

JULIANA MARTINEZ DE GOMEZ, AS ADMINISTRATRIX OF THE ESTATE OF BENIGNO GOMEZ, DECEASED, PLAINTIFF AND APPELLANT, VS. LUZ JUGO VDA. DE REYES AND SILVINO LOPEZ DE JESUS, AS REGISTR...

G.R. No. 23062. October 08, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

The complaint filed in this case in the Court of First Instance of Tarlac by the plaintiff as administratrix of the estate of the deceased Benigno Gomez against Luz Jugo Vda. de Reyes and Silvino Lopez de Jesus as registrar of deeds for the Province of Tarlac, defendants, asked that transfer certificates of title Nos. 279 and 510 issued by the registrar of deeds for the Province of Tarlac and the order of the Court of First Instance of Tarlac dated August 18, 1922, entered in civil case No. 1500 of that court, be declared null and void; that the estate administered by the plaintiff be declared the absolute owner and entitled to the possession of the parcel of land covered by transfer certificates of title Nos. 207, 279, and 510 issued by the registrar of deeds for the Province of Tarlac; that the defendant Luz Jugo Vda. de Reyes be directed to reconvey the aforesaid parcel of land to the plaintiff and to surrender transfer certificate of title No. 510; that the defendant registrar of deeds be directed to cancel transfer certificate of title No. 510 issued in the name of Mrs. Reyes, to register the reconveyance, and to issue a new certificate therefor in favor of the estate administered by the plaintiff, and that judgment be rendered in favor of the estate administered by the plaintiff against both defendants jointly and severally in the sum of P25,000, plus interest and costs. The registrar of deeds for the Province of Tarlac in his answer alleged that prior to March 24, 1920, on which the notice of lis pendens filed by the plaintiff concerning the parcel of land described in transfer certificate No. 207 was received and registered in the book provided for that purpose, said parcel of land had already been sold by the registered owner, Benigno Gomez, to Elias Aboitiz and mortgaged by the latter to Luz Jugo Vda. de Reyes. Mrs. Reyes in her answer alleged that on March 13, 1920, Elias Aboitiz had mortgaged to her the parcel of land described in the transfer certificate of title No. 510; that this mortgage was registered at 9.30 a. m. on March 19, 1920; that the notice of lis pendens referred to by the plaintiff in her complaint was not recorded in the registry of deeds in the Province of Tarlac, and that transfer certificate of title No. 510 was issued to her after she had foreclosed the mortgage and purchased the property mortgaged at a sale at public auction, which purchase was later approved by the Court of First Instance of Tarlac.

The pleadings disclose in a general way the respective contentions of the parties. After trial and after due consideration of the evidence presented on behalf of the plaintiff and the defendants, the trial judge rendered judgment dismissing the complaint without costs. On appeal, the sole assignment of error of the plaintiff as appellant is that the lower court erred in holding that the case of *De la Cruz vs. Fabie* (35 Phil., 144), is controlling in the case at bar and in dismissing plaintiff's complaint.

As stated by the appellant and as agreed to by the appellees, there are practically no disputed facts. These facts, however, though having a common starting place branch in two directions. Consequently, it is well first to set

forth plaintiff's chain of title, and next Mrs. Reyes' chain of title.

