

JOSEPHINE OROLA, MYRNA OROLA, ANGELINE OROLA, MANUEL OROLA, ANTONIO OROLA AND ALTHEA OROLA, PETITIONERS, VS. THE RURAL BANK OF PONTEVEDRA (CAPIZ), INC., EMILIO Q. OROLA, THE REG...

G.R. No. 158566. September 20, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 35724 reversing, on appeal, the Decision[2] of the Regional Trial Court (RTC) of Roxas City, Branch 15, in Civil Case No. V-5452.

On July 16, 1969, Trinidad Laserna Orola died intestate. She was survived by her husband Emilio Orola and their six minor children, namely, 10-year-old Antonio, 12-year-old Josephine, 16-year-old Manuel, and other siblings, Myrna, Angeline and Althea.

The estate consisted of property located in Pontevedra, Capiz. It included portions of Lots 1071 and 1088 (Lot 2-B) of the Pontevedra Cadastre, covered by Tax Declaration (T.D.) No. 7197[3] under the names of the heirs of Trinidad Orola; Lot 1088 (Lot 2) covered by T.D. No. 6901 under the name of Trinidad Orola; Lot 1071 and portions of Lot 1088 (Lot 2-A) of the same cadastre covered by T.D. No. 7196 under the names of the heirs of Trinidad Orola; and Lot 1050 of the same cadastre covered by T.D. No. 2623[4] under the name of Trinidad Orola. Portions of the property were devoted to the development and production of sugar. Some portions were riceland, while some parts of the property were swampy.[5]

Emilio Orola, who, in the meantime, had married anew, executed a waiver of all his rights and interests over the said property in favor of his children by Trinidad Laserna, namely, Josephine, Myrna, Angeline, Manuel, Antonio and Althea, all surnamed Orola.[6]

In 1973, Emilio Orola retired as cashier of the Philippine National Bank (PNB).[7] He filed a petition for his appointment as guardian over the persons and property of his minor children. The case was docketed as Special Proceedings (Sp. Proc.) No. V-3526. The petition was granted, and Emilio Orola was appointed guardian not only over the persons of his minor children but also over their property. On November 6, 1973, Emilio filed a petition with the RTC for the settlement of the estate of his deceased spouse, Trinidad Laserna, and his appointment as administrator of her estate. The RTC issued an order appointing Emilio Orola as administrator of the estate of his deceased spouse.

As such administrator of the estate, Emilio took possession of the said parcels of land. He opened an account in the name of the estate with the PNB. He embarked on a massive sugar production and, with prior approval of the court, negotiated with banking institutions for financing loans to purchase the required equipments. However, in 1976 and 1977, there was a sudden collapse of the sugar industry. Emilio Orola found it necessary to develop the

swampy portion of the estate for the production of fish. To finance the endeavor, he needed at least P600,000.00.

On September 11, 1980, Emilio Orola filed a motion[8] in Sp. Proc. No. V-3639 for authority to negotiate a P600,000.00 loan from the Central Bank of the Philippines for the full and complete development of the fishpond portion of the estate, and to transfer the sugar account of the estate from the PNB to the Republic Planters Bank (RPB).

On September 12, 1980, the court granted the motion of the administrator and authorized him to negotiate the loan through the Rural Bank of Capiz (Rural Bank of Pontevedra, Capiz) and to transfer the sugar account of the estate to the RPB in Roxas City.[9] Emilio then filed an application with the Rural Bank for a financing loan of P600,000.00. However, the bank informed him that the said loan would have to be processed by the Central Bank and that it would take some time. He was informed that there would be no need for the Central Bank to intervene if the loan of P600,000.00 would be broken down into three parts of P200,000.00, each to be applied for by three applicants to whom the property to be used as collateral would be leased by the estate. Emilio agreed and talked to his children, Josephine, Manuel and Antonio, about the bank's proposal. The three siblings agreed.[10] The Estate of Trinidad Laserna, through its administrator, Emilio, as lessor, and Josephine, Manuel and Antonio, all surnamed Orola, as lessees, executed separate contracts of lease over the aforesaid property of the estate. On September 20, 1982, the intestate estate court issued an Order approving the contracts.

