

TAN CHUN TIC, PLAINTIFF AND APPELLEE, VS. WEST COAST LIFE INSURANCE CO. AND JOSE C. LOCSIN, PROVINCIAL SHERIFF OF OCCIDENTAL NEGROS, DEFENDANTS AND APPELLANTS.

G.R. No. 30882, February 01, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }The instant complaint seeks the annulment and cancellation of the preliminary attachment levied by the defendant provincial sheriff of Occidental Negros on petition of the other defendant, the West Coast Life Insurance Company, upon the property described in the transfer certificates of title Nos. 3220 and 1263 in the name of Go Chulian. The defendants demurred to the complaint on the ground that the same did not state facts sufficient to constitute a cause of action. The demurrer was overruled by M. L. de la Rosa, judge. The defendants answered with a general denial, and as none of them appeared at the hearing, they were adjudged in default; and after the plaintiff had introduced his evidence, the trial court rendered judgment holding that lots Nos. 64 and 662 of, the cadastre of Murcia, Occidental Negros, belong in fee simple to the plaintiff, and by virtue thereof ordered that their respective transfer certificates of title Nos. 6328 and 6329 (formerly Nos. 3220 and 1263) of the office of the registrar of deeds of the province, be cancelled, and that the annotation of the preliminary attachment of said lots be stricken therefrom, with costs against the defendant.

The defendant West Coast Life Insurance Company appealed from the judgment in due time and form, and in its brief assigns five errors, of which we shall consider the fourth, the rest being, to our mind, of secondary importance in this case. In the fourth assignment of error the appellant alleges that: "The trial court erred in not holding that the stipulation in the mortgage Exhibit A, whereby the lands mortgaged shall become the property of the creditor-mortgagee in the event of the nonpayment of the debt within the term fixed, is a pactum commissorium and therefore null and void under articles 1859 and 1884 of the Civil Code."

From the record it appears that on September 16, 1925, the West Coast Life Insurance Company filed a complaint against Go Chulian, Julio Gonzaga, and Francisco Sanchez in the Court of First Instance of Manila for the recovery from them of the sum of P24,000. On the same day, the West Coast Life Insurance Company obtained from the court a writ of preliminary attachment by virtue of which the provincial sheriff of Occidental Negros, on September 21, 1925, attached, among others, two parcels of land described in the transfer certificates of title Nos. 3220 and 1263 in the name of Go Chulian. The attachment was duly recorded in the registry of deeds of Occidental Negros and annotated on the back of the proper certificates on the same date, September 21, 1925.

On September 15, 1925, Go Chulian executed a mortgage on the two parcels in question in favor of Genoveva Gamboa de Jayme, in order to secure the payment of a loan of P4,200. This mortgage appears in Exhibit A,

copied literally in the bill of exceptions. According to said document, the mortgage, which fell due on March 30, 1926, contains the following agreement:

"This mortgage shall fall due on March 30, 1926, it being understood that if upon maturity the mortgagor shall be unable to satisfy the amount owed, he will authorize the mortgagee to take over the aforesaid parcels of land, and to dispose of them after the sugar-cane crop has been harvested for milling in the season of 1925-1926, the ownership of the aforesaid lots being thus transferred to the mortgagee who shall then be the owner thereof in fee simple, dispensing with expensive lawsuits."

On March 30, 1926, the date on which the mortgage fell due, Genoveva de Jayme assigned and transferred her rights and actions in the mortgage contract to Tan Chun Tic, for value received, the deed of assignment being signed by her husband, Antonio Jayme, and the debtor Go Chulian, Exhibit B. On March 7, 1927, Tan Chun Tic presented to the registrar of deeds of Occidental Negros an affidavit wherein he stated that the period granted to the debtor in the said mortgage had already elapsed without payment of its value (Exhibit C). The registrar of deeds then cancelled the certificates of title in the name of Go Chulian, and in lieu thereof issued others in the name of Tan Chun Tic, but preserved the annotation of the preliminary attachment in favor of the West Coast Life Insurance Company.

The fundamental question raised by the appellant in his fourth assignment of error refers to the validity or nullity of the pactum commissorium contained in the mortgage contract in favor of Genoveva Gamboa de Jayme, in connection with the provisions of articles 1859 and 1884 of the Civil Code. These articles provide:

"Art. 1859. The creditor may not appropriate to himself the things given in pledge or mortgage, or dispose of them.

* * * * *

"Art. 1884. The non-payment of the debt within the term agreed upon does not vest the ownership of the property in the creditor. Any stipulation to the contrary shall be void. But in such case the creditor may demand, in the manner prescribed by the Law of Civil Procedure, the payment of the debt or the sale of the realty."

