SPOUSES FRANCISCO AND BERNARDINA RODRIGUEZ, PETITIONERS, VS. HON. COURT OF APPEALS, SPOUSES CHRISTOPHER AND MA. ANGELICA BARRAMEDA, AND SPOUSES ANTONIO AND MARIDEL CALINGO,

G.R. NO. 142687. July 20, 2006

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the decision of the Court of Appeals dated September 7, 1999 in CA-G.R. CV No. 48772 and its resolution dated March 31, 2000. The Court of Appeals reversed the decision of the Regional Trial Court of Makati in Civil Case No. 92-3524.

The facts show that herein respondent Spouses Antonio and Maridel Calingo (respondents Calingo) were the registered owners of a house and lot located at No. 7903 Redwood Street, Marcelo Green Village, Parañaque, Metro Manila. The property was mortgaged to the Development Bank of the Philippines, which mortgage was later absorbed by the Home Mutual Development Fund (HMDF) or Pag-ibig.

On April 27, 1992, respondents Calingo and respondent Spouses Christopher and Ma. Angelica Barrameda (respondents Barrameda) entered into a contract of sale with assumption of mortgage where the former sold to the latter the property in question and the latter assumed to pay the outstanding loan balance to the Development Bank of the Philippines.[1] Respondents Barrameda issued two checks in the amounts of P150,000.00 and P528,539.76, for which respondents Calingo issued a receipt dated April 24, 1992.[2]

In a letter dated April 23, 1992, respondent Antonio S. Calingo informed HMDF/Pag-ibig about the sale of the property with assumption of mortgage. Said letter, however, together with an affidavit by respondents Calingo, was served upon HMDF/Pag-ibig on October 2, 1992.[3]

On May 29, 1992, respondents Barrameda filed with the Register of Deeds of Parañaque an affidavit of adverse claim on the property. The adverse claim was inscribed at the back of the certificate of title as Entry No. 3439.[4]

On June 1, 1992, respondent Ma. Angelica Paez-Barrameda wrote HMDF, Mortgage and Loans Division informing the office that they have purchased the subject property from the Calingo spouses and that they filed a notice of adverse claim with the Register of Deeds of Parañaque. They also sought assistance from said office as regards the procedure for the full settlement of the loan arrearages and the transfer of the property in their names.[5]

Respondents Barrameda moved into the property on June 2, 1992.

On July 13, 1992, a notice of levy with attachment on real property by virtue of a writ of execution was annotated at the back of the certificate of title of the property in question. The writ of execution was issued by Judge Salvador Abad Santos, Regional Trial Court of Makati, Branch 65 in connection with Civil Case No. 88-2159

involving a claim by herein petitioners, Spouses Francisco and Bernardina Rodriguez, against respondents Calingo. Judge Abad Santos issued the writ in favor of petitioners Rodriguez.[6]

On July 21, 1992, petitioners' counsel, Atty. Nelson A. Loyola, sent a letter to respondents Barrameda inquiring about the basis of their occupation of the property in question.

On August 21, 1992, respondents Barrameda remitted to respondents Calingo the amount of P364,992.07 to complete the payment of the agreed purchase price. Respondents Calingo acknowledged receipt of said amount and waived all their rights to the property in favor of the Barrameda spouses. They also guaranteed that the property was clear and free from any liens and encumbrances, except the real estate mortgage assumed by respondents Barrameda.[7]

On October 7, 1992, respondents Barrameda executed a joint affidavit stating that they are the owners of the property in question by virtue of a deed of sale with assumption of mortgage; that they registered an affidavit of adverse claim with the Register of Deeds of Parañaque; that the Sheriff of the Regional Trial Court, Branch 65, Makati, Sheriff Manuel C. Dolor, levied said property despite their adverse claim; and that they have acquired the property long before the levy was made, and therefore, said levy was illegal. They served a copy of the affidavit on petitioners' counsel, Atty. Loyola, who made a reply thereto on October 15, 1992.

In his letter to Christopher Barrameda dated October 15, 1992, Atty. Loyola pointed out that the alleged deed of sale with assumption of mortgage was not registered with the Register of Deeds and that the records of the HMDF show that the property is owned by the Calingo spouses. He urged the Barrameda spouses to confer with the petitioners to amicably settle the controversy.[8]

On November 9, 1992, respondents Barrameda found a Notice of Sheriff's Sale posted on their front gate, announcing the auction sale of their house and lot on December 3, 1992 at 10:00 in the morning.[9]

On November 20, 1992, pursuant to Rule 39, Section 17 of the Revised Rules of Court, respondents Barrameda served a Notice of Third Party Claim upon Sheriff Manuel C. Dolor, accompanied by their affidavit of title.

