

POTENCIANO GABRIEL, PLAINTIFF AND APPELLEE, VS. ALFREDO BAENS ET AL., DEFENDANTS. “LA URBANA” ET AL., APPELLANTS.*G. R. No. 34599. December 02, 1931*

Ponente: STREET, J.

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This is an accumulation of six appeals in as many separate cases decided in the Court of First Instance of Rizal. The plaintiffs are different in the several cases, but the defendants are the same in each case, and all six cases have in common the circumstance that the questions involved are the same and that the land with which the six actions are concerned consists of contiguous lots together forming a larger mass, covered by Torrens certificates. The common purpose of the several actions is to obtain a declaration of nullity with respect to a deed executed on October 2, 1928, by Ramona Roque, widow of Lazaro Baens, and her children, hereinafter referred to as the Baens heirs, in favor of Juan T. Tabien and wife, Asuncion Noscá, as well as a mortgage executed on December 8, 1928, by Tabien and wife in favor of the building and loan association "La Urbana," with cancellation of the corresponding inscriptions of said documents and the certificates of title consequent thereupon bearing the numbers 8918, 8919, 14621, and 14625, with restoration of certificate No. 8509, and with a declaration that the respective plaintiffs in each of the six several cases are absolute owners of the parcels of land described in their several complaints, together with all incidental and appropriate relief. The complaints also pray for damages in the amount of P23,375 in the eventuality that the primary relief asked for should not be granted. The register of deeds of the Province of Rizal was made a defendant for purposes of formal relief, and he answered the several complaints with a general denial, as did also the administrator of Ramona Roque, and the Baens heirs. "La Urbana" likewise answered with, a general denial and special defense in which it was alleged that said association is mortgagee for a valuable consideration and in good faith of the land claimed by the various plaintiffs and that, even supposing fraud to have been practiced by Juan T. Tabien, its immediate predecessor in interest, in procuring the certificate of title issued in the name of himself and wife, "La Urbana" at no time had any knowledge of said fraud prior to the institution of these actions.

Upon hearing the cause, the trial judge declared the deed executed in favor of Tabien and wife by the widow and heirs of Baens to be fraudulent and void, as well as the later mortgage executed in favor of "La Urbana" by Tabien and wife, and he ordered that the certificates of title consequently issued in favor of the vendees should be canceled by the register of deeds, as well as the annotation of the mortgage in favor of "La Urbana," with costs in each of the cases against the defendants except Tupas, the register of deeds. From this judgment the defendant "La Urbana" has prosecuted this appeal by appropriate bill of exceptions. Tabien and wife also joined in the bill of exceptions, but they have assigned no error, and are unrepresented in this court, with the result that, as to them, the appealed judgment must be considered final.

Lazaro Baens was in life the owner of a considerable tract of registered land in the municipality of Malabon, of the Province of Rizal. Baens died in 1911, but before his death he had transferred, by deed of conveyance and for,

a valuable consideration, to Potenciano Gabriel the land claimed by the latter. Also, after the death of Baens, his executor, with leave of the court, sold to the other five several plaintiffs, or their predecessors in interest, the land severally claimed by them in this appeal. All of the plaintiffs, or their predecessors in interest, promptly entered into possession of the lots so conveyed to them and have remained in possession of the same until this date.

The deeds of conveyance above-mentioned did not contain the proper technical description of the property which was the subject of conveyance necessary to effect registration in conformity with the Land Registration Act, and it resulted that no account was taken of said deeds in the subsequent transfers made in the register's office. Years passed with no change in the situation as to these lots, but finally in the administration proceedings over the estate of Lazaro Baens, the court authorized his widow and heirs to execute the conveyances necessary to permit the issuance of proper certificates to these plaintiffs, whose rights were questioned by nobody. No new transfers were, however, executed in conformity with this authority by the heirs in favor of the plaintiffs. On the contrary there came upon the scene in 1928 one Juan T. Tabien, who, taking advantage of the feebleness of the widow, Ramona Roque, on the eve of her death, and of the apparent lack of instruction on the part of the heirs, prevailed upon them, on October 2, 1928, to transfer to him all the land included in the certificate of title which had been issued to them, upon cancellation of the old certificate in the name of the former husband and father, Lazaro Baens. It will be observed that although most of the property had been conveyed away, as above stated, to the plaintiffs by Baens or his administrator, there still remained in the tract a small parcel on which was located the house belonging to the Baens family. The Baens heirs said that they were led to believe, and this is quite credible, that the conveyance was intended to convey their interest in the lot then belonging to them, and the house thereon, for the sum of P2,000, and they appear to have received only P2,000, as a consequence of their having joined in the conveyance. Armed with this instrument Tabien procured certificate of title No. 14625 to be issued in favor of himself and his wife, on November 10, 1928.

