

LA ORDEN DE DOMINICOS O PP. PREDICADORES DE LA PROVINCIA DEL SANTISIMO ROSARIO DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. GABRIELA ANDREA DE COSTER Y ROXAS ET AL., DEFENDANTS. GA...

G.R. No. 26556. March 16, 1927

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STATEMENT

Plaintiff alleges that it is a domestic religious corporation. That the defendant, Doña Gabriela Andrea de Coster y Roxas, and J. M. Poizat are husband and wife. That on June 16, 1915, the defendant wife "duly represented and by virtue of a power of attorney by her husband, Jean M. Poizat, contracted a loan and received from the plaintiff corporation the sum of P125,000 binding herself to pay and return the sum so borrowed within the period of three years from the said date, June 16, 1915." That she also promised and agreed to pay interest thereon at the rate of 10 per cent per annum payable quarterly. That as a security for the payment of the loan with interest, she made a first and special, mortgage upon the property described in the complaint, and that the mortgage was duly registered. That the defendant wife is now indebted to the plaintiff for the interest agreed, upon from December 16, 1921, to June 30, 1925, amounting to P44,270.83. That the conditions of the mortgage have been broken, and that it is now subject to foreclosure. That in paragraph 4 thereof, it was agreed that the defendant wife would pay any and all taxes levied upon the property, and that she further agreed that in the event of a suit or action to collect the debt, she would pay the further sum of P12,000 as attorney's fees. That she has failed and neglected to pay taxes on the property for the years 1924 and 1925 amounting to P19,113.52.

Plaintiff prays judgment against the defendant wife and her husband that the P125,000 is now due and owing, and the further sum of P44,270.83 as interest from December 16, 1921, to June 30, 1925, the date of the filing of the complaint, and the interest accruing, and the further sum of P12,000 as attorney's fees, and that they be required to immediately pay the taxes now due and owing upon the property, and that for failure to do so within ninety days, the mortgaged property be sold at public auction and the proceeds applied to the satisfaction of plaintiff's judgment.

For answer the defendant wife admits that she is the owner of the property described in the complaint, and denies that she ever obtained any loan from the plaintiff, or that she ever executed any deed or mortgage to secure the payment of the loan or any part of it, or that she is legally liable for the payment of the debt or that she ever authorized her husband, J. M. Poizat, to obtain any loan from the plaintiff or to execute any mortgage or to give any security for the payment of the debt, and as a special defense, alleges that the loan was purely a personal one of the plaintiff to the defendant J. M. Poizat. That he had no power to execute the mortgage, and that she never authorized him to mortgage her property for the payment of any obligation to a third person. "That the plaintiff in demanding said security was not ignorant of the limitation of the powers which the defendant Gabriela had given said defendant Poizat; that never and much less after the execution of the aforesaid deed of mortgage did she consider the loan in question as made to her, but just all reverse,—as a loan made to the defendant Poizat; and that said deed of mortgage upon which plaintiff's action is based is void."

No service was made upon the defendant J. M. Poizat, and he never appeared in the action, and the case was dismissed as to the defendant Bank of the Philippine Islands,

The trial was had upon such issues, and judgment was rendered for the plaintiff against the defendant wife as prayed for in its complaint, and the case was dismissed as to her husband, and the wife appeals and assigns the following errors:

"I. The court erred in holding that the loan was made to the defendant Gabriela Andrea de Coster y Roxas;

"II. The court erred in not finding that the loan was made by the plaintiff to Juan M. Poizat, individually;

"III. The court erred in holding that Juan M. Poizat was authorized to execute the deed of mortgage Exhibit B as attorney in fact of this defendant;

"IV. The court erred in holding that the loan Exhibit B was executed by Juan M. Poizat as attorney in fact of Gabriela Andrea de Coster y Roxas or was ever ratified by this defendant or her agent; and

"V. The court erred in sentencing this defendant to pay to the plaintiff the sum of P125,000, together with the interest thereon at the rate of 10 per cent per annum, from December 16, 1921, to the date of payment, plus the sum of P12,000 as attorney's fees and costs."

JOHNS, J.:

The defendant wife admits the execution of the power of attorney to her husband J. M. Poizat in which, among other things, he is authorized and empowered "in her name, place and stead" to "buy, sell, trade, assign or admit in payment or by way of compensation or otherwise acquire or transfer any kind of personal estate, cattle, real estate, goods, rents, merchandise, effects, rights and actions for the prices and under the conditions which he might see fit, receiving or satisfying in advance, by cash or in installments, executing the necessary deeds of purchase or transfer, securing copies thereof or testimonies and applying for the inscription of all real estate in the office of the register of deeds.

