

ERNESTINA ORTALIZ ET AL., PLAINTIFFS AND APPELLANTS, VS. THE REGISTRAR OF DEEDS OF THE PROVINCE OF OCCIDENTAL NEGROS ET ALV DEFENDANTS. PHILIPPINE NATIONAL BANK, APPELLANT.*G.R. No. 33106. October 15, 1930*

Ponente: VILLAMOR, J.

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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; }

By this action is sought: (a) The annulment of the order of the court dated December 21, 1918, authorizing the administratrix to make out a power of attorney in favor of Gil Montilla to mortgage the property of the deceased Jose Ortaliz Jordan and Vicenta Montilla; (b) the annulment of the mortgage executed in favor of the National Bank for the indebtedness of Maa Sugar Central Co., Inc.; (c) the annulment of the mortgages subsequently executed by the Maa Sugar Central Co., Inc., for its indebtedness to the National Bank amounting to several million pesos; (d) the annulment of the annotations made in titles Nos. 537, 4904, 5871, 6843, 5992, 5872, 6610, 7461 in the registry of deeds of Occidental Negros; and (e) the cancellation of the annotation of said encumbrances and mortgages and the return of titles to the plaintiffs.

The plaintiffs allege:

"1. That Ernestina, Elisa, and Jose, surnamed Ortaliz, were, by a decree of the Court of First Instance of this province (Occidental Negros) issued on October 27, 1923, in the intestate proceedings of the late Vicenta Montilla, and another issued by the same court on the same day in the intestate proceedings of Jose Ortaliz y Jordan, declared and ratified as the only legitimate and universal heirs of said decedents;

"2. That the plaintiffs by virtue of this declaration and ratification of the Court of First Instance of this province, are at present the legitimate? and absolute owners of all the estate left by the deceased Jose Ortaliz and Vicenta Montilla, consisting, among other things, of the realty described as follows:

Lot number	Title number
2072in Bago, Occidental Negros.....	5992
2073 in Bago, Occidental Negros.....	6843
2193 in Bago, Occidental Negros.....	537
865 of La Carlota.....	6610
977 of La Carlota.....	7461
926 of La Carlota.....	4904
974 of La Carlota.....	5871
975 of La Carlota.....	5872

"3. That neither have the plaintiffs nor their predecessors in interest ever executed any mortgage deed in favor of the Philippine National Bank, and much less any document relating to the mortgage of the realty above-mentioned, for the increase of the corporate capital and exclusive benefit of the Maa Sugar Central Company, Inc., of Bago, Occidental Negros;

"4. That the defendants illegally recorded in the registry of deeds of the province and in the title deeds of all the realty mentioned above, left by the deceased Jose Ortaliz y Jordan and Vicenta Montilla, an illegal order of the Court of First Instance of this province dated December 21, 1918, authorizing the administratrix, without first obtaining the written consent of the heirs of the decedents, to mortgage the latter's property, not for purposes of administration but solely for business and speculation; and that said defendants knew on that date that, for the reasons given, the said court had no jurisdiction to issue such an order;

"5. That said authorization given by the court to the administratrix of the estates of Jose Ortaliz y Jordan and Vicenta Montilla plainly stated that the administratrix aforesaid was bound to mortgage said property 'for the exclusive benefit of said intestate estates/ but the administratrix through her attorney-in-fact, Gil Montilla, illegally mortgaged said property 'for the exclusive benefit of the Maa Sugar Central Company, Inc., a corporation with which the estates were not connected/ and to the serious and utter prejudice of the interests of the intestate estates, as by such a mortgage for millions of pesos the property is encumbered forever without any benefit or compensation;

"6. That the administratrix's illegal power and the unlawful mortgage executed by Gil Montilla as attorney-in-fact of said administratrix, infringed upon the aforementioned order issued by the court, and the defendants also illegally recorded it in the registry of deeds of the province and in the title deeds of the said realty of the above-mentioned decedents;

"7. That without any connection or authority, the Maa Central Co., Inc., later illegally mortgaged said realty of the decedents for millions of pesos, for their own interests, and to the serious and utter prejudice of the interests of the intestate estate; and the defendants likewise illegally recorded said illegal mortgages in the registry of deeds of the province and in the title deeds of the decedent's property ;