The trial court found, and this fact goes without question on this appeal, that Tabien procured the title to this property by fraud and he was well aware of the rights of the plaintiffs to the property severally occupied by them. Moreover, there was no consideration for the conveyance other than the P2,000 paid for that part of the property which rightfully belonged to the Baens heirs, though the deed recited a consideration of more than P114,000. But having thus procured the certificate of title in his own name, Tabien lost little time in mortgaging the property to "La Urbana" for the sum of P23,000. This mortgage was executed on December 8, 1928, and annotation thereof on the Torrens certificate was effected three days later. The sole litigated question arising upon the foregoing facts is whether or not the mortgage executed by Tabien and wife in favor of "La Urbana" is valid as against the plaintiffs; and this question resolves itself in the end into the further question whether "La Urbana" was an innocent purchaser for value and without notice, and is entitled to protection as such.

In *Emas vs. De Zuzuarregui and Aguilar* (53 Phil., 197), we held that where a person acquires land covered by a Torrens title from one who has no right to convey, the purchaser has the burden of proving that he in good faith paid value for the property so acquired, without knowledge of facts sufficient to charge a reasonable person with notice that the sale was fraudulent. This rule is well recognized in jurisprudence, and has the effect of shifting the burden of proof upon the purchaser. The basis of this exception to the general presumption of good faith is found in the recognition of the fact that, in equity at least, a deed conveys the right which inheres in the grantor. It is therefore not always sufficient for the grantee to say "I bought on the faith of the Torrens certificate," if he buys from one who has acquired title by fraud or forgery and who consequently has no right in equity to sell. It is incumbent upon him to prove the independent fact that he is a purchaser for value and without notice. This appears to operate as a qualification of the rule stated in article 434 of the Civil Code, but, rightly considered, it is merely an incident of following the general rule into its natural ramifications. Proof of lack of title on the part of the grantor introduces a totally different factor into the situation and justifies the shifting of the burden of proof.

At any rate the rule announced in *Emas vs. De Zuzuarregui and Aguilar*, supra, is well founded in jurisprudence and it operates in furtherance of justice, without imposing any unnecessary hardship on the person acquiring the tainted title. With these observations we proceed to consider whether *La Urbana* has in fact proved that it was an innocent purchaser for value and without notice.

To begin with, the fact of payment by "*La Urbana*" of the full value for the mortgage is admitted. There is no question as to the adequacy of the consideration, and there is no room for the speculation, which frequently obtrudes itself into the transactions of bargain and sale, as to whether, in view of possible gain, the purchaser may have deliberately closed his eyes to facts that ought to have served as notice of the absence of right on the part of his grantor.

After Tabien, holder of the Torrens certificate No. 14625, had made application to "*La Urbana*" for a mortgage loan upon the property covered by said certificate, the association sent its architect, Julio de la Rosa, to appraise the property. The report of the architect, dated November 15, 1928, describes the general character of the property, states its total area at 37,463 square meters, and appraises the value of the land at P29,970. An observation contained in this report is to the following effect: "On these lands many houses are built, the majority of nipa, though some are good."

At the trial the parties submitted two agreed statements of fact mostly devoted to the documents containing the transfers above-mentioned and proceedings relative thereto. When these agreed statements were submitted in court, the attorney for "*La Urbana*" stated to the court that he concurred in these statements as dealing with facts that could be proved by documentary or oral proof, but with the reservation and express understanding that "*La Urbana*" had no knowledge of the documents nor of the facts stated therein before the granting of the loan and the execution and registration of the mortgage, and that it had no knowledge of any of said facts prior to the institution of civil action No. 4108 by Eduardo Rivera, with the exception of facts connected with the execution and foreclosure of the mortgage to it, as stated in paragraph 9 of the Agreed Statement P and paragraph 13 of the Agreed Statement Q. The opposing attorney manifested no opposition to this reservation, and the court accordingly approved the two agreed statements and admitted them with their related exhibits.