"Loan or borrow any sums of money or fungible things at the rate of interest and for the time and under the conditions which he might deem convenient, collecting or paying the capital or the interest on their respective due dates; executing and signing the corresponding public or private documents related thereto, and making all these transactions with or without mortgages, pledges or personal guaranty." In other words, the power of attorney not only authorizes her husband to borrow money and to mortgage the real property of the wife to secure the payment of the loan, but it even empowers him to sell and dispose of her real property, and to execute deeds of conveyance to complete the sale.

The evidence is conclusive that on June 16, 1915, J. M. Poizat applied for and obtained an actual loan from the plaintiff for P125,000, and that the plaintiff, delivered to him that amount in money, and that at the time of the making of such loan and to secure its payment, J. M. Poizat executed, acknowledged and delivered to the plaintiff the following instrument, known in the record as Exhibit 1:

"Know all men by these presents that: I, Juan Maria Poizat, merchant, of age, married and resident of this city, as attorney in fact and legal representative of my wife Doña Gabriela Andrea de Coster y Roxas, by virtue of the power of attorney given to me by her in a document acknowledged before Don Jose Ma. Rosado y Calvo, Notary Public for the City of Manila, on the 25th of August, 1903, which power of attorney has not been revoked, suspended nor restricted and is sufficient for the execution thereof with lawful effects

"DO HEREBY STATE:

"That in consideration of the sum of one hundred twenty-five thousand pesos (P125,000), Philippine currency,

which the 'La Orden de Dominicos o PP. Predicadores de la Provincia del Santisimo Rosario de Filipinas,' a religious corporation duly registered under the laws of the Philippine Islands in the registry of their class, has paid to Don Juan Maria Poizat, the latter in the capacity in which he executes this deed, conveys by mortgage to said corporation 'La Orden de Dominicos o PP. Predicadores de la Provincia del Santisimo Rosario de Filipinas,' the property assessed at P237,190, which is described as follows: (Description.)

"This mortgage is executed upon the following conditions:

"1. The mortgagor shall pay an interest at the rate of ten per cent (10%) per annum upon the sum of one hundred twenty-five thousand pesos (P125,000), Philippine currency, which interest shall be paid quarterly at the end of each quarter at the domicile of the mortgagee.

"2. The mortgagor binds herself through aforesaid attorney in fact to pay the aforesaid sum of one hundred twenty-five thousand pesos (P125,000) to the mortgagee within the period of three years from the date hereof, which may be extended for indefinite time; provided that if the mortgagee should desire to collect the credit at the expiration of the three (3) years aforesaid, it must notify the mortgagor to that effect, and if it is the mortgagor who should desire to pay the same, should give the same notice; and after the expiration of the three years, the creditor may demand the payment of the debt, or the debtor pay the amount due, by giving notice to each other, according as to who should desire to do so, six months in advance.

"3. The debtor is under obligation to have in the City of Manila an attorney in fact with sufficient power to represent her legally in all such matters as may have reference to this contract in the future, and advise the creditor corporation in writing as to the name and domicile of said attorney in fact; it being understood that if this notice in writing is not given to the creditor corporation, the latter may demand the payment of what is due it upon the expiration of the three years fixed as the duration thereof, or at any period of time thereafter without necessary of making demand of payment six months in, advance, as stipulated in the foregoing paragraph.

"4. The mortgagor is bound to pay the taxes actually levied or to be levied in the future by the competent authorities upon the mortgaged property and to perform for her account all the works which the Municipality, Department of Health, or other authority may order, being under obligation to exhibit the receipts for said taxes, especially those for the land tax to the mortgagee as soon as she makes payment thereof during the time this mortgage is in force.

"5. It is also stipulated and agreed that if the assessed Value of the property mortgaged should decrease in the future, the debtor binds herself to increase the mortgage security hereby given to the satisfaction of the creditor, it being understood that in case of her failure to do so, the creditor Corporation may demand the immediate payment by the debtor of what is due from her.

"6. It is specially agreed that failure of payment of interest for two consecutive quarters shall give the creditor the right to hold the period of three years herein stipulated to have expired, and to demand from the debtor the immediate payment of the debt without waiting for the lapse of said period.

"7. It is likewise stipulated, covenanted and agreed that should the creditor be compelled to go to the courts of justice for the purpose of collecting the amount of this loan and the interest thereof, Doña Gabriela Andrea de Coster shall pay said creditor in addition to the sum of twelve thousand pesos (P12,000), Philippine currency, which amount is to be employed by the said creditor for the payment of costs and the total expenses and fees of the attorney or attorneys it may hire in the exercise of its action, the debtor waiving right now the right to contest said attorney's fees of said creditor, unless it should attempt to collect from her an amount in excess of the twelve thousand pesos (P12,000) aforesaid, which Doña Gabriela Andrea de Coster y Roxas binds herself to pay.

