

JOSEPA LAPLANA, AS ADMINISTRATRIX OF THE ESTATE OF ANA MARIA ALCANTARA, PLAINTIFF AND APPELLANT, VS. MARIANO GARCHITORENA CHEREAU AND ANDREE GARCHITORENA CHEREAU, DEFENDANTS AND...

G.R. No. 23663. October 17, 1925

Ponente: STREET, J.

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STREET, J.:

This action was instituted on December 27, 1921, in the Court of First Instance of Camarines Sur by Josefa Laplana, as administratrix of the estate of Ana Maria Alcantara, against Mariano Garchitorena Chereau and Andree Garchitorena Chereau, for the purpose of compelling them to execute a mortgage on certain real property and to recover the indebtedness secured by said mortgage. In connection with this complaint the plaintiff asked for an order for the preventive annotation of her right to be secured by said mortgage, in the registry of titles, for the purpose of securing the benefit of *lis pendens*, contingent upon the outcome of the litigation. This order was granted. Upon hearing the cause the trial judge ignored the prayer for the creation of a formal mortgage but gave judgment for the plaintiff to recover the amount sued for, consisting of the sum of P24,902.86, with interest from July 2, 1921, and an additional sum of P2,000 to cover expenses of litigation and attorney's fees. From this judgment the plaintiff appealed in respect to the action of the court in refusing to require the defendants to execute the mortgage, and the defendants appealed in respect to the order requiring them to pay to the plaintiff the amounts stated.

Omitting a long series of historical antecedents not necessary to the determination of the case, the facts are briefly these: On July 2, 1921, the defendant Mariano Garchitorena, acting under competent power of attorney from his sister, Andree Garchitorena, executed a public document in the City of Manila, on behalf both of himself and his said sister, admitting that the two were indebted to the plaintiff, Josefa Laplana, as administratrix of Ana Maria Alcantara, in the amount of P24,902.86, as of the date of June 30, immediately preceding. In the same document the said Mariano Garchitorena obligated himself and sister to pay said sum within one year from July 1, of the same year, with interest at the rate of one per centum per month, payable within the first fifteen days of each month beginning with the succeeding August.

In the same document it was declared that the obligors in this contract, Mariano and Andree Garchitorena, were the owners of a large estate, known as the Hacienda Salvacion, located in the barrio of Hignaroy, municipality of Tigaon, Ambos Camarines, for the registration of which proceedings were then pending in the Court of First Instance of said province; and it was agreed that as soon as they should obtain a Torrens title to the said hacienda a second mortgage upon the same would be executed by Mariano Garchitorena, acting in his own behalf and as attorney in fact of his sister, to secure said debt. Finally, it was declared that the mortgage to be executed should respond not only for capital and interest of said debt but furthermore for the sum of P2,000, agreed upon for costs and expenses, including the attorney's fees of the creditor in case of litigation.

It appears that in the official survey made for the purposes of the registration proceedings the Hacienda Salvacion was divided into three parcels, consisting, respectively, of about 452.81, 176, and 103.52 hectares, all of which were subject to a first mortgage in favor of the Philippine National Bank for the sum of P15,000. Of these three parcels the lot No. 2 was the first to be registered, and when the certificate of title issued, the defendant, Mariano Garchitorena, instead of constituting a second mortgage thereon in favor of the estate of Ana Maria Alcantara, mortgaged the lot on November 28, 1921, to one Bartolome M. Martin, to secure a loan for the sum of P11,000, received on that date by said Garchitorena. Three days thereafter the plaintiff instituted the present action for the purpose, as already stated, of compelling the defendants to execute a mortgage and to recover the amount claimed in the complaint. It will be noted that the action was brought before the date of the maturity of the debt as fixed in the contract, but the plaintiff insists that the act of Mariano Garchitorena in mortgaging lot No. 2 to a stranger constitutes a diminution of the value of the security which he had contracted to give to the plaintiff and, under No. 3 of article 1129 of the Civil Code, confers on the creditor the right to treat the whole debt as due. The trial court considered this contention to be well founded, a conclusion in which we agree. The contention of the defendants that the action was prematurely brought is therefore not well founded.

By the terms of the contract of July 2, 1921, it was explicitly agreed that a mortgage should be created in favor of the plaintiff upon the Hacienda Salvacion as soon as a Torrens title should be secured, and the defendants were obligated to execute a mortgage in favor of the plaintiff immediately upon obtaining a title to any part thereof, in preference to any creditor other than the Philippine National Bank which had a first mortgage for P15,000 on the estate. It is pretended by the defendants that the intention was that the mortgage should be created when a Torrens title should be obtained to the whole hacienda, and that the obligation to execute a mortgage did not arise when a certificate of title had been obtained to one lot only of the three constituting the hacienda. We consider this suggestion an untenable evasion of the spirit of the agreement, and it is obvious that the creation of a second mortgage in favor of Martin was in violation of the stipulation to execute a second mortgage on the property to the plaintiff.