We are of the opinion that the qualification thus expressed by the attorney for "*La Urbana*," and silently acquiesced in by the attorney for the plaintiffs, is binding on them. It is a well recognized rule that if a man is silent when he ought to speak, equity will debar him from speaking when conscience requires him to keep silent. (10 R. C. L., p. 693.) In this particular situation the reservation made by the attorney is consistent with other facts appearing in the record, and it is incredible that the attorney for the plaintiffs would have failed to challenge the reservation if he had not had good reason to believe that it was in entire harmony with facts readily provable by oral testimony. We are of the opinion, therefore, that the agreed statement of facts makes out a sufficient balance of affirmative proof in favor of the good faith of the mortgagee and lack of notice on its part of the rights and claims of the plaintiffs.

But the plaintiffs attempted to make positive proof of notice of their rights through the witness Inocencio Lazaro, whose testimony connects itself with the inspection of the property made by Julio de la Rosa, the appraiser of "*La Urbana*," about November 11, 1928. It appears that Tabien accompanied De la Rosa on that occasion. The witness Inocencio Lazaro, a cochero, says that in those days he was occupying one of the houses on the property in question with the consent of the owner Juan Cruz. He says that one morning, in the first five days of December, he saw Tabien, accompanied by a Spaniard and a Filipino, appear on the ground, making inquiries for certain of the occupants, namely, Siochi, Gofio, Bautista, and Gutierrez, names that will be recognized as pertaining to four of the plaintiffs in these cases. The witness no doubt intended to indicate Julio de la Rosa as the Spaniard in Tabien's company, but he made the mistake of describing De la Rosa as a person wearing a mustache and chin

whiskers. The witness gays that, upon coming in contact with the three, he heard the Filipino ask Tabien, "Which of these places are you mortgaging to 'La Urbana'?" Tabien replied, "All these places, for these occupants are paying rent to me." Upon this Lazaro says that he himself then spoke to Tabien, admonishing him, "You ought not to mortgage those lands for I know the owners of the same." To this observation Tabien and his companions are supposed to have replied to Lazaro that he had no business obtruding into the conversation.

The words thus spoken by the witness were admittedly spoken in Tagalog, and there is proof that De la Rosa does not understand that language'. Strangely enough, the witness mentions Siochi and Gutierrez as persons present, and he says that there were others there whose names he does not remember.

We look upon this interview as probably altogether fictitious, in view of the error of the witness as to the date, the incorrect description of De la Rosa, and other badges of falsehood. But even supposing that the witness addressed to Tabien the words which he says he used, and assuming that Tabien understood him, it does not follow that the meaning of those words, if heard, was understood by De la Rosa. Certain it is that Tabien would have been the last person to convey such an item of information to De la Rosa. More than that, it is difficult to see how an observation made by an irresponsible person on the street with respect to the fact that he knew the owners of certain lots, could affect the agent of the mortgagee with notice of the state of the title. It must be admitted that if "La Urbana," through a competent representative, had learned all that the records of the Court of First Instance of Rizal then showed with respect to the right to that property, the association could not be considered an innocent purchaser for value. But to say that an intending purchaser or money lender having a Torrens title before him showing ownership in a certain person is bound to listen to all the rumors that may reach his ear from irresponsible persons tending to show ownership in somebody else than the registered owner, is too much. Good faith does not require it, and good faith is all that can be required.

It is suggested that the mere fact that numerous native houses were found on the property and that the plaintiffs in these cases were then occupants of those houses, was enough to charge "La Urbana" with notice of the rights of the plaintiffs. But this contention is obviously unsound. To recognize it would frustrate the policy underlying the existence of the Torrens system. The occupation of a house does not raise any legal presumption of ownership on the part of the occupant. Also, it is claimed that the fact that the plaintiffs had for many years been paying taxes on the lots respectively occupied by them was a circumstance tending to affect the mortgagee with notice of the plaintiffs' right. But this contention is also untenable. It was not incumbent upon "La Urbana" to search the tax rolls. The Torrens certificate of title itself is, *prima facie*, sufficient proof of title in the registered owner, and until knowledge of the rights of other persons are brought home to the intending purchaser or mortgagee, reliance can be safely placed on that instrument, good faith being otherwise sufficiently proved.