"In witness whereof, I sign this present in Manila this 16th of June, 1915.

(Sgd.) "M. B. LAMPA

"JEAN M. POIZAT

"Signed in the presence of:
(Sgd.) "S. GALLARDO

"UNITED STATES OF AMERICA

"Philippine Islands

"In the City of Manila, this June 16, 1915, before me personally appeared Don Juan Maria Poizat, known to me to be the same person who executed the foregoing document and acknowledged the same to be his free act and deed. He exhibited to me his cedula No. F-1413, issued at Manila, on January 5, 1915.

"In testimony whereof, I place my name at the bottom of this certificate and affixed my official seal on the day, month and year above-mentioned.

(Sgd.) "ANTONIO SANZ
"Notary Public

"My commission expires on December 31, 1916"

"Reg. Not. No. 213, Fol. 47."

That after the execution of such instrument, and relying thereon as a mortgage to secure its payment, the plaintiff delivered and paid over to J. M. Poizat the P125,000 in question.

In a well written and exhaustive opinion, the lower court found as a fact that the transaction was an actual loan of that amount of money made by the plaintiff at the time of the execution of Exhibit 1, and further that the loan was made to J. M. Poizat as the agent and attorney in fact of the defendant wife, and was a loan of actual money paid over and delivered to him as her agent and attorney in fact at the time of the transaction, and both of such findings are fully sustained by the evidence. That is to say, that the defendant wife is liable to, and should pay, the plaintiff the amount to which it is legally entitled.

The real question involved in this case is the legal force and effect of Exhibit 1, and whether or not it is a valid real mortgage upon the property of the defendant wife. Citing and relying upon recent decisions of this court, in which the Bank of the Philippine Islands was the plaintiff in one case, and the Philippine Sugar Estates Development Company in the other, and in both of which she was the defendant, the wife vigorously contends that the mortgage in the instant case is null and void as to her, for the reasons therein stated. In the case of the Bank of the Philippine Islands, which was a suit to foreclose a second mortgage upon the same property of the defendant wife, the evidence was conclusive that the mortgage in that case was made by her husband as her agent and attorney in fact, to secure the preexisting debt of a third person, for which the wife was not liable, and to which she was not a party, and it was there held that under the power of attorney now in question, her husband, as her attorney in fact, could not make her liable for the payment of a preexisting debt of a third person, or as a surety for the payment of such, a debt, and that for such reasons, the real mortgage made by her attorney in fact, to secure the payment of that kind of a debt, was null and void.

In the Philippine Sugar Estates Development Company, among other things, the mortgage specifically recites "that the Philippine Sugar Estates Development Company, Ltd., having granted to Don Juan M. Poizat a credit of Ten Thousand Pounds Sterling," "That the Philippine Sugar Estates Development Company, Ltd., hereby grants Don Juan M. Poizat a credit in the amount of Ten Thousand Pounds Sterling which the said Mr. Poizat may use within the entire month of January of the coming year, 1913, upon the bank established in the City of London, England, known as Banco Español del Rio de la Plata, which shall be duly advised, so as to place upon, the credit

of Mr. Poizat the said amount of Ten Thousand Pounds Sterling, after executing the necessary receipt therefor." It also appears from the body of the mortgage that J. M. Poizat was personally a party to it and to all of the covenants therein made, and that it was signed and executed by him, and by him only, in the identical manner in which he signed the mortgage here in question. In other words, it appears upon the face of the mortgage that the money borrowed was loaned to J. M. Poizat personally and that it was not paid or delivered to him, as the agent or attorney in fact of the defendant wife.

It is true that in the mortgage, and as her attorney in fact, he covenants and agrees that the wife should pay the debt, and that he purports and undertakes to execute the mortgage on her property. Be that as it may, the mortgage shows upon its face that the loan there in question was made to him personally, and that it was not made to the wife. It further appears from the recitals made in the instrument that both the husband and wife are parties to the mortgage, and that it was signed and acknowledged by J. M. Poizat, only, there is nothing in the body of the instrument, or his signature, which shows or tends to show that he signed the mortgage as the agent or attorney in fact of his wife, or that his lone signature should be construed as the dual signature of the husband and the wife.

