C. N. HODGES, PLAINTIFF AND APPELLANT, VS. THE TREASURER OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

G.R. No. 26498. March 02, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The complaint filed herein is for the recovery of the sum of P10,000, with legal interest, from the assurance fund by way of indemnity for damages suffered by the plaintiff-appellant, due to an alleged negligence of the register of deeds of Occidental Negros in not registering, in due time, a mortgage deed which the plaintiff-appellant had sent to said official for its notation.

The defendant in answering said complaint denied each and every allegation contained therein; and, as a special defense, alleged that the person who executed the mortgage deed was not the registered owner of the land sought to be registered at the time of the execution of the mortgage, and that the plaintiff had not complied with the requirements of the law.

The case was called for trial and after hearing the evidence introduced by both parties in support of their respective allegations, the trial court rendered judgment holding that it was without jurisdiction to try the case on the ground that the same is for the recovery of damages to rural property situated in the Province of Occidental Negros, and dismissing the case.

The plaintiff appealed to this court from said judgment, assigning in support of his appeal the following alleged errors as committed by the trial court in its decision, to wit:

> "1. The trial court erred in holding that it was without jurisdiction to try the case because the action should have been brought in the Court of First Instance of the Province of Occidental Negros.
>
> "2. The court erred in failing to find that the plaintiff had suffered a loss through the negligence of the register of deeds of the Province of Occidental Negros to register plaintiff's mortgage.
>
> "3. The court erred in failing to find that the plaintiff was entitled to recover the amount of his loss from the defendant.
>
> "4. The court erred in failing to render judgment for the plaintiff for the sum of P10,000 with legal interest thereon from May 16, 1922."

The preponderance of the evidence shows the following:

Asisclo Ramirez and Apolinario Alvarez were coowners of a parcel of agricultural land registered under the Torrens system and covered by certificate of title No. 7968, subject to a mortgage in favor of the Philippine National Bank to secure the payment of the sum of P3,600, with interest at 8 per cent per annum.

On August 24, 1920, Asisclo Ramirez executed a special power of attorney in favor of his coowner, Apolinario Alvarez, authorizing the latter to lease, mortgage or sell his undivided half of the land above-mentioned.

On September 6, 1920, Apolinario Alvarez, in his own behalf and that of Asisclo Ramirez sold said land to Ramon Siocon for the sum of P15,000.

On the same date, that is, September 6, 1920, Ramon Siocon conveyed the said land and two other parcels by way of mortgage to the herein plaintiff-appellant C. N. Hodges, to secure the payment of a promissory note for the sum of P14,800, with interest at the rate of 1 per cent per month.

On September 10, 1920, C. N. Hodges mailed to the register of deeds of Occidental Negros the power of attorney, by Asisclo Ramirez in favor of Apolinario Alvarez; the deed of sale executed by Apolinario Alvarez in favor of Ramon Siocon; the deed of cancellation and release of the mortgage by the Philippine National Bank, and the mortgage deed executed by Ramon Siocon in favor of C. N. Hodges, without internal revenue stamp, registration fees and a certified copy of the certificate of title.

On November 13, 1920, the Philippine National Bank, through its duly authorized agent, executed in favor of Asisclo Ramirez and Apolinario Alvarez a deed cancelling and releasing its mortgage upon the said land.

On November 24, 1920, the register of deeds of Occidental Negros noted and recorded the deed of cancellation and release of the mortgage, executed by the Philippine National Bank, and cancelled the original certificate of title No. 7968 and recorded transfer certificate of title No. 2379 in his registration book, issuing the corresponding "owner's duplicate certificate of title" in favor of Ramon Siocon in accordance with the deed of sale Exhibit L. On the same date, that is, November 24, 1920, the register of deeds of Occidental Negros entered in his daybook the mortgage deed without internal revenue stamp, executed on September 6, 1920 by Ramon Siocon in favor of C. N. Hodges.

On November 16, 1920, C. N. Hodges mailed to the register of deeds of Occidental Negros check No. 4756 of the manager of the Philippine National Bank for the sum of P300 in payment of registration fees of other documents, receiving the sum of P69.76 as change from the P300.

On October 13, 1921 the register of deeds of Occidental Negros, after considerable time and without having recorded it, returned the said mortgage deed executed by Ramon Siocon in favor of C. N. Hodges to the latter, because he had failed to send a certified copy of the transfer certificate of title, without which he could not make the notation requested.

On the back of transfer certificate of title No. 2379 there is noted, under the date of September 6, 1921, a mortgage deed executed on March 4, 1921 by Ramon Siocon in favor of Lichauco & Co., Inc., for the sum of P15,000, with interest at 12 per cent, and under the date of May 6, 1923, an assignment of the same in favor of the China Banking Corporation.

In regard to the first assignment of error, section 101 of Act No. 496, commonly called the "Land Registration Act" provides that actions may be brought in any court of competent jurisdiction against the Treasurer of the Philippine Islands for the recovery of damages to be paid out of the assurance fund. The indemnity here claimed is not for damages caused to the property mortgaged, the registration of which is under discussion, but for alleged damages caused to the mortgagee C. N. Hodges by the refugal of the register of deeds of Occidental Negros to note his mortgage lien on the land on the back of the certificate of title covering the mortgaged land, having thus lost his preferential right; therefore, that provision of section 377 of the Code of Civil Procedure, which provides that in order to obtain indemnity for damages caused to real property, the action must be brought in the province where the land, or some part thereof, is situated is not applicable ; but that which says that all actions not herein otherwise provided may be brought in the province where the defendant or the plaintiff resides, at the election of the latter.

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In the present case, the plaintiff resides in the Province of Iloilo and the defendant in the City of Manila, and the former having made use of his right of election granted him by the law, filed the complaint in Iloilo, his place of residence, and the Court of First Instance of Iloilo acquired exclusive jurisdiction to try the case.

For the foregoing, we are of the opinion, and so hold, that the trial court has jurisdiction to try the case and render final judgment, having, therefore, committed an error in dismissing it for lack of jurisdiction.

In regard to the other assignments of error, the fact that the plaintiff-appellant did not send the registration fees and the owner's duplicate certificate of title to the register of deeds of Occidental Negros, together with the mortgage deed, as required by section 61 of Act No. 496, prevented the former from recording said mortgage, and inasmuch as under section 101 of Act No. 496 only those are entitled to indemnity for damages from the assurance fund who, without negligence on their part, have suffered through an omission of the register of deeds, the plaintiff-appellant is not entitled to the indemnity he seeks to recover for alleged damages suffered by him through his own negligence.

By virtue of the foregoing, the judgment appealed from is revoked and it not being necessary to remand the case for further proceedings, for lack of merit, the same is dismissed and the defendant is absolved from the complaint, without special pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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