The trial court therefore erred in annulling the mortgage to "La Urbana" and the annotation thereof on certificate No. 14625.

Before this case was decided in the lower court, "La Urbana" had instituted an action to foreclose its mortgage, and judgment therein had been entered in favor of "La Urbana" on September 28, 1929. Upon said judgment of foreclosure an order of sale was entered and execution issued, the sale having been set by the sheriff for 10.30 a. m. on the morning of April 5, 1930. Whether this sale has been accomplished does not appear.

We note that the trial court ordered that the conveyance made to Tabien by Ramona Roque and the Baens heirs, as well as the certificate thereupon issued to Tabien and wife, should be canceled; and as the rights of Tabien have not been brought under discussion in these appeals, it results that the appealed judgment as affecting him cannot be disturbed. But that part of the judgment prejudicial to the rights of "La Urbana" must be reversed.

It appears that the lots claimed by the plaintiffs in the six cases before us, taken together, do not cover all of the

land included in the mortgage to "La Urbana." Whether there may be other occupants in like right with the plaintiffs, upon other portions of the lot so mortgaged, does not appear, but we may observe, with respect to the rights only of the parties to this case, that, if a sale should be made under the decree of foreclosure above-mentioned, it will be incumbent upon "La Urbana" first to sell the portions of the land mortgaged to it which are not included in the claims of the plaintiffs, and the lots held by the plaintiffs should be sold only in the event that the other portions of the property should not bring enough to satisfy the mortgage.

The appealed judgment, in the part under review in these appeals, is therefore reversed, and it is declared that the mortgage to "La Urbana" and the annotation thereof on Torrens certificate No. 14625, are valid. So ordered, without pronouncement as to costs.

Avanceña, C. J., Villamor, Ostrand, and Romualdez, JJ., concur.[1]

[1] In these cases a motion for reconsideration was interposed by the plaintiffs- appellees, in disposing of which the court in part said:

"* * * and it now appearing from the motion and Exhibit A attached thereto that the mortgage to 'La Urbana' has already been foreclosed and that the property covered by the mortgage has been sold to 'La Urbana' which sale has been duly confirmed by order of the court, which order has already become final, and without the present appellants having intervened for the assertion of their rights in said case, it results that the direction contained in the decision of this court in this case that the plaintiff herein, 'La Urbana,' should first sell the portions of the mortgaged land which are not included in the claims of the plaintiffs, cannot be given effect—a fact which in no wise impairs the validity of the sale. The suggestion in the motion of the plaintiffs-appellees that the foreclosure was invalid is therefore without merit, and the motion is denied." Minute Entry, February 10, 1932.—Editor.

DISSENTING

IMPERIAL, J., with whom concur JOHNSON, MALCOLM, and VILLA-REAL, JJ., :

The issue on appeal directly passed upon by the majority, is the validity of the mortgage executed on December 8, 1928, by Juan T. Tabien and Asuncion Noscal, husband and wife, in favor of "La Urbana" to secure a loan of P23,000. In consequence, there is also a question regarding the efficacy of the registration of said mortgage on the transfer certificate of title No. 14625, issued to the Tabiens by the registrar of deeds for the Province of Rizal.

It is admitted that the lands involved in these cases were sold to the plaintiffs, appellees herein, some of them by Lazaro Baens, and the others by his executor with judicial authority; and that the conveyance of all such lands to the Tabiens by the executor and the heirs, evidenced by air instrument dated October 2, 1928, is fraudulent and therefore null and void. The Tabiens did not appeal from the finding of the trial court that such conveyance was fraudulent and void.

In order to determine whether the mortgage to "La Urbana" is valid or void, the evidence must be scrutinized with a view to ascertaining whether that company is a mortgagee in good faith. To this end we must inquire whether it was aware that the Tabiens had obtained the property by means of fraud, and were not the true owners of the lands and improvements mortgaged.