However, it turned out that the lessees would not qualify for the loans; the bank required a lease period of at least 10 years from the time the court approved the same. On May 20, 1982, Emilio, Antonio, Manuel and Josephine Orola filed a Manifestation[11] with the intestate estate court, praying that its order be amended to state that the periods of the leases were to commence from court approval of the said contracts.

However, on December 15, 1982, the estate, through Emilio, as lessor, and Josephine, Antonio and Manuel Orola, executed separate Amended Contracts of Lease[12] covering the same property. The periods of the lease were extended to 12 years, to commence from their approval by the intestate estate court. The lessees were also authorized to negotiate loans for the development of the leased premises not to exceed P200,000.00, and to bind the leased premises by way of real estate mortgage as security therefor.

On December 15, 1982, Emilio filed an Ex Parte Motion[13] in the intestate estate court for the approval of the amended contracts of lease appended thereto. On December 17, 1982, Angeline, Myrna and Althea Orola filed their Joint Affidavit of Conformity[14] to the motion. On December 17, 1982, the court granted the motion of Emilio and approved the amended contracts of lease.[15] On December 20, 1982, the Rural Bank notified Emilio that the loan applications of his children had been approved.[16]

Antonio, Manuel and Josephine signed separate Promissory Notes[17] on March 21, 1983 in which they promised and bound themselves to pay their respective loans in 10 years in stated annual installments. Antonio Orola, for and in behalf of his father Emilio Orola, executed a Real Estate Mortgage over Lot 1088 as security for the payment of his loan.[18] Manuel Orola, also as attorney-in-fact of the administrator of the estate, likewise, executed a real estate mortgage in favor of the Rural Bank over the said lots as security for his loan.[19] Josephine Orola, as attorney-in-fact of the administrator of the estate, executed a separate real estate mortgage agreement over a portion of Lot 1088 and Lot 1071 as security for her loan.[20] However, the real estate mortgage contracts were not submitted to the guardianship and intestate estate courts for approval. Neither were Myrna, Angeline and Althea aware of the said loans.

The net proceeds of the loan, in the total amount of P582,000.00, were deposited in the Rural Bank on May 9, 1983 in Emilio's account.[21] From the said proceeds, the Rural Bank deducted the amount of P229,771.20, the accommodation loan Emilio secured from the Rural Bank.[22] As of September 9, 1983, the balance of the said

deposit amounted to only P4,292.79.[23] Emilio, thereafter, failed to pay the amortizations of the loans to the Rural Bank.[24]

This prompted the Rural Bank to write separate letters of demand to Josephine, Manuel and Antonio, demanding payment of the balance of their accounts within seven days from the receipt thereof, otherwise the Rural Bank would cause the extrajudicial foreclosure of the real estate mortgages.[25] Emilio Orola pleaded to the Rural Bank not to foreclose the mortgages. However, on June 15, 1985, the Rural Bank filed an application with the Ex-Officio Provincial Sheriff for the extrajudicial foreclosure of the real estate mortgages over Lots 1071 and 1088.[26] The lots were sold at public auction on April 14, 1986 with the Rural Bank as the winning bidder. The Ex-Officio Provincial Sheriff executed separate certificates of sale in favor of the Rural Bank.[27]

On September 1, 1987, the guardianship court terminated the guardianship and dismissed the case.[28] On September 21, 1987, Josephine, Myrna, Manuel and Antonio Orola executed a Deed of Acceptance of Waiver or Donation in which they accepted their father's waiver of his rights, interests and participation over their mother's estate.[29]