As already stated, while giving judgment for the debt, the trial court at first failed; to make any pronouncement with reference to the right of the plaintiff to have said mortgage executed. In the motion dated September 13, 1924, the attorney for the plaintiff asked the court to make a proper provision in the judgment for the execution by the defendants of the second mortgage in favor of the plaintiff on the hacienda. In reply to this motion the trial judge made its order of December 24, 1924, in which said motion was denied on the ground that the two causes of action, namely, to enforce the execution of the mortgage; and to recover judgment for the indebtedness, were mutually inconsistent and that both species of relief could not properly be granted. We are of the opinion that this ruling was erroneous. It is true that a promise to constitute a mortgage gives rise only to a personal obligation between the contracting parties (art. 1862, Civ. Code) and creates no real right in the property, but the agreement to constitute the mortgage is lawful and such stipulation can be enforced by the creditor, being in no wise inconsistent with the right to recover the indebtedness. But a court of equity never requires an unnecessary thing and in this case all of the rights of the creditor will be adequately protected by declaring that the indebtedness recognized by Mariano Garchitorena in the document of July 2, 1921, constitutes a lien in the nature of a mortgage upon the Hacienda Salvacion, it appearing that the registration of the whole has been effected. It is a maxim of jurisprudence that "equity regards that as done which ought to be done," and in obedience to this precept, as between the parties to this record, the property must be considered to be subject to the same lien as if the mortgage which had been agreed to be made had been actually executed. (1 Pom., Eq. Jur., secs. 363-377.) It is our opinion, therefore, that there is merit in the plaintiff's appeal, though the remedy to be conceded is not precisely the compelling of the defendants to execute the mortgage, a declaration of the existence of the lien being sufficient.

We note that in the brief of the defendants, as appellees, it is insisted that the plaintiff's appeal was not perfected in time, with the result that this court has no jurisdiction to entertain the appeal. This contention is not well founded. In this connection we note that the original judgment was rendered by the trial court on August 27, 1924, and notice of this decision was served on the attorney for the appellant on September 5, 1924. On September 13 said attorney presented his motion, asking the court to amplify the judgment and in particular to pass upon the rights of the plaintiff to compel the defendants to execute a mortgage in favor of the plaintiff. The court kept this motion under consideration until December 24, 1924, when the motion was overruled. The submission of this petition to the court had the effect of suspending the running of the time for the taking of the necessary steps for appeal; and if this period be deducted, it will be found that all of the steps looking towards the perfection of the appeal were taken within due time and in the manner necessary to give this court jurisdiction over the cause. The contention of the defendants-appellees that the appeal of the plaintiff should not be entertained is therefore ill-founded.

In the third, fourth and fifth errors assigned in the brief of the defendants, as appellants, an effort is made to demonstrate that the true amount of the defendants' indebtedness to the plaintiff is not more than P8,000, with interest at twelve per centum per annum from October 20, 1920, and that the document of July 2, 1921, admitting indebtedness to the extent of P24,902.86 was obtained from Mariano Garchitorena by fraud and deceit. We have examined the considerations in support of this contention and find the same to have been so completely refuted in the able opinion of the trial court that we find it unnecessary to comment further, adopting the conclusion of the appealed decision upon this point.

We note that during the pendency of this litigation Carmen Garchitorena Alcantara was declared, in the proceedings over the estate of her mother, Ana Maria Alcantara, to be the latter's heir and entitled to succeed to the right of action in this case, for which reason the said Carmen Garchitorena Alcantara was substituted as party plaintiff by order of the court of August 2, 1922, since which date the litigation has proceeded in her own name and right.

For the reasons stated the decision which is the subject of appeal will be affirmed in so far as it requires the defendants jointly and severally to pay to the present plaintiff, Carmen Garchitorena Alcantara, the sum of P24,902.86, with yearly interest at twelve per centum from July 2, 1921, until paid, plus the further sum of P2,000 as costs, expenses and attorney's fees, and said decision will be modified by adding thereto a pronouncement that the aforesaid indebtedness constitutes a lien upon the Hacienda Salvacion consisting of the three lots described in the complaint, and a duly certified copy of the dispositive part of this decision will be certified to the register of deeds of Camarines Sur, in order that the existence of this lien may be noted in the proper certificates of title, to which end the defendants are enjoined to produce before said register the owner's duplicates. No express pronouncement will be made as to costs.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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