

LUCIO EMAS, PLAINTIFF AND APPELLE, VS. ANTONIO DE ZUZUARREGUI AND FAUSTINO AGUILAR, DEFENDANTS AND APPELLANTS.

G.R. No. 29937. July 12, 1929

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the Province of Tarlac by Lucio Emas against Antonio de Zuzuarregui and Faustino Aguilar, to obtain a decree of nullity with respect to transfer certificate of title No. 1024, purporting to show that De Zuzuarregui is the owner of the parcel of land described in said certificate, with the building thereon, in so far as affects an undivided half interest in said parcel claimed by the plaintiff, and to obtain an order for the cancellation of said certificate. The defendant Aguilar appears to be mortgagee of the whole parcel by contract of mortgage executed in his favor by De Zuzuarregui and noted in the certificate. The plaintiff therefore also seeks to obtain the annulment of said mortgage, in so far as affects the undivided half of the property claimed by the plaintiff.

Upon hearing the cause the trial court found that the plaintiff is the owner of the undivided half interest claimed by him in the parcel covered by the certificate in question and ordered that the duplicate of the transfer certificate No. 1024 be surrendered and that the certificate be cancelled, not only as to the title but as to the mortgage in favor of Aguilar, in so far as affects the plaintiff's half of the property, with costs against De Zuzuarregui and in favor of the plaintiff Lucio Emas. This decision was, however, made without prejudice to the right of Aguilar, as mortgage creditor of De Zuzuarregui, to enforce his rights under the mortgage against the half of the property pertaining to his mortgagor, De Zuzuarregui. From this judgment the defendants, De Zuzuarregui and Faustino Aguilar, appealed.

The property with which this action is concerned consists of lot No. 1147 of the cadastral of La Paz, Province of Tarlac, containing an area of 1,846,932 square meters and covered by original certificate of title No. 3271, issued on June 5, 1922. From this certificate it appears that on the date stated three undivided interests in said parcel were vested as follows, namely, an undivided half in Lucio Emas, an undivided fourth in Gregoria Salas, and an undivided fourth in Ignacio Salas. The two undivided fourths belonging respectively to Gregoria Salas and Ignacio Salas subsequently passed by transfer to Antonio de Zuzuarregui; and by this means the plaintiff, Lucio Emas, and the defendant Antonio de Zuzuarregui came to be co-owners, to the extent of one-half each, of the property covered by the certificate above mentioned.

The plaintiff Emas is a resident of La Paz, Tarlac, while Antonio de Zuzuarregui is a resident of the City of Manila; and it appears that, prior to the occurrence which gave rise to this litigation, they were not personally known to each other. It further appears that De Zuzuarregui, having acquired an undivided half in the property referred to, was desirous of acquiring the other half also, and to this end he entered into negotiations with one Victor Ortega, who represented himself to be an intermediary of Lucio Emas, for the purpose of effecting the sale

of Emas's half to De Zuzuarregui. This representation on the part of Ortega was entirely false, since he did not have any authority from Lucio Emas to negotiate a sale of the latter's share in the property; and, on the contrary, Ortega well knew that Emas was not at all desirous of parting with his interest in the property. Nevertheless, Ortega procured a stranger, whose identity is so far unknown, to personate Lucio Emas in the execution of a forged deed (Exhibit A), bearing date of October 2, 1925, which purports to convey to De Zuzuarregui, for the sum of P5,000, the undivided half pertaining to Emas in the property in question. In the consummation of this fraud one Simon Zapata acted as one of the witnesses to this instrument, while Ortega himself served as the other.

Victor Ortega and Simon Zapata were subsequently prosecuted in the Court of First Instance of the City of Manila for the falsification of a public document, effected by them in conspiracy with the unknown personator of Lucio Emas. As a result of this prosecution Victor Ortega was convicted and sentenced, in the Court of First Instance, to undergo imprisonment for four years, nine months and eleven days, prison correccional, with the accessories prescribed by law, and to pay a fine of 250 pesetas, with subsidiary imprisonment in case of insolvency, with costs. Upon appeal to the Supreme Court this judgment was modified and the penalty of imprisonment increased to five years, seven months and four days, prison correccional.[1] The accused was also further sentenced, in the last named court, to pay a fine of P1,000 and to indemnify De Zuzuarregui in the amount of P2,500, with subsidiary imprisonment in case of insolvency, and with costs.