On October 1, 1987, Josephine Orola and her siblings, Myrna, Angeline, Manuel, Antonio and Althea, filed a Complaint against the Rural Bank, their father Emilio and the Ex-Officio Provincial Sheriff for the nullification of the Promissory Notes and Real Estate Mortgages executed by Josephine, Manuel and Antonio Orola, and the sale of the property subject of the said deed at public auction. They alleged therein that they became the sole owners of Lots 1088 and 1071 when their father executed a waiver of his rights over the said lots in their favor. They also alleged that the real estate mortgage contracts were null and void because the same were never submitted to and approved by the RTC in Sp. Proc. Nos. V-3526 and V-3639. Moreover, they were hoodwinked by their father into signing the contracts of lease and amended contracts of lease, promissory notes and deeds of real estate mortgages as security for the P600,000.00 loan on the assurance that they would be benefited therefrom; moreover, they did not receive the proceeds of the said loans. As such, the extrajudicial foreclosure of the real estate mortgages and the sale of the property covered by the said deeds were null and void. The plaintiffs prayed that:

(1) A Temporary Restraining Order be issued restraining in the meantime the defendant Ex-Officio Provincial Sheriff from executing the Sheriff's Certificates of Sales arising out of Case No. 33 (1985), Case No. 34 (1985) and Case No. 36 (1985), all of the Office of the Provincial Sheriff.

(2) After hearing, a writ of preliminary injunction be issued against the defendant Provincial Sheriff for the same purpose stated above, and that the said Preliminary Injunction be made permanent after trial on the merits.

(3) After trial, a Judgment be rendered -

(a) Declaring the contracts of loan and/or Promissory Notes allegedly executed by plaintiffs Josephine, Manuel and Antonio Orola in favor of the defendant Rural Bank of Pontevedra (Capiz), Inc. null and void ab initio.

(b) Declaring the real estate mortgages purportedly signed by the same plaintiffs Josephine, Manuel and Antonio Orola in favor of defendant Rural Bank of Pontevedra (Capiz), Inc. null and void ab initio.

(c) Ordering defendant Emilio Q. Orola and defendant Rural Bank of Pontevedra (Capiz), Inc., jointly and severally, to pay the plaintiffs moral damages in the sum of P600,000.00, actual damages in the sum of P10,000.00, as and for attorney's fees in the amount of P65,000.00, as exemplary damages in the sum of P10,000.00, and to pay the costs of this suit.

(d) Ordering the Register of Deeds for the Province of Capiz to cancel the registration of the real estate mortgages illegally made under Section 113 of Presidential Decree No. 1529 affecting Lots Nos. 1088 and 1050 of the Cadastral Survey of Pontevedra, Capiz.

The plaintiffs also pray for such other reliefs and remedies that may be considered just and equitable under the premises.[30]

In its answer to the complaint, Rural Bank averred that the RTC in Sp. Proc. No. V-3639 authorized and even approved the amended contracts of sale executed by Antonio, Manuel and Josephine Orola and the defendant Emilio Orola. It further averred that the plaintiffs had agreed to the execution of the mortgages of the property subject of the said deeds, and conformed to the said amended contracts before the RTC in the intestate estate proceedings approved the same; they were also notified of the balance of their account, and of the extrajudicial foreclosure of the real estate mortgages, and the subsequent sale of the property covered by the said mortgages at public auction after they refused to pay their account despite demands. As such, the plaintiffs were estopped from assailing the real estate mortgages and the extrajudicial foreclosure thereof and the sale of the lots covered by the said deeds at public auction. Rural Bank prayed that:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that, after due notice and hearing, a judgment be rendered in favor of defendant bank dismissing the plaintiffs' complaint and ordering the plaintiffs to pay defendant bank the following:

- As and for attorney's fees in the amount of P50,000.00;
- As moral, compensatory and exemplary damages, an amount to be fixed by this Honorable Court;
- The costs of this suit.

Herein defendant bank, likewise, prays that the plaintiffs petition for the Issuance of a Temporary Restraining Order against the defendant Ex-Officio Provincial Sheriff restraining him from executing the Certificates of Sheriff Sale arising out of Case No. 33 (1985), Case No. 34 (1985) and Case No. 36 (1985), all of the Office of the Provincial Sheriff of Capiz be denied for obvious lack of merit.

