

PEDRO NATAÑO, ET AL., PLAINTIFFS AND APPELLANTS, VS. SENEN ESTEBAN, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 22034. October 28, 1966*

Ponente: SANCHEZ, J.

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Suit to quiet title to land registered under Torrens system.[1] Here are the material averments of the complaint: In February, 1959, plaintiff Pedro Nataño discovered that his land covered by Original Certificate of Title No. 1840 (Camarines Sur) had been transferred by means of a forged and fictitious deed of sale to defendant Senen Esteban in whose name Transfer Certificate of Title No. 59 was issued. Senen Esteban in bad faith sold the land to Ramona Dagle, his mother-in-law, who knew of Esteban's fraudulent acquisition thereof. Esteban's Torrens title No. 59 was thus cancelled and in lieu thereof Transfer Certificate of Title No. 80 was issued to Ramona Dagle. In furtherance of the fraudulent scheme, Juana Aquino, wife of Senen Esteban—by virtue of a special power of attorney executed in her favor by Ramona Dagle—mortgaged the property to the Rehabilitation Finance Corporation,[2] now Development Bank of the Philippines,[3] for P6,000.00, which remained unpaid.

Plaintiffs, on January 11, 1960, filed a notice of lis pendens with the Register of Deeds.

Defendants' answer, inter alia, sets up the affirmative defense that plaintiffs have no cause of action against them.

At the start of the trial on August 8, 1960, defendants moved for a preliminary hearing on their affirmative defense of lack of cause of action. Ground: RFC (now DBP), as mortgagee, became an innocent purchaser for value. Preliminary hearing was had.

On August 12, 1960, the court issued an order declaring that the DBP, "although only a mortgagee, is in contemplation of law a purchaser for value and in good faith", and dismissing the complaint without costs.

Copy of the order of August 12, 1960 was served on plaintiffs' counsel in open court only on September 5, 1960.

In the interim, i. e., between August 12 and September 5, 1960, the following events took place:

On August 18, 1960, that is, prior to the service on plaintiff's counsel of the dismissal order of August 12, plaintiffs moved to amend their complaint to delete therefrom reference to the mortgage with the RFC, now DBP. The amended complaint was appended to the motion. Reason for the amendment is that on August 10, 1960—2 days after the preliminary hearing—plaintiffs discovered in the Office of the Register of Deeds of Camarines Sur that the RFC mortgage had been released.

On August 23, 1960, the court rejected the amended complaint upon the ground that the complaint sought to be amended thereby had already been dismissed by the court's order of August 12.

On August 26, 1960, defendants filed an ex-parte petition for the cancellation of the notice of lis pendens.

On August 29, 1960, the court granted the foregoing motion and ordered the Register of Deeds "to cancel the

notice of lis pendens on Transfer Certificate of Title No. 80".

On August 31, 1960, plaintiffs' counsel filed a manifestation admitting knowledge of the court's order of August 23, 1960 which denied the motion to amend the complaint because the latter had already been dismissed, but expressing their concern over the fact that up to then they had not yet been furnished a copy of the court's order dismissal.

Came September 6, 1960. Counsel for plaintiffs having received on September 5 the dismissal order—moved to reconsider the court orders of August 12, August 23, and August 29. Counsel also prayed that the case be set for hearing on the merits.

On September 20, 1960, the court denied the motion for reconsideration on the ground that it "does not satisfy the requirements of Rule 37 of the Rules of Court".

Plaintiffs appealed to this Court. But, the record was mistakenly elevated to the Court of Appeals which certified the case to us.

1. First under attack is the court's order of August 12, 1960 dismissing plaintiffs' case for lack of cause of action. As heretofore adverted to, the land was mortgaged to the RFC, now DBP. The trial court expressed the view that since the DBP is "a purchaser for value and in good faith", plaintiffs are barred from recovery of title from defendants. Note that the DBP is not a party to this action.

By Section 55 of the Land Registration Act, the registered owner deprived of title by fraud may pursue his legal and equitable remedies against the parties to such fraud, subject to the "rights of any innocent holder for value of a certificate of title". Nothing in the law would suggest that where the land had been mortgaged by the fraudulent transferee, such fact would stop the suit by the legitimate owner against the latter, to recover title to the land. Of course, the lawful registered owner must respect the lien thereon acquired by the mortgagee in good faith and for value.[4] The land Registration Act has never been intended as a shield to insulate the fraudulent transferee from his malevolent acts. As this Court puts it, "The Land Registration Act was never designed to serve as a shield for fraud, and we do not think that the Legislature intended that a person obtaining a certificate of title by fraud should be allowed to escape the consequences of his own fraud by mortgaging the land to an innocent third party for a fraction of its value".[5]

2. On top of this is plaintiffs' averment—in the motion to amend the complaint—not traversed by defendants, that at the time that the latter procured the order dismissing the case, the mortgage to the RFC (DBP) had already been released and had been so as early as January 22, 1960.[6] The certification of the Register of Deed, Annex A of the amended complaint, prima facie attests to this fact. Whether a man has paid his debt or not is a fact peculiarly within his knowledge. At the preliminary hearing of August 8, 1960 defendants, in all candor, should have informed the court that the RFC mortgage was already nonexistent. They did not. They fed the court with representations that that mortgage was still in force. In this posture, defendants cannot escape from a charge of bad faith in inducing the court to issue, the questioned order of August 12, 1960.

