

ENRIQUE BRIAS DE COYA, PLAINTIFF AND APPELLEE, VS. TAN LUA AND VICENTE NEPOMUCENO, DEFENDANTS AND APPELLANTS.

G. R. No. 30756. September 22, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a new hearing of the appeal taken by the defendants Tan Lua and Vicente Nepomuceno from the judgment of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"The defendants shall pay the plaintiff the sum total of P17,631.06, plus interest at 9 per cent per annum on the principal of P16,000 from this day until fully paid, and legal interest upon interest due at the time when the complaint was filed until fully paid, and the legal costs. The defendants are hereby ordered to deposit with the clerk of this court said amount within the period of three months, and if neither of them should do it, let the property described in transfer certificate of title No. 29363 of the registry of Manila, be sold to satisfy this judgment.

"Should the defendants appeal and this judgment be affirmed, let further judgment be rendered for P400 as attorney's fee for the creditor."

At the original hearing, the appellants assigned the following alleged errors in their brief, as committed by the trial court, as the grounds of their appeal, to wit:

- The lower court erred in rendering judgment for the amount of the mortgage debt found in the decision against both defendants Tan Lua, an adjudged insolvent, and her co-defendant Vicente Nepomuceno, the assignee of the insolvent estate; in not limiting such judgment against the latter in his official capacity as such assignee and legal representative of said insolvent; and in not dismissing the complaint as to defendant Tan Lua.
- The lower court erred in ordering alternatively either of the defendants, instead of the defendant assignee alone, to deposit the amount of the judgment with the clerk of court within a period of three months in voluntary satisfaction of the judgment and to avoid enforcement thereof by foreclosure sale of the mortgaged property."

The following relevant and undisputed facts are necessary to decide the question raised on this appeal:

On June 12, 1926, Attorney O'Brien and other lawyers filed with the Court of First Instance of Manila in civil case No. 29955 a petition praying, for the reasons stated, that Mariano Velasco y Cia., Mariano Velasco & Co., Inc., and Mariano Velasco Sons & Co., and each and every member of these partnerships and corporations, be declared involuntarily insolvent.

On March 17, 1927, the Court of First Instance of Manila entered an order declaring the company and corporations mentioned above and all the members thereof, insolvent, including the herein defendant-appellant, Tan Lua. The order was published on March 22, 29, and April 5, 1927, in *El Debate*, a newspaper of general circulation published in the City of Manila, Philippine Islands. Each and every one of the

persons declared insolvent was, in addition, personally notified of the order by mail.

On April 15, 1927, the defendant-appellant Tan Lua, who resided and now resides in China, executed a general and special power of attorney in favor of her son Chua Yok Ten (Exhibit A) to manage, sell, and encumber her property situated in the Philippine Islands.

On May 13, 1927, the defendant-appellant Vicente Nepomuceno was appointed assignee of the involuntary insolvency, accepted the appointment and duly qualified.

On May 21, 1927, the clerk of the Court of First Instance of Manila conveyed to the aforementioned assignee all the inventoried property in his possession belonging to the insolvents.

On June 15, 1927, the defendant-appellant Tan Lua, to secure a P16,000 loan payable within three years with interest at 9 per cent, executed, through her attorney-in-fact, a mortgage deed (Exhibit B) of the parcel of land described in transfer certificate of title No. 24914 issued to her, which was endorsed upon the original and duplicate certificates.

On September 17, 1927, the aforementioned assignee filed his appointment for the purpose of having it recorded on said certificate of title No. 24914 issued to Tan Lua as registered owner, and to have the property transferred to him.

The first question to determine on this appeal is whether the mortgage given by the defendant-appellant Tan Lua to the plaintiff-appellee Enrique Brias de Coya and noted on the proper certificate of title after the appointment of the assignee and the transfer of the property of the insolvents to said assignee, but before his appointment and the transfer were recorded, was legal and valid or not.

