whether a mortgage lien duly registered under the Torrens System may be nullified by operation of the statute of limitations are conflicting. The American Jurisprudence has the following to say thereon:

"Bar of Debt as Affecting Lien or Other Security; Vice-Versa.— Although a different rule obtains in those jurisdictions where it is held that the statute of limitations not only bars the remedy, but destroys and

annihilates the debt by the presumption that it has been paid or discharged, and in some states it is expressly provided by statute that a lien is extinguished by the lapse of time within which an action can be brought on the principal obligation, it is a general rule, recognized in England and in a majority of the courts in this country that a lien which one may have on property, personal or real, as security for a debt is not impaired because the remedy at law for the "recovery of the debt is barred. * * * With regards to the effect of the bar of a debt upon a mortgage given to secure such debt, one line of authorities holds that the mortgagee can pursue his remedy on the mortgage by foreclosure or ejectment, notwithstanding the debt or the evidence thereof is barred by the statute of limitations, while another line of decisions takes the view that a mortgage, being a mere incident, cannot be foreclosed when the note or other evidence of indebtedness secured thereby, is barred. * * *." (34 Am. Jur., 317-318.)

To the same effect, substantially, is the view expressed in *Glenn on Mortgages*:

"* * * Since the mortgage subsists as a lien for the purpose of securing a debt, it follows that if recovery on the debt is barred by the statute of limitations, surely no lien should be enforced which secures an obligation. The equity process should not be sanctioned in that sort of case; hence a plea, that the debt was barred at law by the statute of limitations, would be equally available in a suit to foreclose the lien. That was, and is, undoubtedly the rule as to equitable liens; but it should also apply to a mortgage if the latter is treated as a lien only. In truth, there is no reason why the same rule should not apply in a title State, so far as foreclosure is concerned. The mortgage secures a debt,—that is its first and only purpose,—and when the debt ceases to be wholly enforceable, it is hard to see why the mortgagee should have the affirmative aid of equity.

"The prevailing view, however, is different. According to this, the mortgagee's rights are several and distinct. First, he has the debt, but second, as a separate proposition, he has the lien. If, then, a short statute of limitations bars a suit on the debt, it is not thereby destroyed, and the creditor may properly turn to his lien. Enforcement of the latter not being barred at all, the creditor, according to this view, may foreclose his lien, either by an equity suit or by exercising a power of sale. He cannot obtain a deficiency judgment by any process, but so far as the security may go, the mortgage can realize his debt by this sort of strict foreclosure. Since this rule just mentioned is logical, it has been perpetuated by statute in at least one State. In Virginia, indeed, no statute of limitations whatever governed foreclosure until 1887; and her present law is very liberal as to the mortgagee's right." (*Glenn on Mortgages*, Vol. II, pp. 814-816.)

There are, also, two (2) sets of decisions, on said issue, in this jurisdiction. *Aldeguer vs. Hoskyn* (2 Phil., 500), *Domingo vs. Osorio* (7 Phil., 405), *Maxilom vs. Tabotabo* (9 Phil., 390) and *Sunico vs. Ramirez* (14 Phil., 500), among others, hold one view, whereas *Buhat vs. Sesana*, (95 Phil., 721; 50 Off. Gaz. [9] 4215) and *Estayo vs. De Guzman* (104 Phil., 1038; 55 Off. Gaz., 7653) maintain another view.

Again, the order, pursuant to which the title to the properties in question was vested in the Alien Property Custodian of the United States, explicitly states that it is "subject to recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of * * * enemy countries," such as the mortgages constituted in favor of appellant herein, and there is authority to the effect that the acknowledgment of a mortgage is tantamount to an acknowledgment of the debt thereby secured (37 C.J., 1107) and hence, it suffices to renew the period of prescription of the action for foreclosure.

Lastly, the question, raised by herein appellee, whether an enemy alien, like the mortgagor Yasugami, could be sued in the Philippine courts before the signing and ratification of the Treaty of Peace between the Philippines and Japan, and, in the affirmative, whether he could have availed himself of the benefits of the moratorium law, is one of first impression in this jurisdiction, which should be threshed out, not within the limited confines of the summary proceedings contemplated in section 112 of Act No. 496, but in an ordinary action.

Wherefore, without prejudice to such appropriate proceedings as the herein appellee may deem best to institute,

the order appealed from is hereby reversed, without special pronouncement as to costs. It is so ordered.

Bengzon, Mantemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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