

**FIDELITY AND SURETY COMPANY OF THE PHILIPPINE ISLANDS,
PLAINTIFF AND APPELLANT, VS. PASTORA CONEGERO VDA. DE
LIZARRAGA ET AL., DEFENDANTS AND APPELLEES.***G. R. No. 15466. February 18, 1921*

Ponente: STREET, J.

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Prior to June 26, 1913, Pastora Conegero was the holder of Torrens certificate of title, No. 147, covering a parcel of land in the city of Iloilo. After the Torrens title aforesaid had been issued, a cadastral survey covering this and other land in the city of Iloilo was undertaken by the Government; and in the course of the cadastral proceedings the court found it convenient or desirable to order that the certificate of title No. 147 be cancelled and that a new certificate of title should be issued to Pastora Conegero in its stead. The explanation of this order, though unimportant for the purposes of this decision, is said to be that the court had discovered that certificate No. 147 included, in addition to the land of which Pastora Conegero was the true owner, two strips of land which belonged to her children. At any rate, Pastora Conegero surrendered certificate No. 147, and two new certificates were issued: one to herself (No. 194), and another to her children (No. 195). The land included in certificate No. 194 may be assumed, as stated in the agreed facts, to be the same as that which had been included in the old certificate No. 147, though it is possible that the lots covered by the two certificates are not exactly the same. With certificate No. 195 we are not here concerned.

The cancellation of certificate No. 147 was effected under the authority of an order of the Court of First Instance of Iloilo, dated July 26, 1913; and the mandate of the Chief of the General Land Registration Office, directed to the register of deeds in Iloilo, directing the change, is dated October 1, 1914.

While Pastora Conegero was yet the holder of certificate No. 147, she mortgaged the land covered by it to El Hogar Filipino to secure a debt, and the incumbrance thereby created was noted on her duplicate certificate of title. On March 30, 1916, Pastora Conegero entered into an agreement with one Samuel Thomas whereby, in consideration of the sum of P1,637.49, she bargained and sold to the said Thomas the property described in title No. 147. At the time this sale was made the Torrens certificate covering the land was not produced or delivered to the purchaser in the city of Manila where the contract was made; and in fact at that time certificate No. 147, referred to in the description of the land in said contract, was non-existent, having been cancelled as already stated. Of this fact, however, the purchaser was presumably ignorant; and although he (or his attorney) was aware that the owner's certificate, No. 147, had been sent to Iloilo for use in the cadastral proceedings, the irregularity of making the contract without having the certificate in hand was considered unimportant. The description inserted in the contract was taken, it may be observed, from that in the mortgage executed by Pastora Conegero in favor of El Hogar Filipino.

Soon after the contract of sale, evidenced by the deed of March 30, 1916, had been executed by Pastora Conegero in favor of Samuel Thomas, the latter's attorney sent the document to Francisco Enage, register of deeds in Iloilo,

in order that the transfer might be registered and that a new certificate might in due course be issued to Samuel Thomas. To this communication, Mr. Enage replied, returning the document and informing the writer that the registration thereof could not be effected for the reason that certificate No. 147 had been cancelled and had been supplanted by certificate No. 194 in the name of Pastora Conegero. The register of deeds, however, noted in his entry book the fact that such a deed had been presented to him at 10 a. m.} on April 18, 1916, and placed a memorandum to the same effect on the document itself. On October 18, 1916, Pastora Conegero mortgaged the property described in certificate No. 194 to the Fidelity and Surety Company of the Philippine Islands to secure a credit of P2,000 guaranteed by the surety company. This mortgage was registered and noted on the original certificate of title, No. 194, by the register of deeds at Iloilo on March 29, 1917.

On November 2, 1917, Samuel Thomas commenced an action in the Court of First Instance of Iloilo to compel Pastora Conegero to produce certificate No. 194 for cancellation, and to secure the issuance of a new certificate of title in his name. Notice of lis pendens was filed on November 5, 1917. On November 9, 1917, Pastora Conegero executed a third mortgage, to Southworth and Goyena, to secure a note for P500.

