

PACIENCIA B. SALITA, PLAINTIFF AND APPELLANT, VS. EDUARDO CALLEJA, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 17314. June 30, 1961*

Ponente: BARRERA, J.

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This is a case for injunction^[1] filed by plaintiff-appellant Paciencia B. Salita to prevent the sale by the Sheriff of Manila of a house in satisfaction of a judgment for a sum of money obtained by defendant-appellee Eduardo Calleja in another case against one Francisco Domingo, admittedly the original owner of the said house. In this other case, Calleja, as plaintiff therein, secured first a preliminary writ of attachment which was levied on January 7, 1954 upon the house in question. But as the house was constructed on a lot purchased by Domingo's wife, Mercedes Domingo, from Realty Investments, Inc. (represented by C. M. Hoskins & Co., Inc.) on an installment plan, and the price thereof had not yet been paid in full and, therefore, the certificate of title covering the land was still in the name of the vendor, the Notice of Attachment addressed to the Register of Deeds of Manila specifically stated that "the land on which this house stands has not yet been fully paid for, and as per investigation and information of the plaintiff (herein appellee Calleja), the house has not been registered under either Act 496 or the Spanish Mortgage Law. It is desired therefore, that this Notice be registered under Act 3344." Accordingly, the attachment was entered upon the corresponding book, but not annotated on the certificate of title covering the land, which did not mention any improvement.

Five months later, or on June 3, 1954, Realty Investments, Inc. conveyed the ownership of said lot to Mercedes Domingo, with the marital consent of her husband Francisco Domingo. However, since she still owed the company the sum of P4,566.20 the transfer was by means of an instrument of sale with mortgage on the lot and house and other improvements thereon, in favor of the vendor company. On the same date, TCT No. 25957 in the name of Realty Investments, Inc. was cancelled and, in lieu thereof, TCT No. 36372 was issued in the name of Mercedes Domingo, with the company's aforesaid mortgage duly annotated on the new title. Outside of what was said in the deed of mortgage, this new title (TCT No. 36372) likewise makes no mention whatsoever of a house or other improvement thereon, nor of the attachment.

On February 3, 1955, Mercedes Domingo, with the marital consent of her husband Francisco Domingo, who had knowledge of the existing attachment on the house in question, sold both lot and house to herein plaintiff Paciencia B. Salita, as evidenced by a deed of sale with assumption (by Salita) of the aforementioned mortgage in favor of Realty Investments, Inc. Said instrument was presented for registration on February 5, 1955, by virtue of which, TCT No. 36372 in the name of Mercedes Domingo was cancelled and a new title (TCT No. 38401) was issued in the name of plaintiff Salita, but with the annotation thereon of the mortgage in favor of Realty Investments, Inc. Again, no mention or annotation was made on said new title of the house in question, nor of the attachment thereon.

On June 23, 1955, said lot and house were mortgaged by plaintiff Salita to the Rehabilitation Finance Corporation (RFC) as security for a loan of P10,000.00. Apparently, part of the proceeds of this loan was used to pay the

P4,566.20 which Mercedes Domingo still owed Realty Investments, Inc. as price of the sale of the lot and which plaintiff Salita assumed to pay on February 3, 1955, for the company's lien on her (Salita's) title was cancelled on July 2, 1955. On December 16, 1955, plaintiff Salita obtained an additional loan of P1,000.00 from the RFC upon the same property.

Meanwhile, on February 14, 1955, Calleja obtained judgment in that other case against Francisco Domingo, which was affirmed by the Court of Appeals on April 27, 1956. On October 13, 1956, Calleja obtained a writ of execution and required the Sheriff to satisfy the judgment by selling the attached house in question. Salita, thereupon, filed a third-party claim with the Sheriff claiming that the house in question was bought by her on February 3, 1955 including the lot on which it stands. To indemnify the Sheriff against any damage which the execution sale of the house may cause, Calleja filed a bond of P15,000.00.

In order to prevent the execution sale of said house and lot which was scheduled for December 27, 1956 at 10:00 A. M., plaintiff Salita filed the instant case (Civil Case No. 31434) for Injunction and Damages against defendants Calleja and Sheriff of Manila. On December 26, 1956, the court issued a writ of preliminary injunction restraining defendant Sheriff of Manila from proceeding with the execution sale.

It is the contention of plaintiff Salita that when she purchased the house and the lot on February 3, 1955, the vendor Mercedes Domingo had a clean title (TCT No. 36372) except for the mortgage over the said property (both land and house) in favor of Realty Investments, Inc. which the purchaser expressly recognized and assumed, and that upon payment of the mortgage indebtedness, she (Salita) became the absolute owner of the entire property, free of all liens and incumbrances.