"8. That the defendants allege that the order of the court authorizing the administratrix to mortgage the property left by the decedents, the power of attorney made out by the administratrix in favor of Gil Montilla, the latter's mortgage, and all subsequent mortgages executed by the Maa Sugar Central Co., Inc., to the 'defendant Philippine National Bank, are illegal, void ab initio, and without any effect, according to the very text of said documents, making evidence unnecessary;

"9. That the administratrix of the estates of Jose Ortaliz Jordan and Vicenta Montilla died on February 7, 1926, and the defendants continued thereafter to give effect to the illegal power of said administratrix, and refused to consider it terminated;

"10. That the plaintiffs have requested the defendants to cancel said illegal encumbrances for millions of pesos recorded as documents Nos. 5924, 7327, 7577, and 10970 in the title deeds issued for the property left by the aforesaid decedents, but defendants refused to do so;

"11. That the defendant, Philippine National Bank, although fully aware and agreeing that said property of the decedents was adjudicated by the Court of First Instance of the province to the plaintiffs Ernestina, Elisa, and Jose Ortaliz, refuses to deliver the original title of deeds to the registrar of deeds for their proper conveyance to the present owners."

The defendant registrar of deeds answered denying generally and specifically each and every allegation of the complaint, and praying for its dismissal.

The defendant Philippine National Bank also filed a general and specific denial of each and every allegation of the

complaint, alleging by way of special defense:

" (a) That the Philippine National Bank is a third party with respect to the plaintiffs, and has acquired the registration of the mortgages executed in its favor in good faith and for valuable consideration.

"(b) That the registration of the mortgages executed in favor of the defendant Philippine National Bank is valid because at the time it was made said bank relied upon the books of the registrar of deeds which contained a record of the order of the court authorizing the administratrix to execute powers to mortgage the property referred to in the second amended complaint, and, moreover, had no knowledge whatsoever of the illegality alleged by the plaintiffs in their complaint.

"(c) That since the defendant Philippine National Bank relied upon the annotations or memoranda endorsed upon the reverse side of the certificates of title covering the property in question as good and lawful with respect to the order of the court and the power-of-attorney executed in favor of Mr. Gil Montilla, in recording the mortgages executed in its favor by said attorney-in-fact, is entitled to the protection of the law.

"(d) That the defendant Philippine National Bank has no objection to make delivery of the certificates of title claimed by the plaintiffs in their complaint, if the court so decrees, but said defendant believes and contends that the complaint herein is not the proper procedure to compel said defendant to make such delivery of the documents aforementioned. And, therefore, defendant asks to be absolved from the complaint with costs against the plaintiffs."

At the hearing, the parties submitted to the court the following stipulation of facts:

(a) That the defendants admit paragraph 1 of the first cause of action of the amended complaint.

(b) The defendants likewise admit paragraph 2 of the first cause of action of said amended complaint.

(c) The defendants also admit that Ernestina Ortaliz, Elisa Ortaliz, and Jose Ortaliz are children of the decedents Jose Ortaliz y Jordan and Vicenta Montilla, and that by virtue of the order of this court dated October 27, 1923, issued in the intestate proceedings of said Jose Ortaliz Jordan and Vicenta Montilla, they were declared and ratified by the proper court as the only legitimate and universal heirs of all the property left by said decedents, appearing in cadastral plans of Bago as lots Nos. 2072, 2073, and 2173, and in cadastral plans of La Carlota as lots Nos. 865, 867, 926, 174, and 975, and other lots therein.

(d) That on September 21, 1918, the judge presiding over the Court of First Instance of Occidental Negros issued a decree appointing Cecilia Ortaliz as administratrix of the estate of Jose Ortaliz Jordan with power to authorize Gil Montilla, among other things, to mortgage to any entity, lots Nos. 2072 and 2073, together with lots Nos. 2193, 1409, and 1411; but that the plaintiffs did not give their written consent to the administratrix to make out said power of attorney and to execute said mortgage.

(e) And that said authorization in its most important part, reads as follows: "Under such conditions as may be deemed most advantageous to the interests of the estates, etc., etc. * * * of Jose Ortaliz Jordan."

(f) The parties likewise agree that in the order or authorization given by this court to the administratrix Cecilia' Montilla, no power was given her to appoint the substitute of Gil Montilla in said power-of-attorney, but neither is there a prohibition against it in said authorization.