Section 32 of Act No. 1956, entitled "The Insolvency Law" provides, among other things, the following:

"SEC. 32. As soon as an assignee is elected or appointed and qualified, the clerk of the court shall, by an instrument under his hand and seal of the court, assign and convey to the assignee all the real and personal property, estate, and effects of the debtor with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in insolvency, and shall relate back to the acts upon which the adjudication was founded, and by operation of law shall vest the title to all such property, estate, and effects in the assignee, although the same is then attached on mesne process, as the property of the debtor. Such assignment shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution. * * *"

On the other hand, sections 50 and 86 of Act No. 496, entitled "The Land Registration Act," provide the following :

"SEC. 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been Registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies."

"SEC. 86. Whenever proceedings in bankruptcy or insolvency, or analogous proceedings, are instituted against a debtor who is an owner of registered land, it shall be the duty of the officer serving the notice of the institution of such proceedings on the debtor to file a copy thereof in the registry of deeds for the province wherein the land of the debtor lies. The assignee or trustee appointed by the court having jurisdiction thereof in such proceedings shall be entitled to the entry of a new certificate of registered land of the debtor upon

presenting and filing a certified copy of the order appointing him such assignee or trustee, with the debtor's duplicate certificate of title; the new certificate shall state that it is entered to him as assignee or trustee in insolvency or bankruptcy or other proceedings, as the case may be."

An apparent conflict will be observed between the Insolvency Law and the Land Registration Act as above quoted; for while the former provides that the assignment by the clerk of the court of all the real and personal property estate, and effects of the debtor to the assignee appointed shall operate to vest in the assignee all of said estate, the latter provides that with the exception of a will, no deed purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the register of deeds to properly record it which shall be the operative act to convey and affect the land.

But this apparent conflict vanishes the moment one considers that section 34 of Act No. 1956 imposes upon the assignee the duty of having the assignment of the debtor's property to him recorded in every province and city within the Philippine Islands where any real estate owned by the debtor is situated, thereby recognizing the force and effect of the Land Registration Act on realty registered thereunder. Furthermore, the aforementioned section 32 of Act No. 1956 makes the assignment date back to the commencement of the proceedings in insolvency, and this can only take place if those proceedings have been recorded from their commencement. This amounts to a recognition of section 86 of Act No. 496 cited above, which imposes upon the officer serving the notice of the institution of proceedings on the debtor, the duty of filing a copy thereof in the registry of deeds for the province wherein the land of the debtor is located.

The Insolvency Law and the Land Registration Act are therefore in perfect accord with each other with reference to Torrens registered realty belonging to insolvency debtors; they compliment each other and are both intended to protect the rights and interests of creditors, according the latter a means for securing their insolvent debtors' property, against which they may enforce their credits. To construe the Insolvency Law in and by itself, without reference to the Land Registration Act, when the property of an insolvent debtor with a Torrens title is in question, would be to hold that one law has repealed another with which it is not in conflict and which it has not expressly repealed. Furthermore, such a method of interpretation would completely destroy the value of the Torrens title as an entirely reliable guarantee of real property, and strip it of its economic importance, founded upon two of its prime objects: to facilitate the circulation of wealth, and the promotion of credit.

Construing sections 32 and 34 of the Insolvency Law together with sections 50 and 86 of the Land Registration Act, we reach the conclusion that in order that the assignment of the insolvent debtor's real property made by the clerk of the proper court to the assignee may operate to vest in said assignee all of said estate from the commencement of the insolvency proceedings, both such proceedings and the assignment must have been recorded in the registry of deeds, the former from their commencement. This is the only logical and reasonable construction that may be placed upon the two laws above cited, for it gives effect to the Insolvency Law, which is intended to protect the creditors of an insolvent debtor, and to the Land Registration Act, which creates a guaranteed title to real property, and at the same time facilitates the circulation of wealth and promotes credit.

Applying the rule just laid down to the case at bar, we find that whereas the involuntary insolvency proceedings instituted on June 12, 1926, against the defendant-appellant Tan Lua do not appear to have ever been recorded in the registry of deeds, and whereas the assignment¹ of her estate to the assignee made by the clerk of the Court of First Instance of Manila was not recorded till September 17, 1927, that estate was vested in said assignee only on that date, and the land here in question belonged to Tan Lua and was unencumbered when she mortgaged it to the plaintiff-appellee Enrique Brias de Coya on June 15, 1927, on which date it was recorded in the registry of deeds.

