

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. TAN ONG ZSE, VDA. DE TAN TOCO, DEFENDANT AND APPELLEE.*G.R. No. 27991. December 24, 1927*

Ponente: VILLA-REAL, J.

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In this instance the plaintiff Philippine National Bank appeals from the judgment of the Court of First Instance of Iloilo dismissing said plaintiff's complaint against the defendant Tan Ong Zse Vda. de Tan Toco for the sum of P357,075.80, plus interest on the capital of P300,000 at the rate of 8 per cent per annum from November 15, 1924 until fully paid, and an additional sum equivalent to 10 per cent of said amount as attorney's fees, with the costs of the action. It was further prayed that, should the defendant fail to pay the amount of the judgment within the period of three months from the date thereof, the mortgaged property be ordered sold at public auction; and furthermore, should the proceeds from the mortgaged property be insufficient to cover the amount of the judgment that a writ of attachment be issued against whatever other property the defendant may have not exempt from execution.

In support of its appeal, the appellant bank assigns the following alleged errors as committed by the trial court in its decision, to wit: (1) In striking out from the record all of the testimony of witness Ramon Mendoza; (2) in finding that the defendant Tan Ong Zse's attorneys had asked, during the hearing, that all of Ramon Mendoza's testimony be stricken out; (3) in refusing to admit as plaintiff's evidence, the documents marked Exhibits A, B, C, D, E and F; (4) in not finding that the evidence shows that Tan Bunco or Mariano de la Rama Tan Bunco was empowered to administer and mortgage the property of the defendant Tan Ong Zse Vda. de Tan Toco; (5) in not finding that the promissory note Exhibit B and the mortgage deed Exhibit E are obligations contracted by the defendant Tan Ong Zse to the Philippine National Bank through M. de la Rama Tan Bunco, her attorney in fact; (6) in not finding that on May 23, 1922, the defendant Tan Ong Zse Vda. de Tan Toco obtained a loan of P300,000 from the Philippine National Bank, with interest at 8 per cent per annum; (7) in not holding that on May 28, 1927, the defendant Tan Ong Zse Vda. de Tan Toco owed the Philippine National Bank, for the loan secured by Exhibit E, the sum of P414,333.35 and that the Philippine National Bank is entitled to recover said sum from the defendant; (8) in not sentencing the defendant Tan Ong Zse Vda. de Tan Toco to pay the plaintiff bank the said sum of P414,333.35 with interest at 8 per cent per annum from March 29, 1927 until fully paid, plus 10 per cent of the total debt by way of attorney's fees, and the costs of the action; (9) in not ordering that, if after the lapse of three months from the date of the judgment, the defendant has not paid to the plaintiff the said sum of P414,333.35 with interest at 8 per cent per annum from March 29, 1927, plus 10 per cent of the total debt, and the costs of the action, the sheriff of the Province of Iloilo should sell at public auction the mortgaged property described in Exhibit E; and (10) in dismissing the complaint with the costs against the plaintiff.

The principal question to determine in the present appeal, and on which depends the solution of the other questions raised by the remaining assignments of error, is that contained in the fourth assignment of error, with reference to the sufficiency of the evidence to establish the existence of a power of attorney from the defendant

Tan Ong Zse Vda. de Tan Toco to Mariano de la Rama Tan Bunco to administer and mortgage property belonging to her.

The only evidence presented by the plaintiff's entity to prove the existence of such power of attorney is the original certificate of title, Exhibit F, issued to Tan Ong Zse Vda. de Tan Toco, on the back of which, among other things, there is a memorandum which reads:

Memorandum of the incumbrances affecting the property described in the original certificate of title No. 329, issued in favor of Tan Ong Zse, a widow

Doc. No.

Kind

Executed in
favor of—

Conditions

Date of instrument

Date of
inscription 1919

Power of attorney

Tan Bunco

Authority is hereby conferred, among other things, to mortgage as well as to administer property belonging to Tan Ong Zse.

1916

Sept. 14

Sept. 10

The appellant contends that said memorandum is sufficient to establish the fact that Tan Ong Zse Vda. de Tan Toco authorized Mariano Tan Bunco, to administer her property, obtain loans, and mortgage said property to secure said loans. It cites, in support of its claim, section 47 of Act No. 496, which reads as follows:

"Sec. 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situate, and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all the courts of the Philippine Islands and shall be conclusive as to all matters contained therein except so far as otherwise provided in this Act."

From a careful examination of the section just quoted, it will be seen that it is the original certificate in the registration book, a copy thereof certified under the signature of the clerk of court or of the registrar of deeds of the province or city in which the land is situated, the duplicate of the same for the owner, and the seal of the court that must be received as conclusive evidence of all the matters contained therein.