Herein defendant further prays that the extra-judicial foreclosure of the Real Estate Mortgages recorded under Republic Act 3344 be confirmed and declared binding and valid affecting the Original Certificates of Title Nos. RO-801 (17658) and RO-802 (17682) covering the mortgaged Lots Nos. 1088 and 1071 of the Cadastral Survey of Capiz.

Herein defendant finally prays for such other reliefs or remedies which are just and equitable in the premises.[31]

In his answer to the complaint, Emilio Orola admitted that the guardianship proceedings terminated on September 1, 1987 but specifically denied the allegations in the complaint that the plaintiffs were the absolute owners of the lots subject matter thereof. He alleged that he executed the Waiver of Right on October 26, 1976 only because his brother and sister-in-law required him to do so as a condition to their signing the partition agreement, with their assurance that the said waiver would take effect only after his death. He further claimed that the plaintiffs were aware of this because they accepted his waiver only on September 21, 1987 after they became of age. Moreover, the plaintiffs had agreed to the execution of the amended contracts of lease to facilitate the early release of the loans as required by the Rural Bank. He further alleged that the proceeds of the loans were used for the development of the estate; the non-submission of the real estate mortgages to the intestate estate and guardianship courts for approval was due to the fault of Rural Bank; and his failure to pay the amortizations of the loan was due to force majeure, namely, typhoon Undang.

On December 29, 1989, the Rural Bank presented the Real Estate Mortgage in the Office of the Register of Deeds.[32]

On April 19, 1991, the RTC rendered judgment in favor of the plaintiffs. The fallo of the decision reads:

IN VIEW OF THE CONSIDERATIONS, judgment is rendered:

- Declaring the loans of Josephine Orola, Antonio Orola, Manuel Orola, all on March 21, 1983, with the defendant, Rural Bank, at P200,000 each or a total of P600,000, null and void;

- Declaring that the real estate mortgages of [the] above three (3) plaintiffs on (a) Lot No. 1071-part and Lot No. 1088-part under Tax Declaration No. 7196 in the name of [the] Heirs of Trinidad Laserna Orola to secure the loan by Josephine Orola; (b) Lot No. 1088 known as Lot No. 2-B of the parcellary plan under Tax Declaration No. 7197 in the name of the Heirs of Trinidad Orola and Lot No. 1050 under Tax Declaration No. 2623 in the name of Trinidad Orola to secure the loan by Antonio Orola; and (c) Lot No. 1088 under Tax Declaration No. 6901 in the name of Trinidad Laserna Orola to secure the loan by Manuel Orola, all as Attorney-in-fact of defendant Emilio Orola, administrator, null and void;

Both (Nos. 1 and 2) for failure to comply with the mandatory requirements of Section 7, Rule 89, Revised Rules of Court;

- Ordering the Office of the Registry of Land Titles and Deeds, Province of Capiz, to cancel its registration of the real estate mortgages affecting [the] above parcels of land.

Claims of damages and attorneys fees as well as counterclaims are denied.

Costs against the defendants, pro indiviso.[33]

The trial court held that although the intestate estate court authorized Emilio to negotiate a loan of P600,000.00 with Rural Bank, he was not authorized to mortgage the real property of the estate to the Rural Bank. The court ruled that the September 12, 1980 Order of the intestate estate court was null and void because the motion of the administrator for authority to negotiate a loan with the Rural Bank was made ex parte, that is, without notifying the plaintiffs who were the heirs of the deceased. The court also held that the plaintiffs were not estopped from assailing the real estate mortgage contracts, the same being null and void. It also declared that the issue of whether or not the plaintiffs were the co-owners of the property should be ventilated with the proper RTC in the exercise of its general jurisdiction in an ordinary action for the said purpose.

Rural Bank's motion for reconsideration of the decision was denied by the trial court. It then appealed the decision to the CA, where it alleged that:

As to Assignment on Error No. I and II

A – In ruling on the nullity of the loans and mortgages in question, the lower court confined itself to the order of the intestate court, dated December 12, 1980, totally ignoring the subsequent order dated December 17, 1982 (Exhs. 36 & 37) which granted the authority to encumber the estate in the manner required by the defendant Rural Bank of Pontevedra.