It is urged that since insolvency proceedings are proceedings in rem, the publication of the order declaring the debtor

insolvent and prohibiting him from assigning his property, serves as notice thereof to the whole world, and anyone doing business with the insolvent debtor with reference to the latter's property cannot allege good faith.

In order that an action in rem may affect all persons in general, it is not enough to publish a notice of its institution ; it must be addressed to the whole world, like a notice of application for registration under the Torrens system, and must be published in a periodical of general circulation. Section 24 of Act No. 1956 requires that the order declaring the debtor insolvent be published in a newspaper of general circulation in the province or city in which the petition is filed, and if there be none, in a newspaper which, in the opinion of the judge, will best give notice to the creditors of the said insolvent: therefore, it cannot affect the whole world.

Inasmuch as the order declaring a debtor insolvent is published merely to give notice to his creditors, and as the plaintiff-appellee was not a creditor of the defendant-appellant Tan Lua, he cannot legally be presumed to have been apprised of said order, or deemed to have acted in bad faith in giving said insolvent debtor, a loan of P16,000, upon the security of the land here in question, which is registered in the name of said debtor with a Torrens title.

In conclusion, then, we are of the opinion that the plaintiff-appellee Enrique Brias de Coya is a mortgagee in good faith and for a valuable consideration paid to the defendant-appellant Tan Lua, and therefore the mortgage upon the land in question given him by the latter, which land is registered with a Torrens title, is legal and valid.

In view of this conclusion and of the fact that the defendant Vicente Nepomuceno, as assignee, has acquired the title to the mortgaged property by virtue of the assignment made to him by the clerk of the Court of First Instance of Manila, and its record on September 17, 1927, upon which date he was subrogated to all the rights and obligations of the insolvent debtor, his codefendant Tan Lua, said assignee is the one who must be ordered to deposit in court the amount of the mortgage debt with interest, within the period fixed by law, and should he fail to do so the land in question shall be sold at public auction to satisfy the said debt and interest, if possible.

For all the foregoing considerations, we are of opinion and so hold: (1) That in order that the assignment of an insolvent debtor's property to an assignee by the clerk of the proper Court of First Instance may operate to vest title thereto in said assignee from the commencement of insolvency proceedings, it is necessary that the proceedings where such assignment took place be recorded in the registry of deeds from their commencement, and that the assignment be likewise recorded; (2) that the publication of an order declaring a debtor insolvent is notice only to the creditors, and not to the whole world, for which reason it cannot adversely affect those who, in good faith and for a valuable consideration, may have entered into transactions with said debtor with reference to the latter's real property covered by a Torrens title; and (3) a duly recorded mortgage of registered land with a Torrens title given by an insolvent debtor to a creditor in good faith and for a valuable consideration, after an assignee has been appointed and the insolvent debtor's property, estate and effects have been assigned to him, but before the insolvency proceedings and the assignment have been recorded in the registry of deeds, is legal and valid.

Wherefore, the judgment of this court dated March 30, 1929, reversing that of the court below, is hereby set aside, and the appealed judgment is hereby affirmed with the sole modification that the defendant Tan Lua shall also be absolved from the complaint, with costs against the appellant, Vicente Nepomuceno, as assignee. So ordered.

Avanceña, C. J., Street, Ostrand, and Romualdez, JJ., concur.

JOHNSON, J.:

I reserve my vote.

DISSENTING

VILLAMOR, J., with whom concur MALCOLM and IMPERIAL, JJ.:

The principal issue in this case, as the majority admit, is whether the mortgage executed by the attorney-in-fact of the appellant Tan Lua in favor of the appellee Enrique Brias de Coya, is legal and valid.

The following facts are beyond dispute:

- (1) On March 17, 1927, Tan Lua and others were declared insolvent by the Court of First Instance of Manila in the case entitled, "Involuntary Insolvency of Mariano Velasco y Cia. et al."
- (2) On May 21, 1927, the clerk of the Court of First Instance of Manila issued an instrument placing the property of Tan Lua in the hands of assignee Vicente Nepomuceno, who presented said instrument to the registrar of deeds of Manila early in September, 1927, and by whom it was recorded on September 17, 1927.
- (3) On April 14, 1927, Tan Lua executed a power of attorney in favor of her son Chua Yok Ten, residing in Manila, authorizing him to sell, Mortgage, encumber, etc., all her property in the Philippines.
- (4) On June 15, 1927, Tan Lua's representative mortgaged the property here in question to Enrique Brias de Coya, to secure a loan in the sum of P16,000, the mortgage deed being registered in the registry of deeds in Manila.