Manresa, whose authority is indisputable, commenting upon article 1859 of the Civil Code, raises the following question: "May the creditor appropriate to himself the things pledged or mortgaged, when it is especially so stipulated in the contract?" And he answers it in the following terms: "Some have so contended, on the ground that the contract is the law between the contracting parties; but in our opinion, the answer cannot but be in the negative.

"With respect to the mortgage, there can be no question, for article 1884 expressly provides that non-payment of the debt within the term agreed upon does not vest the ownership of the property in the creditor, and even declares that any stipulation to the contrary shall be void. And with regard to the pledge, neither can the creditor appropriate the thing pledged, even if it be so stipulated, because in that case, such an agreement would be immoral, illicit, and contrary to law.

"It was so held by the Supreme Court in its judgment of November 3, 1902, which annulled an agreement so worded."

The doctrine laid down by the Supreme Court of Spain in said judgment of November 3, 1902 is as follows: "While it is true that contracts are binding, whatever their form, provided they contain the conditions essential to their validity, and that the obligations arising therefrom have the force of law between the parties who must comply therewith according to the agreement, it is likewise evident that these two precepts of articles 1278 and

1091 of the Civil Code are subordinate to the provision of article 1255, which prohibits agreements contrary to law, morals, or public order. One of said agreements would be, pursuant to the general terms of article 1859, that wherein it is stipulated that the creditor may appropriate the thing pledged as if it had been sold to him, merely because the period for the payment of the loan had lapsed. That agreement, being void as to the mortgagee pursuant to article 1884 of that Code, there can be no rational basis, having in mind the precedents of our ancient law, to consider it lawful with respect to the pledgee, who, in the absence of other conditions which may have been validly stipulated, cannot disregard, in the alienation of the property pledged, the provisions of article 1872 conferring a right to the creditor, which, even though he may renounce, does also constitute a guaranty of the debtor which the latter cannot lose simply by the will of the former or by a stipulation which cannot be enforced in law."

The same doctrine is held in this jurisdiction. In *Perez vs. Cortes* (15 Phil., 211), the following doctrine was laid down:

"When an obligation secured by the mortgage of real estate becomes due, the creditor is entitled to apply to the courts for the foreclosure of the mortgage, but he is not authorized to appropriate or dispose of the property in order to recover the amount due."

In *Mahoney vs. Tuason* (39 Phil., 952) it was held:

"The creditor has no right to appropriate to himself the personal property and chattels pledged, nor can he make payment by himself and to himself for his own credit with the value of the said property, because he is only permitted to recover his credit from the proceeds of the sale at public auction of the chattels and personal property pledged not in the manner prescribed by article 1872 of the Civil Code but in that provided for in section 14 of the said Act No. 1508, which is the one in force.

"The vice of nullity which vitiates the additional agreement entered into by the contracting parties authorizing the creditor to appropriate the property and effects pledged in payment of his credit does not affect substantially the principal contract of chattel mortgage with' regard to its validity and efficacy, for the reason that the principal contract of pledge or chattel mortgage having been perfected it can subsist although the contracting parties have not agreed as to the manner the creditor could recover his credit from the value of the things pledged, in case of the insolvency of the debtor, inasmuch as the law has expressly established the procedure in order that the creditor may not be defrauded or deceived in his right to recover his credit from the proceeds of the chattels retained by him as a security, in case the debtor does not comply with his obligation, because, if the debtor could not pay his debt, there exists no just or legal reason which prevents the creditor from recovering his credit from the proceeds of the effects pledged sold at a sale effected in accordance with law."

And in *Puig vs. Sellner and Green* (45 Phil., 286), it was stated:

"The pactum commissorium, that is, the additional stipulation to a contract of loan, whereby the thing pledged shall become the property of the creditor in the event of the non-payment of the debt within the term fixed, is void.

"The creditor has no right to appropriate the chattels and effects pledged, or to make payment to himself and by himself of his credit with the value thereof, for he is only allowed to collect the debt out of the proceeds of the sale of the effects and chattels pledged."

And although the last two cases cited, dealt with a contract of pledge, nevertheless, the doctrine is also applicable to contracts of mortgage which include the stipulation referred to, since the prohibition contained in said article 1859 applies to both classes of contract.