In the instant case, although the husband signed his name, and his name only, to the mortgage, it appears upon the face of the mortgage that he is not a party to the instrument, and that he executed it "as attorney in fact and legal representative of my wife, Doña Gabriela Andrea de Coster y Roxas, by virtue of the power of attorney" which she executed to him on August 25, 1903, which is the same power of attorney involved in the other two cases. It further recites that the money in question was paid to J. M. Poizat "the latter in the capacity in which he executes this deed." It further recites that "the mortgagor binds herself, through the aforesaid attorney in fact, to pay the aforesaid sum of P125,000 to the mortgagee," and that she agrees at all times to have an attorney in fact in the City of Manila authorized "to represent her legally in all such matters which may have reference to this contract in the future," and that she bound herself to pay the taxes "and to perform for her account" all things required by the municipal authorities, and that she shall exhibit the receipts therefor "as soon as she makes payment thereof during the time that this mortgage is in force." It is further stipulated that if the property should decrease in value "the debtor binds herself to increase the mortgage security" and "that in case of her failure to do so, the creditor corporation may demand immediate payment from the debtor of what is due from her." It is further agreed that in the event of a suit or action, "Doña Gabriela Andrea de Coster y Roxas shall pay said creditor in addition, the sum of P12,000" for and on account of its expenses and attorney's fees, and that she waives her right to contest the amount of such debt "unless it should attempt to collect from her an amount in excess of the P12,000 aforesaid, which Doña Gabriela Andrea de Coster y Roxas binds herself to pay."

In the instant case, J. M. Poizat in person is not a party to the mortgage, and the use of his name in the mortgage is confined and limited to the agent and attorney in fact of his wife only, and the money in question was delivered to, and received by, him as her agent and attorney in fact, and he personally does not covenant or bind himself to pay the loan or do anything else. All of the covenants and agreements specified and defined in the mortgage are the covenants and agreements of the wife, and of the wife only. It is true that her own personal name is not signed to the mortgage, and that it is signed by the name of Jean M. Poizat, and of him only. But the mortgage, with all of the recitals therein made, must be construed as a whole, and the signature of J. M. Poizat must be construed as it relates to, and in connection with, the language used in the body of the instrument, and when so construed, it must be found that in the signing of his name to the mortgage, J. M. Poizat was acting as the agent and attorney in fact of his wife; otherwise, the whole instrument would be a nullity both as to the husband and the wife. It is the wife, and the wife only, who covenants and agrees to pay the money and who makes the covenants and recitals contained in the mortgage, and the instrument upon its face recites that J. M. Poizat executes it "as attorney in fact and legal representative of my wife, Doña Gabriela Andrea de Coster y Roxas, by virtue of the power of attorney" in question.

There are very important distinctions between the actual facts shown to exist in this case and the covenants and recitals made in the mortgage now in question, and the actual facts, covenants and recitals in the cases of the Philippine Sugar Estates Development Company and the Bank of the Philippine Islands, in which the Majority of this court held the mortgages as null and void.

We are clearly of the opinion that the transaction and mortgage in question was the act and deed of the wife by and through her husband as her agent and attorney in fact, and as such it is a valid mortgage on the property therein described.

The lower court ordered the property to be sold within ninety days from the date of the judgment to satisfy plaintiff's claim. If the property should be sold within that time, it might not bring any more than the amount of plaintiff's claim. Under all of the existing conditions, and in the interest of justice, that part of the judgment is modified, and the time for the sale of the property is hereby fixed and limited to eight months from the date of the final judgment, and in all other respects, the judgment of the lower court is affirmed, with costs. So ordered.

Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

CONCURRING OPINION

STREET, J.:

The mortgage involved in this case was created under the same power of attorney used in creating the mortgages under discussion in two other late decisions of this court, namely, the Philippine Sugar Estates Development Co. vs. Poizat (48 Phil., 536), and Bank of the Philippine Islands vs. De Coster (49 Phil., 574); and as the result reached by the court in this case is consistent with the views expressed by the undersigned in dissenting opinions in those cases, he naturally concurs in the result here. He begs leave, however, to abstain from committing himself to the reasoning followed by the court in its present opinion, in so far as it proceeds upon the idea that there is any fundamental difference between the situation here involved and those presented in the earlier cases.

DISSENTING OPINION

JOHNSON, J.:

If the decision in this case is correct, then the court should at once recall, revoke and set aside its former decisions in the case of the Philippine Sugar Estates Development Co. vs. Poizat (48 Phil, 536) and the cases of the Bank of the Philippine Islands vs. De Coster (49 Phil., 574).

DISSENTING OPINION

MALCOLM, J.:

With all due respect to the majority decision and its writer, I have to state that I fail to see the vital distinction between this case and the other Poizat cases. The power of attorney is the same. The signature to the mortgage is still "Jean M. Poizat." The descriptive phraseology in the mortgage does not serve to bind the wife. Accordingly, I must vote for a reversal.

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