The parcel of land described in transfer certificate of title No. 207 formerly belonged to Benigno Gomez. The latter sold the land to Elias Aboitiz on January 24, 1920, by executing a deed of sale in favor of Aboitiz. On the same date, Aboitiz executed a mortgage in favor of Gomez to secure the payment of P6,000, the unpaid balance of the purchase price. On March 19, 1920, however, Benigno Gomez and his wife instituted civil case No. 18167 in the Court of First Instance of Manila against Elias Aboitiz to obtain a declaration of nullity of the contract of sale in favor of Aboitiz and its cancellation on the books of the registrar of deeds of the Province of Tarlac. On the same date, a telegram was sent by the attorney for the plaintiff in the case in the Court of First Instance of Manila to the registrar of deeds of Tarlac, advising the latter of the action pending in the Manila court. This telegram reached the registrar of deeds on March 19, 1920, at 11.11 a. m. A notice of lis pendens was received by the registrar of deeds of Tarlac on March 24, 1920. On February 10, 1921, the deed of sale executed by Benigno Gomez in favor of Elias Aboitiz was rescinded by the Court of First Instance of Manila. On June 9, 1922, the Supreme Court affirmed the judgment rendered by the Court of First Instance of Manila. (R. G. No. 17577.)[1] The herein plaintiff thereupon went before the Court of First Instance of Manila and asked for an order requiring the registrar of deeds of Tarlac to comply with the judgment of the Supreme Court. After the registrar of deeds had filed his return to the said order, the trial judge found the return satisfactory.

Standing alone and uncontested, it would be undeniable that the estate of Benigno Gomez has a perfect title to the land in question.

As before noted, the parcel of land described in transfer certificate of title No. 207 was sold by Benigno Gomez to Elias Aboitiz on January 24, 1920. On January 26, 1920, the registrar of deeds for the Province of Tarlac issued, free from any encumbrance, transfer certificate of title No. 279, in the name of Elias Aboitiz, covering the same parcel of land described in transfer certificate of title No. 207, issued in the name of Benigno Gomez. On March 13, 1920, so as to guarantee a loan of P6,000, Aboitiz mortgaged the same land to Luz Jugo Vda. de Reyes. On March 19, 1920, at 9.30 a. m., the mortgage executed by Aboitiz in favor of Mrs. Reyes was noted on certificate of title No. 279. The mortgage debt not having been paid by Aboitiz, Mr. Reyes foreclosed the mortgage in civil case No. 1500 of the Court of First Instance of Tarlac. The property was sold at public auction to Mrs. Reyes, and the sale was approved and confirmed by the Court of First Instance of Tarlac. On October 3, 1922, transfer certificate of title No. 510 covering the parcel of land in question was issued by the registrar of deeds for Tarlac in the name of Mrs. Reyes. The latter is now in possession of the property.

Standing alone and uncontested, it would be undeniable that Mrs. Reyes has a perfect title to this land.

Four outstanding facts exert a decisive influence. Benigno Gomez failed to register the mortgage executed by Aboitiz in his favor, while Mrs. Reyes recorded the mortgage executed by Aboitiz in her favor. The lis pendens of Gomez was received at 11.11 a. m. on March 19, 1920, while Mrs. Reyes made the notation of her mortgage at 9.30 a. m. on March 19, 1920.

Under these facts, the registrar of deeds is not shown to have been negligent or unfaithful in his duties. Under these facts, Mrs. Reyes was an innocent purchaser for value. The loss of the plaintiff's property is due, first, to his mistake in selling it to Aboitiz and then having to institute an action to have the sale rescinded; second, to his failure to record the mortgage executed by Aboitiz; and third, to his failure to record the notice of lis pendens in time. (Act No. 496, sees. 51, 52, 55.)

The appellant may be right in that portion of her assignment of error which intimates that the trial court was wrong in holding the case of *De la Cruz vs. Fabie* (35 Phil., 144), to be controlling. That was a case where the root of the title which was confirmed was a forged deed; here, there is no such document, but a perfectly good

mortgage which has ripened into absolute dominion. Nor is the case at bar the same as the case of *Macapinlac vs. Gutierrez Repide* (43 Phil., 770), cited by the appellant, for there fraud was supposed in the registration of the land; here good faith is conceded. However, the latter portion of the assignment of error relating to the dismissal of plaintiff's complaint is not well taken.

Prior tempore potior jure, meaning "He who is first in time is preferred in right."

Agreeing as we do with the findings of Judge of First Instance Lukban, our conclusions are necessarily the same as his. As a result, the judgment appealed from must be affirmed without special pronouncement as to costs in this instance. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.
Villa-Real, J., did not take part.

[1] *Martinez de Gomez vs. Aboitiz*, not reported.

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