On the other hand, defendant Calleja claims that since the certificate of title covering the land did not mention any improvement and since the house is real estate in nature and is not registered under Act 496 or the Spanish Mortgage Law, the registration of his attachment on January 7, 1954 under Act No. 3344 is effective and binding upon all subsequent claimants of said house.

The trial court upheld defendant Calleja's contention, dismissed plaintiff Salita's complaint and sentenced the latter to pay defendant P500.00 as attorney's fees on the latter's counterclaim. Hence, this appeal by Salita.

We find the appeal meritorious. Act No. 3344 (Sec. 194, Rev. Adm. Code) pursuant to which defendant Calleja's notice of attachment was registered expressly requires that the register book shall contain, among other things, "the character of the contract and its conditions, the nature of each piece of land (unregistered) and its own improvements only, and not any other kind of real estate or properties, its situation, boundaries, area in square meters, whether or not the boundaries of the property are visible on the land by means of monuments or otherwise, and in the affirmative case, in what they consist; the permanent improvements existing in the property * * *." From this provision, it seems clear that in order to be registerable under Act No. 3344, the instrument must refer only to unregistered land and its own improvements only, and not any other kind of real estate or properties. The words "own" and "only" used in the language of the law when referring to improvements, clearly mean improvements on unregistered lands alone. In fine, the deed cannot refer to improvements or buildings on lands registered under the Torrens system, or under the Spanish Mortgage Law. To hold otherwise, would result in the anomalous situation of two registrations, one under Act 496 with respect to unimproved land, and another, under Act 3344 for improvements subsequently introduced on the same land. Since, in the case at bar, the attachment refers to a house erected on registered land, it is evident that the registration thereof under Act 3344 was invalid and of no legal or binding effect on third persons, or more particularly, on plaintiff Salita.

Furthermore, it is not disputed that in the notice of attachment of real estate (Exh. 6-Calleja) dated January 7, 1954, it was therein stated that the house in question was "erected upon land bought from C. M. Hoskins & Co.,

Inc. on the installment plan," and that said house "has not been registered under either Act 496 or the Spanish Mortgage Law." Knowing that the land on which the house was built was bought from C. M. Hoskins & Co., Inc., defendant Calleja should have investigated whether the land was duly titled and, finding that the same was titled, as in fact it was in the name of Realty Investments, Inc. (TCT No. 25957), he should have taken steps to perfect his lien on said house, by filing a petition for annotation of said improvement as well as the registration of his lien thereon, on the title of the land, pursuant to Section 112 of Act No. 496 (Land Registration Act) which, insofar as pertinent, provides:

"SEC. 112. * * * Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or any duplicate certificate; * * *." (Italics supplied.)

Having failed to perfect his lien on the house in question in the manner indicated, he cannot enforce it against plaintiff Salita, purchaser in good faith of the house and the lot on which it stands. The fact that the clean title acquired by Salita did not mention the improvement, does not preclude the acquisition thereof with the land described in the title. This is so, because unless it otherwise appears on the title itself, the same includes not only the land described therein, but also all improvements existing on said land. (Art. 2127, Civil Code; Philippine Sugar Estates Development Co. vs. Camps, 36 Phil., 85; Bischoff vs. Pomer, et al., 12 Phil., 690; Cu Unjieng e Hijos vs. Mabalacat Sugar Co., 58 Phil., 439; see also Roxas vs. Enriquez, 29 Phil., 31; Art. 440, Civil Code.)

Lastly, it appears that the sale made by Mercedes Domingo with the consent of her husband Francisco Domingo to plaintiff Salita on February 3, 1955, included both the house and lot in question. Likewise, the mortgage in favor of Realty Investments, Inc. duly annotated on Domingo's certificate of title and which plaintiff Salita had assumed and later paid, included both house and lot. In other words, plaintiff-appellant Salita actually parted with her money to acquire the house in question, while defendant-appellee Calleja merely seeks security for an otherwise unsecured pre-existing claim.

For all the foregoing, the decision appealed from is hereby reversed and set aside, without prejudice to any action which defendant-appellee Calleja may take to enforce his judgment against Francisco Domingo. The injunction previously issued by the trial court which was dissolved after judgment for defendant Calleja was entered below, is revived and made permanent. Without pronouncement as to costs. So ordered.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

[1] Originally appealed to the Court of Appeals, but certified to us on March 24, 1960, on the ground that it involves only questions of law.

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