On December 2, 1992, respondents Barrameda filed with the Regional Trial Court of Makati a petition for quieting of title with prayer for preliminary injunction. The petition prayed, among others, that the execution sale of the property be enjoined, the notice of levy and attachment inscribed on the certificate of title be cancelled, and that respondents Barrameda be declared the lawful and sole owners of the property in question.[10]

The trial court ruled in favor of herein petitioners and dismissed respondents Barrameda's petition for quieting of title. It ruled that the annotation of respondents Barrameda's adverse claim at the back of the certificate of title was insufficient to establish their claim over the property. It said that respondents Barrameda, as buyers of the property, should have registered the title in their names. Furthermore, respondents Barrameda's adverse claim had lost its efficacy after the lapse of thirty days in accordance with the provisions of the Land Registration Act. The trial court also found that there was collusion between respondents Barrameda and respondents Calingo to transfer the property to defraud third parties who may have a claim against the Calingos.[11]

The Court of Appeals, however, reversed the decision of the trial court. Citing the ruling in Sajonas v. Court of Appeals,[12] the appellate court held that respondents Barrameda's adverse claim inscribed on the certificate of title was still effective at the time the property was levied on execution. It said:

> Therefore, the disputed inscription of adverse claim on TCT No. 83612/57286 was still in effect on July 13, 1992 when the Rodriguezes caused the annotation of the notice of levy on execution thereto. Consequently, they are charged with knowledge that the property sought to be levied upon on execution was encumbered by an interest the same as or better than that of the registered owner thereof. Such notice of levy cannot prevail

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> over the existing adverse claim inscribed on the certificate of title in favor of the Barramedas. xxx

The court held, therefore, that the notice of levy could not prevail over respondents Barrameda's adverse claim.

Petitioners moved for a reconsideration of the appellate court's ruling, but the motion was denied.

Hence, this petition. Petitioners essentially argue that the remedy of a petition for quieting of title was not available to respondents Barrameda as they did not have a valid title to the property in question; that the affidavit of adverse claim inscribed by respondents Barrameda at the back of the certificate of title was not sufficient to establish their claim to the property; and there was collusion between respondents Barrameda and respondents Calingo.

The principal issue that needs to be resolved in this case is whether respondents Barrameda's adverse claim on the property should prevail over the levy on execution issued by another court in satisfaction of a judgment against respondents Calingo.

We hold that it cannot.

Respondents Barrameda anchor their claim on the property on the deed of sale with assumption of mortgage executed by them and respondents Calingo on April 27, 1992. The Property Registration Decree[13] requires that such document be registered with the Register of Deeds in order to be binding on third persons. The law provides:

> Sec. 51. Conveyance and other dealings by registered owner. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.
>
> The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. (emphasis supplied)

It is admitted in this case that the deed of sale with assumption of mortgage was not registered, but instead, respondents Barrameda filed an affidavit of adverse claim with the Register of Deeds. The question now is whether the adverse claim is sufficient to bind third parties such as herein petitioners.

In L.P. Leviste and Company, Inc. v. Noblejas,[14] we explained when an inscription of an adverse claim is sufficient to affect third parties, thus:

> The basis of respondent Villanueva's adverse claim was an agreement to sell executed in her favor by Garcia Realty. An agreement to sell is a voluntary instrument as it is a wilful act of the registered owner. As such voluntary instrument, Section 50 of Act No. 496 [now Presidential Decree No. 1529] expressly provides that the act of registration shall be the operative act to convey and affect the land. And Section 55 of the same Act requires the presentation of the owner's duplicate certificate of title for the registration of any deed or voluntary instrument. As the agreement to sell involves an interest less than an estate in fee simple, the same should have been registered by filing it with the Register of Deeds who, in turn, makes a brief memorandum thereof upon the original and owner's duplicate certificate of title. The reason for requiring the production of the owner's duplicate certificate in the registration of a voluntary instrument is that, being a wilful act of the registered owner, it is to be presumed that he is interested in registering the instrument and would willingly surrender, present or produce his duplicate certificate of title to the Register of Deeds in order to accomplish such registration. However, where the owner refuses to surrender the duplicate certificate for the annotation of the voluntary instrument, the grantee may file with the Register of Deeds a statement setting forth his adverse