B – The non-presentation of the priorly authorized mortgages in question in court after their execution, does not nullify said mortgages, as what is required by Sec. 7, Rule 89 is only prior approval by the intestate court.

As to Assignment of Error No. III

Estoppel [precludes] a party from [repudiating] an obligation voluntarily assumed after having accepted benefits therefrom.

As to Assignment of Error No. IV

Because of their baseless complaint, defendant-appellant was unnecessarily dragged into this litigation causing defendant-appellant damages.[34]

The appellant bank averred that the amended contracts of lease, which contained provisions requiring the intestate estate court's approval, were approved by the intestate estate court and conformed to by the other heirs of the deceased. The bank posited that the court a quo had no jurisdiction to nullify the order of the estate court, which was co-equal in rank with the estate court in approving the amended contracts of lease. It further alleged that the administrator of the estate is not required under Section 7, Rule 89 of the Rules of Court to secure prior authority to mortgage the real properties or otherwise encumber the same. Rural Bank alleged that the appellees were estopped from assailing the real estate mortgages of the property after having been benefited by the P600,000.00 loan.

The appellees failed to file their brief. On October 18, 2002, the CA rendered a Decision^[35] granting the appeal and reversing the appealed decision.

The appellate court ruled that the intestate estate court's approval of the amended contracts of lease carried with it the approval of the real estate mortgages executed by Emilio Orola in favor of the Rural Bank. Angeline, Myrna and Althea even conformed to the amended contracts of lease; hence, were estopped from assailing them, as well as the real estate mortgage contracts.

After the appellate court denied their motion for reconsideration of the decision, the Orola siblings, now the petitioners, filed the instant petition for review on certiorari with this Court, alleging that:

-I-

THE SUBJECT MORTGAGES CONSTITUTED OVER THE REAL ESTATE PROPERTIES OF PETITIONERS-APPELLEES UNDER SECTION 7, RULE 89 OF THE RULES OF COURT ARE VOID FOR NON-COMPLIANCE WITH THE MANDATORY REGULATIONS (SIC) OF THE SAID PROVISION.

-II-

ASSUMING ARGUENDO SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF RULE 89, SECTION 7, THE SUBJECT MORTGAGES ARE STILL VOID FOR LACK OF AUTHORITY FROM THE PROBATE COURT, HAVING BEEN CONSTITUTED BY PERSONS OTHER THAN THE ADMINISTRATOR OF THE ESTATE OF TRINIDAD LASERNA OROLA.^[36]

The petitioners reiterate their argument that respondent Emilio Orola, then administrator of the estate, failed to comply with Section 7, Rule 89 of the Rules of Court. They aver that this provision is mandatory in nature, including the fixing of a time and place for hearing of the motion for the approval of the amended contracts of lease. They point out that respondent Orola failed to file a motion for the approval of the real estate mortgages. The petitioners insist that even if it is assumed that the December 17, 1982 Order of the intestate estate court approving the amended contracts of lease authorized the constitution of real estate mortgages over the real property of the estate, such order is void, as it authorized petitioners Manuel, Antonio and Josephine Orola, and not the respondent Emilio Orola, to mortgage the said property. They insist that they are not estopped from assailing a void order issued by the intestate estate court.

Respondent Rural Bank insists that the petitioners had been benefited by the loans granted to them; hence, are estopped from assailing the real estate mortgage contracts. Respondent Orola, for his part, avers that the one-half undivided portion of the property subject of the real estate mortgages was the exclusive property of the deceased, and partly the conjugal property of the respondent and the deceased. Moreover, respondent Orola's share in the conjugal property was not the subject of the intestate case, as it was not included as part of the property given as security for the loans of the petitioners-mortgagees.

The petition is meritorious.