Directing attention again to the forgery of the deed, the following facts may be noted as pertinent to the present controversy: Said deed was executed before Hipolito de Jesus, attorney and notary public, with office at 520 Rizal Avenue, Manila. This attorney was an acquaintance of De Zuzuarregui and was employed by the latter to draw up the papers incident to the transfer. De Jesus says that, for some time prior to October 2, 1925, De Zuzuarregui had been discussing the purchase of the property with Ortega, who had informed De Zuzuarregui that the owner would sell (thei undivided half which De Zuzuarregui wished to acquire for the sum of P5,000. On October 1, 1925, Ortega brought to the office of De Jesus an individual who was introduced to De Jesus as Lucio Emas. Upon being informed that Emas had come for the purpose of consummating the sale, De Jesus called De Zuzuarregui by telephone. When De Zuzuarregui arrived the conditions of the sale were discussed. In the course of this conversation De Zuzuarregui apparently divined that he might obtain a considerable concession in the matter of the price, and believing that De Jesus might be of assistance in effecting such reduction, De Zuzuarregui called De Jesus aside and told him that he (De Zuzuarregui) would give De Jesus the sum of P700 if the latter could prevail upon Emas to sell his interest for P2,000. At the same time De Zuzuarregui informed De Jesus that he would give Ortega the sum of P400 if the purchase could be consummated for the price of P2,000. Upon this Ortega was also called aside and secretly informed of the offer; and after some dickering an agreement was reached by which the supposed vendor undertook to sell the property to De Zuzuarregui for the sum of P2,000. For this amount De Zuzuarregui gave his check to the supposed vendor; and in addition to this, De Zuzuarregui appears to have paid some P40 to cover expenses incident to the transaction. As a consequence De Zuzuarregui, after compensating De Jesus in the amount of P700 and Ortega in the amount of P400, was at a total expense of P3,140 upon account of the deal.

It appears that, in the course of the conversation above mentioned, the suspicion of De Jesus was aroused with respect to the bona fides of the transaction, and he took the precaution to have an affidavit made to the effect that the person acting as Lucio Emas was really that individual. De Jesus says also that when he observed the ease with which the supposed owner yielded to the request of the purchaser for a reduction of the price, he feared that the "old man" was being defrauded.

After the document of transfer had been delivered to De Zuzuarregui and the check of P2,000 for the purchase money had been placed in the hands of Hipolito de Jesus, De Zuzuarregui was informed that the vendor had no

duplicate of the Torrens Certificate of Title such as is issued to the owner¹. For this reason De Zuzuarregui told De Jesus not to present the check for payment until a certificate should be obtained; and in order to procure the certificate, De Jesus, representing the vendor (the supposed Lucio Emas), made a trip to the Province of Tarlac and filed a motion in the Court of First Instance in the name of Lucio Emas (the impostor), stating that he was the registered owner of an undivided half interest in the parcel in question and that his owner's duplicate had been accidentally destroyed by fire. He therefore asked that a new duplicate should be issued to him. Upon the faith of this representation the court made the necessary order, on October 13, 1925; and by means of this new and fraudulent duplicate, transfer certificate No. 1024 was issued by the register of deeds in favor of De Zuzuarregui on October 21, 1925. As De Zuzuarregui was already the owner of an undivided half in the property covered by this certificate, and as he had now apparently acquired the other half from Lucio Emas, the certificate No. 1024 shows De Zuzuarregui to be the registered owner of the entire interest in the parcel covered by the certificate. A few months thereafter, or on March 5, 1926, De Zuzuarregui mortgaged the entire property to Faustino Aguilar to secure a loan of P11,500, at twelve months, with interest at 9 per cent per annum. The existence of this mortgage is proved only by the register's annotation, dated March 11, 1926, on the back of certificate No. 1024, since Faustino Aguilar did not introduce the mortgage in evidence, nor submit any proof whatever to demonstrate the validity of his lien.