On March 22, 1918, the Fidelity and Surety Company of the Philippine Islands brought this action to foreclose its mortgage, naming Samuel Thomas and Southworth and Goyena as codefendants with Pastora Conegero.

After hearing the evidence, the trial court held that the property belonged to Samuel Thomas, when the plaintiff's mortgage was registered, and limited the plaintiff's remedy to a judgment in personam against Pastora Conegero for P1,982.50. From this judgment the plaintiffs appealed.

The mortgage in favor of El Hogar Filipino was of course superior to all subsequent transfers and incumbrances; and it is equally clear that the mortgage in favor of Southworth and Goyena is inferior to that in favor of the present plaintiff, the Fidelity and Surety Company. The only question which here concerns us, therefore, is whether the deed of March 30, 1916, to Samuel Thomas is superior to the mortgage of October 18, 1916, executed in favor of the Fidelity and Surety Company. The solution of this question depends upon the effect to be conceded to the notation made on April 18, 1916, by the register of deeds of Iloilo in his entry book concerning the deed executed by Pastora Conegero in favor of Thomas. Did the entering of this memorandum in said book operate as an effective registration of the title, or transfer of title, and thereby place Thomas in an unassailable position? The trial judge held that it had this effect. With this conclusion we are unable to agree.

Section 56 of Act No. 496 provides in part as follows:

"Each register of deeds shall keep an entry book in which he shall enter in the order of their reception all deeds and other voluntary instruments, and all copies of writs or other process filed with him relating to registered land. He shall note in such book the year, month, day, hour, and minute of reception of all instruments, in the order in which they are received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date."

We think that, where the statute says that an instrument shall be regarded as registered from the time the annotation is made in the entry book, these words must be understood to apply to such instruments as are competent to transfer, or affect, the Torrens title and upon which a new certificate is in fact issued in due course. What is here really meant, we suppose, is that wherever registration is actually effected, and a new certificate issued, the registration is retroactive and takes effect by relation as of the date when the annotation in the entry book was made. In the light of this interpretation it is quite evident that the mere annotation of a contract relating to land covered by a Torrens title, which is not followed by registration and the emission of a new certificate, is without significance as regards its effect upon such title. To put the point another way, it might be said that the

constructive registration, if such it be, which results from the notation of a document in the entry book cannot be given effect in the case where actual registration, or the actual issuance of a new certificate, is impossible. At the time the absolute deed of sale in favor of Thomas was presented to the register of deeds of Iloilo in the case before us the Torrens title upon which that deed was supposed to operate was non-existent, having been judicially cancelled with the consent of the owner. There can be no constructive registration in a situation of this kind.

Under section 50 of Act No. 496, "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 clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land." The steps by which registration is accomplished are fully set out in section 57 of the same Act; and by reference thereto, it will be seen that registration of the transfer of registered land depends upon several vital conditions, among which is the requirement that the grantor's duplicate certificate, upon which the title is founded, shall be produced before the register of deeds for cancellation; and that he shall also have before him the original certificate, likewise to be cancelled. This prerequisite condition was not complied with when the deed to Thomas was presented for registration. On the other hand, the conveyance of the land covered by certificate No. 194, by way of mortgage to the Fidelity and Surety Company, was effected in compliance with all legal requirements. As a consequence it must be held that the title acquired by the Fidelity and Surety Company is superior to that acquired by Samuel Thomas.

It follows that the judgments appealed from must be reversed; and the cause will be remanded to the court of origin with directions to proceed to the foreclosure of the plaintiff's mortgage in the manner prescribed by law. No special pronouncement will be made as to costs of either instance. So ordered.

Mapa, C. J., Araullo, Malcolm, and Villamor, JJ., concur.

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