Section 41 of the same Act defines a "certificate of title" as follows:

"Sec. 41. Immediately upon the entry of the decree of registration the clerk shall send a certified copy thereof, under the seal of the court, to the register of deeds for the province, or provinces, or city in which the land lies, and the register of deeds shall transcribe the decree in a book to be called the 'Registration Book,' in which a

leaf, or leaves, in consecutive order, shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court. * * *

According to this legal definition, the certificate of the title is the transcript of the decree of registration made by the registrar of deeds in the registry.

And, according to section 40 of the same Act, the decree of registration must contain the following data:

"Sec. 40. Every decree of registration shall bear the day of the year, hour, and minute of its entry, and shall be signed by the clerk. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife. If the owner is under disability, it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, and other incumbrances, including rights of husband or wife, if any, to which the land or owner's estate is subject, and may contain any other matter properly to be determined in pursuance of this Act. The decree shall be stated in a convenient form for transcription upon the certificates of title hereinafter mentioned."

If, according to the above cited section 47, only the original certificate in the registry of deeds, a certified copy of the same, or the seal of the court, will be admitted as conclusive proof of its contents and if, according to section 41, also above quoted, the original certificate of title is no other than the transcript of the decree of registration made in the registration book, then the notations or memoranda on the back of the certificate of title are not admissible as proof of the contents of the documents to which they refer, inasmuch as they do not form a part of the contents of the decree of registration. The said notations or memoranda are, at most, proof of the existence of the transactions and judicial orders noted, which affect the registered land, of its presentation to the registrar, of its entry in the registry, and a notice to the whole world of such facts, as provided for in section 51 of said Act No. 496, which reads as follows:

"Sec. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering."

It could not have been the Legislature's intention to make the original certificate of title, or a certified copy thereof, or a duplicate of the same for the owner, conclusive proof not only of its contents but also of the contents of the documents and judicial orders noted since, unlike the original certificates of title or certified copies thereof, said notation do not contain the full text of the documents or judicial orders noted, but only a memorandum, or extract of the same, consisting of the designation of the kind of the document, the name of the person to whom it was issued, the date of its execution and the date and hour of its registration. It would be extremely hazardous to accept such notations or memoranda as conclusive proof of the contents of the documents or judicial orders noted, because then the document itself which is an unquestionable and indubitable evidence of its contents would be supplanted by an extract of its contents made by the registrar, which extract might be erroneous and might not give the true sense of the conditions stipulated therein. And even if such an extract were as exact as could be desired, still, it cannot be a guarantee of the authenticity and due execution of the document from which the extract is made. Moreover, it would be contrary to the fundamental rule that the document itself is the best proof of its contents and that only in case of destruction or loss can secondary or supplementary proof of the same be admitted. (Sec. 321, Act No. 190.)

In the case of *Government of the Philippine Islands vs. Martinez and Martinez* (44 Phil., 817), this court, speaking of the probatory value of the registration in the public registry, said the following:

"1. Evidence; Primary and Secondary.—While it is true that the record of any document in a public registry is a public document, yet before the record or a certified copy of the recital made in a public registry of the contents of a deed of sale, may be admitted as evidence of the contents of said deed, it is indispensable to establish first that said deed really existed, was duly executed and was lost; for while it may be true that said document was really presented to the registry, as stated in the entry or the books of the registry, yet the document actually presented may have been falsified or simulated, and may not have really been executed by the parties appearing thereon to have signed the same. And if it really existed, it should be presented unless it is proven to have been lost, in which case, and only then, secondary evidence may be introduced."

By analogy, we may say that the memorandum of a power of attorney noted on the back of an original certificate of title is not admissible as proof of the contents of said power of attorney, but only of the fact of its execution, of its presentation for notation and of its notation for the purposes of public notification in connection with the creation of preferential rights to the registered land covered by the title.

The non-presentation of the power of attorney as evidence of the authority conferred by the defendant Tan Ong Zse Vda. de Tan Toco upon Mariano de la Rama Tan Bunco to administer and mortgage her property, deprives us of the best means of determining whether the acts performed by the alleged attorney in fact are included in the powers conferred by said power of attorney.

In view of the importance of the case, in the interest of equity and justice it is ordered that it be reopened and the record be remanded to the court of origin for the presentation of the power of attorney together with such evidence connected therewith as the parties might deem fit to present, without the necessity of again submitting that already presented at the original trial, and that a new judgment be rendered in accordance with all the evidence in the record, without special pronouncement as to costs. So ordered.

Avanceña, C.J., Johnson, Street, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

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