Section 2, Rule 89 of the Rules of Court provides that, upon application of the administrator and on written notice to the heirs, the court may authorize the administrator to mortgage so much as may be necessary of the real estate for the expenses of the administrator, or if it clearly appears that such mortgage would be beneficial to the persons interested:

Sec. 2. When court may authorize sale, mortgage, or other encumbrance of realty to pay debts and legacies through personality not exhausted. – When the personal estate of the deceased is not sufficient to pay the debts, expenses of administration, and legacies, or where the sale of such personal estate may injure the business or other interests of those interested in the estate, and where a testator has not, otherwise, made sufficient provision for the payment of such debts, expenses, and legacies, the court, on the application of the executor or administrator and on written notice to the heirs, devisees, and legatees residing in the Philippines, may authorize the executor or administrator to sell, mortgage, or otherwise, encumber so much as may be necessary of the real estate, in lieu of personal estate, for the purpose of paying such debts, expenses, and legacies, if it clearly appears that such sale, mortgage, or encumbrance would be beneficial to the persons interested; and if a part cannot be sold, mortgaged, or otherwise encumbered without injury to those interested in the remainder, the authority may be for the sale, mortgage, or other encumbrance of the whole of such real estate, or so much thereof as is necessary or beneficial under the circumstances.

Section 7 of Rule 89 provides the rules to obtain court approval for such mortgage:

- (a) The executor or administrator shall file a written petition setting forth the debts due from the deceased, the expenses of administration, the legacies, the value of the personal estate, the situation of the estate to be sold, mortgaged, or otherwise encumbered, and such other facts as show that the sale, mortgage, or other encumbrance is necessary or beneficial;
- (b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;
- (c) If the court requires it, the executor or administrator shall give an additional bond, in such sum as the court directs, conditioned that such executor or administrator will account for the proceeds of the sale, mortgage, or other encumbrance;
- (d) If the requirements in the preceding subdivisions of this section have been complied with, the court, by order stating such compliance, may authorize the executor or administrator to sell, mortgage, or otherwise encumber, in proper cases, such part of the estate as is deemed necessary, and in case of sale the court may authorize it to be public or private, as would be most beneficial to all parties concerned. The executor or administrator shall be furnished with a certified copy of such order;
- (e) If the estate is to be sold at auction, the mode of giving notice of the time and place of the sale shall be governed by the provisions concerning notice of execution sale;
- (f) There shall be recorded in the registry of deeds of the province in which the real estate thus sold, mortgaged, or otherwise encumbered is situated, a certified copy of the order of the court, together with the deed of the executor or administrator for such real estate, which shall be as valid as if the deed had been executed by the deceased in his lifetime.

After the real estate mortgage is executed in accordance with the foregoing regulations, the said deed must be submitted for the consideration and approval or disapproval of the court.[37]

The records show that respondent Emilio Orola notified the petitioners of his motion for the approval of the

amended contracts of lease. Although the motion was ex parte, nonetheless, petitioners Angeline, Myrna and Althea Orola filed their Joint Affidavit of Conformity, in which they declared that:

- That on December 15, 1982, the administrator, thru counsel, filed an ex parte motion for the admission and approval of the amended contracts of lease in favor of our brothers and sister changing the term from ten (10) to twelve (12) years, copy of the amended contracts of lease [were] shown to us;
- That we have no objection and we voluntarily conform to the amendment of the term from ten (10) to twelve (12) years and freely give our consent to having the Lessees execute a real estate mortgage over the leased property in favor of the bank just to be able to avail with the CB: IBRD financing loan to develop the property;
- That we are jointly executing this affidavit for the purpose of facilitating the immediate admission and approval of the amended contracts of lease as prayed for in the ex parte motion dated December 5, 1982.[38]

However, the Court agrees with the petitioners' contention that respondent Orola failed to secure an order from the intestate estate court authorizing him to mortgage the subject lots and execute a real estate mortgage contract in favor of respondent Rural Bank. What the intestate estate court approved in its December 17, 1982 Order was the authority incorporated in the amended contracts of lease respondent Orola gave to petitioners Josephine, Manuel and Antonio Orola so that the said lots could be mortgaged to the respondent Rural Bank as security for the P600,000.00 loan under their respective names. In fine, the intestate estate court authorized the petitioners, not respondent Orola, to mortgage the said lots to respondent Rural Bank. Moreover, under Section 7 of Rule 89 of the Rules of Court, only the executor or administrator of the estate may be authorized by the intestate estate court to mortgage real estate belonging to the estate; hence, the order of the estate court authorizing the petitioners to mortgage the realty of the estate to the respondent Rural Bank is a nullity.