(g) That on December 21, 1918, the Court of First Instance of Occidental Negros issued an order of authorization identical with that issued in the intestate proceedings of Jose Ortaliz and in the intestate proceedings of Vicenta Montilla, civil cause No. 1720, referring to lots Nos. 865, 877, 926, 974 and 975 of the cadastral survey of La Carlota, Occidental Negros.

(h) There are also included in this stipulation of facts, Exhibits A and B of the plaintiffs, admitted by the defendants, and the certified copies (marked Exhibits 1 and 2 of the defendants) of the orders issued by the

court in civil cases Nos. 1254 and 1720, being the intestate proceedings of the late Jose Ortaliz Jordan and Vicenta Montilla, and certified copies of the powers of attorney executed by Cecilia Ortaliz in favor of Gil Montilla, marked Exhibits 3 and 4 of the defendants.

In view of the stipulation of facts and other evidence adduced by the parties, the court below rendered judgment on March 13, 1929, holding: (1) That the mortgage executed in favor of the Bank by Gil Montilla, acting as attorney-in-fact of the judicial administratrix Cecilia Ortaliz, is valid since it was executed on March 2, 1920, and Act No. 2884, amending section 714 of the Code of Civil Procedure, was passed on February 24, 1920, which authorizes the establishment of liens on the estates of decedents; and no evidence of bad faith having been adduced against the bank in accepting the mortgage executed by Gil Montilla, it would seem clear that the privilege accorded a person acquiring a thing in good faith and for a valuable consideration may be invoked (sections 38 and 39, Act No. 496, and *Angelo vs. Director of Lands*, 49 Phil., 838); and (2) that said mortgage has been cancelled since 1920 for having been substituted by other contracts wherein neither Cecilia Ortaliz, nor Gil Montilla, nor the plaintiffs herein took part, and therefore the liens created by those subsequent contracts cannot be deemed to have been legally constituted upon the property belonging to the plaintiffs. And by virtue thereof the court ordered the registrar of deeds of Occidental Negros to cancel the liens in favor of the Philippine National Bank appearing in certificates of title covering lots Nos. 865, 926, 974, 975, and 977 of the cadaster of La Carlota, and lots Nos. 2072, 2073, and 2193 of the cadaster of Bago, both of the same province, without special pronouncement of costs.

Both parties appealed from this judgment.

The plaintiffs confine their appeal to that part of the judgment holding that the mortgage given to the bank by Gil Montilla was valid because it was executed after the enactment of Act No. 2884, amending section 714 of the Code of Civil Procedure, authorizing a mortgage of real property included in an inheritance. The bank, on the other hand, appealed because the court below held that the mortgage of March 2, 1920, was cancelled by the substitution of other contracts in which neither Cecilia Ortaliz, nor the attorney-in-fact Gil Montilla, nor the plaintiffs, took part.

In order to decide the appeal taken by the plaintiffs, section 714 of the Code of Civil Procedure, as amended by Act No. 2884, cited in the judgment below, must be considered, which provides:

"Sec. 714. Realty may be sold or encumbered though personalty not exhausted.—When the personal estate of the deceased is not sufficient to pay the debts and charges of administration without injuring the business of those interested in the estate, or otherwise prejudicing their interests, and where a testator has not otherwise made sufficient provision for the payment of such debts and charges, the court, on application of the executor or administrator with the consent and approbation, in writing, of the heirs, devisees, and legatees, residing in the Philippine Islands, may grant a license to the executor or administrator to sell, mortgage or otherwise encumber for that purpose real, in lieu of personal estate, if it clearly appears that such sale, mortgaging or encumbrance of real estate would be beneficial to the persons interested and will not defeat any devise of land; in which case the assent of the devisee shall be required."

According to this provision of law, the probate court may authorize the sale or mortgage of real property, even when there is still some personal property, subject to the following conditions: (a) That the application of the administrator be accompanied by the written consent and approval of the heirs, devisees, and legatees residing in the Philippine Islands; (b) that the sale or mortgage is necessary in order to pay off debts and expenses of administration; and (c) that the sale or mortgage is beneficial to the heirs and other persons interested in the estate.

