

CONSULTAS NOS. 450 AND 451 OF THE ATTORNEYS OF JOSE LEDESMA Y ROSARIO, HILADO & HILADO, APPELLANTS, VS. THE REGISTER OF DEEDS OF THE PROVINCE OF OCCIDENTAL NEGROS, APPELLEE.

G. R. No. 25292. November 10, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

It appears from the record that a mortgage deed executed by Julio Ledesma in favor of Jose Ledesma was presented for registration to the register of deeds of Occidental Negros sometime during the year 1925. The mortgage was given to secure a loan of P225,000, with interest at the rate of 12 per cent per annum, and covered two Torrens registered haciendas, one of them embracing five parcels of land and the other only one parcel. Under Act No. 2866, the registration fee for a mortgage of that amount is P70, and the register of deeds was of the opinion that the full fee of P70 should be paid for each parcel of land described in the mortgage. The mortgagee maintained that the registration fee could be charged only once, that is to say, that he was only bound to pay a fee of P70 for all six parcels covered by the mortgage.

By reason of this divergency in views, the matter was brought in consulta to the Judge of the Fourth Branch of the Court of First Instance of Manila, who held that, before registration could be had, it was necessary that the value of each property described be determined and be made to appear either in the mortgage, or else by a separate public document, and that separate fees, based upon the value of each property, be charged in accordance with the schedule contained in Act No. 2866. From this ruling the mortgagee Jose Ledesma appeals to this court.

The schedule of fees for recording mortgages in the Torrens register is found in section 114 of the Land Registration Act as amended by Act No. 2866. The pertinent portions of the amended section read as follows:

"SEC. 114. Fees payable under this Act shall be as follows:

* * * * *

"For each registration or entry, with notes in connection therewith, there shall be collected.

"For each property or right worth three hundred pesos or less, three pesos.

"From three hundred one to six hundred pesos, three pesos and fifty centavos.

* * * * *

"From two hundred thousand and one to three hundred thousand pesos, seventy pesos."

The amending act may not be drawn as skilfully as might be desired, but upon examination its meaning seems fairly clear. The expression "For each property or right" does not mean that the terms "property" and "right" are to be regarded as synonymous. A mortgage on a parcel of land is not property in the sense of ownership or dominion

over the land; it is merely a right held by a creditor to have the property seized and sold for the satisfaction of a debt in default of payment. We are therefore here dealing with the fee for the registration of a "right" within the meaning of the statute. This right consists in a mortgage for P225,000, or, as the statute expresses it, a mortgage "worth" P225,000, and it is provided that each right worth that much shall be recorded in the Torrens register upon the payment of a fee of P70, plus the entry fee of 50 centavos. The mortgage is one and indivisible; it covers all of the parcels described in it, and each and every parcel responds for the full amount of the debt secured. It is not a mortgage executed in accordance with the now obsolete and rarely observed provisions of article 119 of the Mortgage Law of 1893, under which each of several parcels described in a mortgage deed respond for only a portion of the total amount of the debt secured, so that one mortgage deed might, in reality, embrace several more or less disconnected mortgages. Here we have only one undivided mortgage, or, in other words, one undivided right and for the recording of which only one fee may be charged.

But it is argued that when several separately registered parcels of land are included in the same mortgage, its recording will entail more work than that required for the recording" of a mortgage covering" only one parcel, and that it must have been the intention of the legislature to impose larger fees where a greater number of entries were necessary. As to this argument, it is sufficient to say that the schedule of fees clearly shows that it is principally a revenue measure based on the value of the interest involved rather than on the amount of labor required for the act of recording.

Our conclusion is that, for the purpose of taxing fees, an ordinary mortgage on Torrens registered property must be regarded as only one "right" within the meaning of section 114 of the Land Registration Act as amended by Act No. 2866; that the fee for its recording must be based on the total amount of the debt secured, and that only one such fee may be collected for the recording in one province, irrespective of the number of parcels or properties covered by the mortgage. If, by reason of the location of the properties covered by a mortgage, it becomes necessary to record said mortgage in more than one province, each register of deeds may charge the full fee for the total amount of the mortgage. For instance, if one of the parcels described in the mortgage now before us were situated in the Province of Iloilo and the other parcels in Occidental Negros, and the mortgage should be presented in the registries of deeds in both provinces, each register of deeds would have the right to collect the full sum of P70, plus the entry fee of P0.50, on the ground that each parcel responded for the full amount of the mortgage debt and that the mortgage was recorded in two separate and distinct registries.

The ruling appealed from is therefore reversed; the respondent register of deeds will be governed by the rules herein laid down; and it is hereby ordered that, upon payment by the petitioner of an entry fee of P0.50 and the recording fee of P70, the mortgage in question shall be admitted to record in the Torrens registry of the Province of Occidental Negros. No costs will be allowed in this instance. So ordered.

Avanceña, G. J., Street, Villamor, Johns, and Villa-Real, JJ., concur.

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