The proof adduced before the trial court shows, we think, beyond any doubt, that the deed, original of Exhibit A, which purports to show a conveyance of the property in question from the plaintiff, Lucio Emas, to the defendant De Zuzuarregui, is a forgery, and that the fraud was consummated substantially in the manner above described. The plaintiff in this action (the real Lucio Emas) testified unequivocally that he had never taken any part in the creation of the deed in question, and his testimony, in our opinion, leaves no room to doubt that he was speaking the truth. As evidence of the crime of forgery, the plaintiff's attorney submitted in the trial court certified copies of the judgments entered in the Court of First Instance of Manila and afterwards in the Supreme Court in the criminal case convicting Ortega of the crime of estafa by falsification of a public document. These certified copies were admitted by the trial court as competent proof, and the attorney for the defendants objected on the ground that said judgments are inadmissible in this civil action, being *res inter alios acta*. As an abstract point of law the assignment of error based on this exception is perhaps well taken; but we are of the opinion that, apart from said certified judgments, the record contains ample evidence to support the finding of the trial court that the original of the Exhibit A is a forged document, and that the present plaintiff, Lucio Emas, was not a party thereto.

It appears from the proof that since the year 1926 the entire parcel covered by certificate No. 1024 has been assessed for the purposes of taxation in the amount of P30,095, and the trial judge stated the conclusion that two-thirds of the property is low ground, with a value of about one hundred pesos per hectare, while the other third is more elevated, having a value from two hundred to three hundred pesos per hectare. We see no reason to doubt that the entire property has a value at least equal to the amount for which it is assessed, notwithstanding the fact that prior to 1926 the assessed value was at P13,620. In any view that can be taken of the matter it is evident that, at the time the forgery was committed, the value of one-half of the property was greatly in excess of the amount paid by De Zuzuarregui to the impostor.

Upon general principles of jurisprudence it is self-evident that the defendant De Zuzuarregui acquired no right whatever in the property in question by virtue of the forged deed (original of Exhibit A); but it is contended, upon the authority of *De la Cruz vs. Fabie* (35 Phil., 144), that he acquired the undivided half interest which was the subject of conveyance in said deed by virtue of the issuance to him of the transfer certificate No. 1024. We are of the opinion, however, that, upon the facts before us, De Zuzuarregui is not in a position to assert the rights of an innocent purchaser for value and the acquisition of the Torrens certificate by him did not cure the defect in his title. In this connection it appears that Hipolito de Jesus, who was acting as attorney for De Zuzuarregui,

suspected that the sale was a dishonest transaction; and the ease with which De Zuzuarregui obtained a reduction of more than one-half from the asking price and the resulting inadequacy of the consideration were circumstances sufficient to admonish any reasonable person that the sale was not being made in good faith by the seller. A person cannot claim the rights of an innocent purchaser who wilfully closes his eyes to facts which would be sufficient to arouse the suspicion of a reasonable person; and knowledge of what might have been revealed by proper inquiry is imputable to the purchaser. De Zuzuarregui therefore is in no position to resist this action by the true owner to set aside the forged deed and the transfer certificate based thereon.

With respect to the alleged rights of the defendant Faustino Aguilar based upon the mortgage executed in his favor by De Zuzuarregui, we note that reliance is placed by this appellant exclusively on the annotation appearing on the back of transfer certificate No. 1024, showing that the property had been mortgaged by De Zuzuarregui to Aguilar, as already stated in this opinion. But the mortgage itself was not introduced in evidence, and no proof was submitted on the part of Aguilar tending to show that he had advanced the money mentioned in the annotation upon the faith of the mortgage. In *National Bank vs. Tan Ong Zse* (51 Phil., 317), it was held that, although an annotation of this character on a Torrens certificate is effective notice of the execution of the document, such annotation nevertheless does not supply original proof of the terms of the contract. Moreover, Aguilar's title is derived from a contaminated source, and it was incumbent upon him to prove that he is, in fact, to the extent of his mortgage credit, an innocent purchaser of the property in good faith. In the absence of such proof, no error was committed on the part of the trial court in ignoring his alleged rights.

From what has been said it follows that there is no error in the appealed decision, and the judgment will be affirmed. So ordered, with costs against the appellants.

Johnson, Johns, Romualdez, and Villa-Real, JJ., concur.

Malcolm, and Ostrand, JJ., also voted for affirmance, but their names are not signed to the opinion owing to their absence on leave at the time of promulgation.

[1] *People vs. Ortega*, G. R. No. 26368, promulgated March 23, 1927, not reported.

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