But the judge who decided the case, in attempting to construe the agreement in question, gives it such an interpretation that instead of said stipulation referring to the creditor's right to appropriate to himself the mortgaged property, in default of the payment of the debt, as agreed upon by the parties, it refers to the debtor's power to sell said property to the said mortgagee, should the credit not be satisfied within the period stated in the contract. In order that this aspect of the question may be clarified, we shall place the contract Exhibit A and the court's interpretation side by side for purposes of comparison:

According to Exhibit A:

“ * * * if upon maturity the mortgagor shall be unable to satisfy the amount owed, he will authorize the mortgagee to take over the parcels of land, and to dispose of them after the sugar-cane crop has been harvested for milling in the season of 1925-1926, the ownership of the aforesaid lots being thus transferred to the mortgagee who shall be the owner thereof in the fee simple, dispensing with expensive lawsuits.”

According to court:

“* * * what the parties agreed upon is was that in case the debtor does not pay the debt within the period stipulated, the property given as security would be transferred to the creditor for the amount of the debt, the latter thereby becoming the owner, ‘without the necessity of expensive judicial proceedings.’”

The fundamental difference between the two may be easily understood, and consists in that in one case the mortgagee may take over and dispose of the property mortgaged for the nonpayment of the debt, and in the other, in case of nonpayment, the debtor sells to the creditor the same property mortgaged, for the value of the mortgage.

The doctrines invoked by the plaintiff in support of the judgment appealed from were rendered in cases where the question in dispute was whether a mortgagor could validly sell the thing mortgaged to the mortgagee for the amount of the mortgage, when the latter became due. The most interesting case expounded by Manresa in his commentaries upon article 1872 of the Civil Code, contained the following stipulation: "If upon the lapse of one year from this date, the amount loaned has not been returned, the borrower promises to execute a public deed of sale transferring to the lender the two parcels of land described in numbers 2 and 3, for the price of 4,000 pesetas; and in case of the non-fulfillment of this obligation, the parties may be compelled to do so by the courts."

The board of registration in its resolution dated November 16, 1902, held that such an instrument (containing the stipulation quoted) can be registered, holding, among other grounds for such a resolution, that "what the law forbids is the appropriation or disposition of the mortgaged property by the mortgagee, and that if the debtor may legally sell to his creditor the mortgaged property for such price and subject to such conditions as he may deem fit, which has never been doubted, there is no reason whatsoever why he should not be able in like manner to make a promise to sell."

And Manresa concludes: "That is to say, that if said parties agree in the mortgage deed upon the sale, or mere promise to sell, of the property mortgaged to the creditor, should the obligation secured by it not be complied with in time, stipulating the conditions of the alienation, the latter may be effectuated without any juridical objection upon the mere default in the payment, without the necessity of a prior auction sale, or any other requisite or formality; but, if instead of agreeing upon the alienation the agreement merely states that upon non-fulfillment of

the obligation secured by the mortgage, the mortgagee may, when the mortgage falls due, sell the encumbered property, then the provisions of the law for the sale of the thing pledged, as given in the article under consideration, must be observed." But the doctrines which recognize the right of owners of mortgaged property to transmit freely the ownership thereof to the mortgagee in payment of his credit, are not applicable to the case at bar, where the additional stipulation in question is entirely different from that which the judge took into consideration as the ground of the judgment appealed from. This being so, it is held that the court below erred in upholding the validity of the additional stipulation in question, and in ordering the cancellation of the annotation of the preliminary attachment upon said lots in favor of the defendant West Coast Life Insurance Company.

It is true that by Exhibit B, Genoveva Gamboa de Jayme assigned her rights and actions to the plaintiff Tan Chun Tic, but such an assignment does not extend to the ownership of the mortgaged property, for, the additional stipulation in question, being void, the assignor could not have appropriated said property to herself. And as it is evident that the assignee Tan Chun Tic could not have acquired more rights to the mortgaged property than his assignor Genoveva Gamboa de Jayme had, it follows that neither could he have acquired the ownership of said lots, and hence, he had no right to ask for the cancellation of the annotation of the preliminary attachment levied thereon.

Another ground of the appeal is that the contract Exhibit A is void as having been executed in favor of a married woman without her husband's authority. But it should be noted that although the contract thus entered into is voidable at the husband's instance, the latter, instead of asking for its annulment, ratified it, when, together with his wife, he executed the contract of assignment Exhibit B. It is also alleged that the court below erred in reversing the ruling upon the defendant's first demurrer, handed down by another judge of the same court. Supposing that such an error was committed, by itself alone, it is not a reversible error.

By virtue of the foregoing, the judgment appealed from is reversed, and the instant complaint should be, as it is hereby, dismissed, without special pronouncement of costs. So ordered.

Johnson, Street, Malcolm, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

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