The respondents must have realized that the order of the intestate estate court authorizing petitioners Manuel, Antonio and Josephine Orola to mortgage the lots was void because respondent Emilio Orola caused the real estate mortgage contracts in favor of respondent Rural Bank to be executed by his children, petitioners Josephine, Manuel and Antonio Orola, "acting as attorneys-in-fact of the administrator of the estate." However, the estate court had not appointed petitioners Antonio, Josephine and Manuel Orola as attorneys-in-fact of respondent Emilio Orola empowered to execute the said contracts. Hence, they had no authority to execute the said Real Estate Mortgage Contracts for and in behalf of respondent Orola, in the latter's capacity as administrator of the estate.

Worse, respondent Orola failed to submit the real estate mortgage contracts to the intestate estate court for its consideration and approval. To give approval means to confirm, ratify, or to consent to some act or thing done by another.[39] Unless and until the said contracts are approved by the intestate estate court, the same cannot have any binding effect upon the estate; nor serve as basis for any action against the estate and against the parcels of land described in the said contracts belonging to it.[40]

It bears stressing that respondent Orola had no right or authority to mortgage the realty belonging to the estate. He derived his authority from the order of the estate court which had jurisdiction to authorize the real estate mortgage thereof under such terms and conditions and upon proper application. Any mortgage of realty of the estate without the appropriate authority of the estate court has no legal support and is void.[41] The purchaser at public auction acquires no title over the realty.[42] The real estate mortgage contracts, as well as the extrajudicial foreclosure thereof and the sale of the property described therein at public auction, can thus be attacked directly and collaterally.[43]

Contrary to the contention of respondent Rural Bank, the petitioners were not estopped from assailing the real estate mortgage contracts, the extrajudicial foreclosure thereof and the sale of the property to respondent Rural

Bank.

Although the records show that petitioners Josephine, Manuel and Antonio Orola received the proceeds of the loan from respondent Rural Bank, the amount was deposited by respondent Emilio Orola in his savings account with respondent Rural Bank. He was obliged to deposit the said amount in the estate's account with the Republic Planters Bank, as ordered by the intestate estate court. Worse, respondent Rural Bank applied P229,771.20 of the loan proceeds to liquidate the accommodation loan it granted to respondent Emilio Orola. There is no showing in the records that the intestate estate court ever authorized the use of the proceeds of the loan to pay respondent Emilio Orola's accommodation loan. The loan proceeds were to be used to develop property belonging to the estate into a fishpond from which income could be generated. Of the net proceeds of the P582,000.00 loan, only P4,292.79 remained as of September 9, 1983. Respondent Emilio Orola failed to pay the amortization of the loan for the respondent Rural Bank of the estate.

Had the real estate mortgage contracts been submitted to the intestate estate court for consideration and approval after proper notice to the petitioners, the court would have been apprised of the terms and conditions contained therein, and that about one-half of the loan would be used to pay the accommodation loan of respondent Emilio Orola.

Petitioners Manuel, Josephine and Antonio Orola executed the amended contracts of lease, the promissory notes and the real estate mortgages upon the prodding of their father, respondent Emilio Orola, and upon the suggestion of respondent Rural Bank, solely to facilitate the speedy approval of the loan of the estate, which was to be the ultimate beneficiary thereof. The petitioners acted on the belief that the loan would be used to develop the swampy portion of the realty into an income-generating fishpond, impervious of the fact that almost one-half of the proceeds of the loan had been used to pay the accommodation loan of respondent Emilio Orola.