It is equally undisputed that Tan Lua knew positively that she had been declared insolvent before empowering her son Chua Yok Ten to mortgage the property in question.

As the assignee had taken possession of the property and refused to recognize the validity of the mortgage or to pay the interest thereon, Enrique Brias de Coya brought this action to foreclose the mortgage against Tan Lua and the assignee of the insolvency of Mariano Velasco y Cia., Vicente Nepomuceno.

I am of the opinion that the mortgage executed in favor of the plaintiff by Tan Lua's representative is null and void, notwithstanding that it was recorded in the registry of deeds.

In order that a mortgage may be valid, the property mortgaged must belong to the mortgagor, who must have the power to dispose freely of his property or be legally authorized to mortgage it.

When Tan Lua executed a power of attorney in favor of her son to sell or mortgage her property, she could not freely dispose of it inasmuch as it had all passed by operation of law to the assignee, Vicente Nepomuceno, when the insolvent's property was assigned according to section 32 of the Insolvency Law, which is cited by the majority. The legal precept embodied in this section is couched in absolute terms, subject to no condition whatever. From the time the clerk of the court, by the instrument under his hand and the seal of the court, assigns and conveys to the assignee all the real and personal property, estate, and effects of the debtor, such assignment shall relate back to the commencement of the proceedings in insolvency and by operation of law shall vest the title to all such property, estate, and effects in the assignee, although the same is then attached on mesne process as the property of the debtor. If this be so, it is evident, in my opinion, that Tan Lua could not dispose of the property in question, as she did, through her attorney-in-fact, Chua Yok Ten.

According to the majority opinion, the assignment of the insolvent's estate made by the clerk of the court to the assignee is legal and valid only if recorded in the registry of deeds. Such a ruling, I believe, would be equivalent

to an amendment to section 32 of the Insolvency Law. If this were the intention of the legislator, he would have so expressed it. Even considering the Insolvency Law inferior to the Land Registration Law, as the majority do, still, it is a complete law containing all the necessary provisions to carry out the purposes intended.

It is true that section 34 of the law cited provides that within a month after the assignment of the insolvent estate by the clerk of the court, the assignee shall cause it to be recorded by the registrar of deeds. But this section does not provide for the nullity of the assignment in case it is not registered. The reason why the assignment should be recorded, I believe, is to protect the assignee; but as to the efficacy of the assignment, section 32 declares that it shall vest the title to all the insolvent property in the assignee by operation of the law, so that even before being recorded, it is evidence of the assignee's legal right and power. Furthermore, such assignment shall vacate and set aside any judgment entered in any action commenced within thirty days immediately prior to the commencement of insolvency proceedings and any execution issued thereon. This proves that the assignment of the property made by the clerk of the court to the assignee according to section 32 does not depend upon its being recorded in the registry of deeds.

According to section 50 of the Land Registration Law (Act No. 496), contracts upon real estate entered into by the parties concerned become effective only upon being recorded in the registry. But I do not believe this section applies to the assignment of the insolvent's property made by the clerk of the court to the assignee, for, according to the express provision of section 32 aforementioned, the assignment thus made takes effect by operation of the law.

It is no argument against my opinion that the mortgage contract between Tan Lua's representative and the plaintiff Enrique Brias de Coya was recorded in the registry of deeds before the instrument of assignment, for it is a well-known principle of law that registration does not validate void acts performed in contravention of the law; and, as we have said, that contract was void with reference to one of the parties, the alleged mortgagor Tan Lua, who could not freely dispose of her property, having been declared insolvent before she empowered her son Chua Yok Ten to mortgage the property in question.

I believe that the construction which the majority place upon section 32 of the Insolvency Law is directly contrary to the purpose of said law, which is to protect the creditors in an insolvency proceeding. For this reason I am compelled to dissent.

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