3. We deplore the haste with which the lower court granted the ex parte motion to cancel the notice of lis pendens.

Lis pendens has been conceived to protect the real rights of the party causing the registration thereof. With the lis pendens duly recorded, he could rest secure that he would not lose the property or any part of it. For, notice of lis pendens serves as a warning to a prospective purchaser or incumbrancer that the particular property is in litigation; and that he should keep his hands off the same, unless of course he intends to gamble on the results of the litigation.[7]

For three reasons, the order directing the cancellation of the notice of lis pendens should be set aside: First, it was granted ex parte. Plaintiffs were thus deprived of their right to be heard on notice.[8] Second, the order dismissing the complaint had not yet become final. That order in effect had placed plaintiffs at a disadvantage. It opened the floodgates to the commission of a fraud. What if, after the cancellation of the notice of lis pendens in the Office of the Register of Deeds, defendants should thereafter sell the land to a purchaser in good faith and for value? Third, there is no showing that the notice of lis pendens "is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded." [9]

4. The reason given by the court below for the denial of plaintiffs' motion for reconsideration of the orders of August 12, August 23, and August 29, is that said motion does not satisfy the requirements of Rule 37. Presumably, the court had in mind the lack of affidavit of merits.

But, the motion for reconsideration here involved is not a motion for new trial. The dismissal order was issued upon a mere preliminary hearing. The case has not reached the stage of a trial on the merits. Since there was no trial, then the motion for reconsideration could not have been a motion for new trial.

This on the one hand. On the other, the questioned orders were premature. There was still the justiciable controversy, to wit: the alleged fraudulent acquisition and mortgage of the registered land.

The order of dismissal thus suffers from an inherent procedural defect—a final disposition of the case before the main issue of forgery and fraud was tried on the merits. Trial here is demandable as a matter of right. [10]

Even if we consider the motion for reconsideration herein as one for new trial, still affidavit of merits is superfluous. And this, because the certification of the Register of Deeds, Annex A of the amended complaint, takes the place of an affidavit. It shows that the mortgage in favor of the RFC, now DBP, had been cancelled. And yet, the dismissal order was planted upon the alleged existence of this mortgage.

Finally, because the dismissal order was procured by fraud, affidavit of merits is unnecessary to sustain a motion to reconsider the said order.[11]

Premised on all the foregoing:—

(a) The orders of August 12, August 23 and August 29, all of 1960, issued in Civil Case No. 4786 of the Court of First Instance of Camarines Sur, entitled "Pedro Nataño et al., plaintiffs, versus Senen Esteban, et al., defendants," are hereby reversed and set aside ;

(b) The notice of lis pendens in said case filed by plaintiffs on January 11, 1960 is hereby declared in full force and effect;

(c) The Court of First Instance of Camarines Sur is hereby ordered to admit plaintiffs' amended complaint therein; after appropriate proceedings, to conduct a trial on the merits; and thereafter to decide the aforesaid case.

Costs against defendants-appellees. So ordered.

Concepcion, C. J., Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Ruiz Castro, JJ., concur.

Orders reversed and set aside.

[1] Civil Case No. 4786, Court of First Instance of Camarines Sur, "Pedro Nataño et. al., plaintiffs, vs. Senen Esteban, et al., defendants".

[2] Hereinafter referred to as RFC.

[3] Hereinafter referred to as DBP.

[4] Blanco, et al., vs. Esquierdo, et al., L-15182, December 29, 1960; Angelo vs. Director of Lands, et al., 49 Phil. 838, 842.

[5] Angelo vs. Director of lands, et al., supra, at pp. 814-842.

[6] R. A., pp. 42, 49.

[7] Section 24, Rule 14, Rules of Court; Jamora vs. Duran, et al., 69 Phil. 3, 11; I Martin, Rules of Court, p. 415, footnote 3, citing cases.

[8] Section 4, Rule 15, Rules of Court.

[9] Section 24, 2nd par., Rule 14, Rules of Court.

[10] Soloria, et al., vs. de la Cruz, et al., L-20738, January 31, citing cases.

[11] See I Martin, Rules of Court, p. 694.

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