The claim of respondent Emilio Orola that part of the property used as collateral for the loan was part of his and his deceased wife's conjugal property, and that the waiver he executed was to take effect only upon his death, is belied by the records. Indeed, in his Waiver of Rights dated October 26, 1976, respondent Emilio Orola declared that:

- That during the lifetime of my first wife, Trinidad Laserna, we have acquired property by purchase from Mr. Manuel Laserna, in co-ownership with Pedro Laserna, Dolores Deocampo, Jesus Laserna and Emiliana Laserna affecting Lots Nos. 1070, 1071, 1074, 1075, 1088, 1050 & 1051, all of Pontevedra Cadastre;
- That the said [properties] mentioned above are still under co-ownership, pro indiviso, between and among the Vendees whose names are mentioned above;
- That during the marital relations between me and my deceased wife, Trinidad Laserna, we have six (6) children, namely, Josephine, Myrna, Angeline, Manuel, Antonio and Althea, all surnamed Orola;
- That the co-owners have decided to terminate the co-ownership over the above-mentioned properties of which the aforementioned children of the spouses, Emilio Orola and Trinidad Laserna, became co-owners thereof in representation of their deceased mother, Trinidad Laserna, by operation of law and the herein undersigned desires to give protection to his children of the first marriage which are named above.

NOW, THEREFORE, for and in consideration of the love, affection and mutual agreements, I, EMILIO Q. OROLA, by these presents, do hereby waive and relinquish all my shares, interests and participations over all the above-mentioned properties in favor of my six (6) children of the first marriage, namely, Josephine, Myrna, Angeline, Manuel, Antonio and Althea.

It is understood that, upon the registration of the project of partition which the co-owners will present that the shares and participations of the undersigned shall be consolidated in the names of the children mentioned

above in equal right and participation.[44]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals are REVERSED AND SET ASIDE. The Decision of the Regional Trial Court is REINSTATED. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Mercedes Gozo-Dadole and Sergio L. Pestaño, concurring; Rollo, pp. 28-38.

[2] Penned by Judge David A. Alfeche, Jr.; Rollo, pp. 44-53.

[3] Exhibit "9."

[4] Exhibit "8."

[5] TSN, 26 October 1989, pp. 47-49.

[6] Exhibit "6-A-1."

[7] TSN, 4 September 1990, p. 2.

[8] Exhibit "8."

[9] Exhibit "29."

[10] TSN, 25 July 1990, p. 35.

[11] Exhibit "27."

[12] Exhibits "32," "33" and "34."

[13] Exhibit "30."

[14] Exhibit "35."

[15] Exhibit "37."

[16] Exhibit "31."

[17] Exhibits "5," "7" and "15."

[18] Exhibit "1."

[19] Exhibit "3."

[20] Exhibit "14."

[21] Exhibit "7."

[22] TSN, 25 July 1990, p. 61.

[23] Exhibit "18."

[24] TSN, 25 July 1990, p. 79.

[25] Exhibits "18," "19" and "20."

[26] Exhibits "21" to "23."

[27] Exhibits "24," "25" and "26."

[28] Exhibit "F."

[29] Ibid.

[30] Records, pp. 9-11.

[31] Records, pp. 46-47.

[32] TSN, 13 March 1990, p. 19.

[33] Records, pp. 354-355.

[34] CA Rollo, p. 65.

[35] Rollo, pp. 28-38.

[36] Rollo, p. 17.

[37] Regalado, Remedial Law Compendum, Vol. II, 9th Revised Ed., p. 95.

[38] Exhibit "35-A."

[39] Ramos v. Court of Appeals, G.R. No. 42108, 29 December 1989, 180 SCRA 635.

[40] Halili v. Lloret, 95 Phil. 78 (1954).

[41] Williams v. Williams, 497 S.W.2d 415 (1973); Crumpacker v. Howes, 222 N.E.2d 296 (1966).

[42] Andrews v. Koch, 702 S.W.2d 584 (1986).

[43] Ibid.

[44] Exhibit "6-A-1."

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