The written consent of the heirs, devisees, and legatees is required because they, as presumptive owners, are the persons directly affected by the sale, and mortgage as well, of the decedent's estate, since a mortgage implies a

sale in case of default in paying the debt. The sale or mortgage must be made for the purpose of paying the debts and expenses of administration, because the creditors of the decedent are indisputably entitled to collect their credits even before the distribution of the estate. And, lastly, the sale or mortgage must be beneficial to the heirs, because, in providing for the administration of decedents' estates, the law aims to protect the heirs as well as the creditors of the decedent.

The convenience or benefit to be derived from the sale or mortgage is not the only thing to be considered before a court authorizes a sale or mortgage; the principal requirement is that the heirs give their written consent and approval, for they are the owners of the property to be sold or mortgaged, and cannot be deprived thereof without due process of law.

In the case before us, the plaintiffs, who have been declared to be the heirs of Jose Ortaliz y Jordan and Vicenta Montilla, did not give their consent nor approval to the mortgage in question. Nor does the record show that said mortgage was necessary to pay off the debts and expenses of administration. Neither is there evidence that the mortgage has been beneficial to the heirs, the plaintiffs herein, for although the decree of the court reads "the attorney-in-fact is empowered to mortgage the estate of the decedents Jose Ortaliz y Jordan and Vicenta Montilla, for such an amount and subject to such conditions as he may deem beneficial to the interests of the estates," as a matter of fact, Gil Montilla, the attorney-in-fact, mortgaged the said property for the exclusive benefit of the Maaos Sugar Central Co., Inc. The court below committed an error prejudicial to the interests of the plaintiffs in authorizing the administratrix to appoint an attorney-in-fact with power to mortgage the property without the requisites required by law.

The requisites set forth in section 714 of the Code of Civil Procedure for a sale or mortgage of real estate under administration left by a decedent are so indispensable to the protection of the heirs that unless they are present the court has no power to grant the authority asked by the administratrix. The law provides how this kind of a sale or mortgage is to be made, and the manner thus provided must be strictly followed. The validity of the sale or mortgage depends upon the fulfillment of the requisites established by the law. (*Lizarraga Hermanos vs. Abada*, 40 Phil., 124; *Buenaventura and Del Rosarib vs. Ramos*, 43 Phil., 704; and *Jamora and Director of Education vs. Jaranilla*, 47 Phil., 617.)

Wherefore, we are of the opinion and so hold that the orders of the court below authorizing the mortgage of the estate in question are null and void ab initio, and that the mortgages executed in favor of the defendant bank by Gil Montilla as attorney-in-fact of the judicial administratrix of the estate of the decedents Jose Ortaliz y Jordan and Vicenta Montilla, whereof the plaintiffs are heirs, are likewise null and void.

We do not consider the statement of the court below of much importance, to the effect that "it seems clear that the Bank may invoke the privilege given to persons acquiring property in good faith and for valuable consideration, no evidence of bad faith having been presented against it, in accepting the mortgage executed by Gil Montilla acting as attorney-in-fact of the administratrix of the estate of the decedents herein." The bank contracted with an agent, and did so at its own risk, being bound to ascertain the character and scope of the powers given to the agent with whom it contracted. (*Strong vs. Gutierrez Repide*, 6 Phil., 680.) The very entries in the registry of deeds relied upon by the bank show that the object of the authority granted by the court and of the powers given by the administratrix to Gil Montilla was to mortgage the property belonging to the intestate estate of the aforesaid decedents. And it was incumbent upon the bank to see whether the requisites of the law were complied with in said mortgage.

The conclusion we have reached in passing upon the plaintiffs' appeal does away with the necessity of discussing the defendant's appeal; for, if the mortgages executed by Gil Montilla on March 2, 1920, and June 24, 1920,

acting in behalf of the administratrix of the decedents' estates aforementioned are null and void ab initio, they do not constitute a lien upon the property in question, even supposing that those contracts were not substituted by the mortgages of December 23, 1920, and June 15, 1922, in which neither the judicial administratrix Cecilia Ortaliz, nor her attorney-in-fact Gil Montilla, nor the plaintiffs herein had any part.

Wherefore, the judgment appealed from is hereby affirmed in so far as it orders the registrar of deeds of the Philippine National Bank appearing in certificates of title covering lots Nos. 865, 877 (not 977), 926, 974, and 975, of the cadaster of La Carlota, and lots Nos. 2072, 2073, and 2193 of the cadaster of Bago, both of the same province. Without special pronouncement of costs. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns and Villa-Real, JJ., concur.

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