> claim, as provided for in Section 110 of Act No. 496. In such a case, the annotation of the instrument upon the entry book is sufficient to affect the real estate to which it relates, although Section 72 of Act No. 496 imposes upon the Register of Deeds the duty to require the production by the [r]egistered owner of his duplicate certificate for the inscription of the adverse claim. The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof. (emphases supplied)

In the case at bar, the reason given for the non-registration of the deed of sale with assumption of mortgage was that the owner's duplicate copy of the certificate of title was in the possession of HMDF. It was not shown, however, that either respondents Barrameda or respondents Calingo exerted any effort to retrieve the owner's duplicate copy from the HMDF for the purpose of registering the deed of sale with assumption of mortgage. In fact, the parties did not even seek to obtain the consent of, much less inform, the HMDF of the sale of the property. This, despite the provision in the contract of mortgage prohibiting the mortgagor (respondents Calingo) from selling or disposing the property without the written consent of the mortgagee.[15] Respondents Calingo, as party to the contract of mortgage, are charged with the knowledge of such provision and are bound to comply therewith. Apparently, there was haste in disposing the property that respondents Calingo informed HMDF of the sale only on October 2, 1992 when they served a copy of their letter to said office regarding the transfer of the property to respondents Barrameda. There was no reason for the parties' failure to seek the approval of the HMDF to the sale as it appears from the letter of respondent Angelica Paez-Barrameda to HMDF that they were ready to pay in full the balance of the loan plus interest. What is more suspect is that the judgment against respondents Calingo ordering them to pay the petitioners the sum of P1,159,355.90 was rendered on January 28, 1992, before the sale of the property on April 27, 1992. We also find it unsettling that respondents Barrameda, without any reservation or inquiry, readily remitted to respondents Calingo the full payment for the property on August 21, 1992 despite knowledge of the levy on execution over the property in July of the same year. Any prudent buyer of real property, before parting with his money, is expected to first ensure that the title to the property he is about to purchase is clear and free from any liabilities and that the sellers have the proper authority to deal on the property.

Again, we stress that the annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of property where the registration of such interest or right is not otherwise provided for by the law on registration of real property. Section 70 of Presidential Decree No. 1529 is clear:

> Sec. 70. Adverse claim. Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed. xxx

The deed of sale with assumption of mortgage executed by respondents Calingo and Barrameda is a registrable instrument. In order to bind third parties, it must be registered with the Office of the Register of Deeds. It was not shown in this case that there was justifiable reason why the deed could not be registered. Hence, the remedy of adverse claim cannot substitute for registration.

IN VIEW WHEREOF, the petition is GRANTED. The assailed decision and resolution of the Court of Appeals are SET ASIDE and the decision of the Regional Trial Court, Makati in Civil Case No. 92-3524 is REINSTATED. No cost.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur

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[1] Exhibit "C," Original Records, p. 18.

[2] Exhibit "9," Original Records, p. 21.

[3]Exhibits "F" and "F-1," Original Records, p. 23.

[4]Exhibit "H-1," Original Records, p. 58.

[5] Exhibit "G," Original Records, p. 25.

[6] Exhibit "5-B," Original Records, p. 59.

[7] Exhibit "E," Original Records, p. 22.

[8] Original Records, p. 29.

[9] Original Records, pp. 30-31.

[10]Original Records, pp. 4-17.

[11]Rollo, pp. 203-210.

[12] G.R. No. 102377, July 5, 1996, 258 SCRA 79.

[13] Presidential Decree No. 1529.

[14] No. L-28529, April 30, 1979, 89 SCRA 520.

[15] 2. The Mortgagor shall not sell, dispose of, or mortgage, nor in any manner encumber the mortgaged property without the written consent of the Mortgagee. If in spite of this stipulation the property is sold, the Vendee shall assume the mortgage in the terms and conditions under which it is constituted it being understood that the assumption by the Vendee shall not release the Vendor of his obligation to the Mortgagee. On the contrary, both Vendor and Vendee shall be jointly and severally liable for said mortgage obligation. xxx (Original Records, p. 119.)

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