Before turning to the evidence, it should be observed that the title then held by the Tabiens was not an original Torrens title, but a transfer certificate of title issued under the same system, according to Act No. 496. There is a substantial difference between the two. Sections 39 and 55 of Act No. 496 contain relevant portions reading as follows:

"SEC. 39. Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all incumbrance except those noted on said certificate, and any of the following incumbrances which may be subsisting, namely:"

"SEC. 55. * * * The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the clerk or register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

Section 38 of the same Act provides that the phrase "innocent purchaser for value" and any other equivalent to it, employed in the Act shall be deemed to include among others, a mortgagee.

From the two sections first quoted above, it follows that while the registered owner appearing on the original certificate of title is the absolute owner of the property covered by said certificate, free of all charges and encumbrances, excepting such as are mentioned in the latter part of section 39, a subsequent purchaser to whom a transfer certificate of title is issued, becomes the owner of the same property only if he is a purchaser for value in good faith. This means that while one who has dealings with a person holding an original certificate of title may rely with absolute confidence upon that document, another dealing with a person holding only a transfer certificate of title is bound to proceed with greater caution; for the law does not afford the same guarantee to the two kinds of certificates; the purchaser of a transfer certificate must be for value and in good faith. Consequently, a mortgagee, for instance, who lends money to a land-owner holding a transfer certificate of title, is bound to ascertain whether the latter has acquired the property for value in good faith, and it is this reasonable inquiry that determines whether he is himself an innocent mortgagee acting in good faith, and entitled to the protection of the law.

Let us now see whether, according to the evidence "La Urbana" is an innocent mortgagee acting in good faith. In accordance with the foregoing paragraph, inasmuch as the Tabiens held a transfer certificate of title, and not an original certificate of title, "La Urbana" was bound to ascertain, before granting the loan, whether the Tabiens were bona fide owners of the land they intended to mortgage. This entailed the obligation of searching for data and information leading to such a conclusion. Did "La Urbana" do this? The record shows that the company detailed the architect Julio de la Rosa and a Filipino, presumably another employee, to look over the land; and that upon arriving there, they saw a number of nipa houses—some of them good—occupied by various persons. Witness Inocencio Lazaro testified that when he heard that Tabien pointed out the land to De la Rosa as that which he intended to mortgage, he made it understood in Tagalog that Tabien could not mortgage it, because it belonged to others who were the real owners, to whom they were paying rents for the portions they occupied. The majority opinion gives this testimony no weight whatever, not only because it seems to them improbable, but also because De la Rosa could not have understood what was said, for it was spoken in Tagalog, which he does not know. We shall make no attempt to discuss this particular evidence, although we are of the opinion that even if De la Rosa himself did not understand what Lazaro had said, the other employee of "La Urbana" who was with him, the Filipino, would have understood it, and if so, it was his duty either to interpret it for his companion, or to report it to the management. But there is another point, which has been unsuccessfully rebutted: The tax declarations upon the mortgaged land were presented and they are made out in the name of the real owners, the appellees. The receipts for the land tax are also made out to them. It is a practice generally followed by companies engaged in giving loans upon mortgage securities, and even by private individuals, to require the land-owner and prospective debtor to produce the land tax receipts showing that the property offered to be mortgaged is not delinquent in the payment of this preferential and superior tax before granting the loan. This wise practice was disregarded by "La

Urbana" in the present case, and there can be no doubt that had it been followed, as usual, the company would have discovered that the taxes had not been paid by the persons pretending to be the owners in fee simple, but by the appellees, who were the real owners of the property. This failure on the part of said appellant to take the usual precautions can only mean that in the transaction upon which this appeal is based, the company was not an innocent mortgagee. All this indicates that a more reasonably thorough investigation should have been made, to show that the prospective debtors did indeed have a good and sufficient title to the property, supported by reasonably convincing information, before granting them so large a loan, the very amount of which demanded conservative action.

In the majority opinion it is stated that should there be other lands mortgaged together with the property in question, it is the duty of "La Urbana" to execute the mortgage first upon those other lands, reserving to itself the right to sell the rest in case the judgment of foreclosure is not fully satisfied. If this be an attempt to lay down the proper procedure in foreclosing a mortgage, it would seem to support the opinion that the mortgage of the property under discussion is not absolutely good and valid; otherwise the majority would not be justified in laying down such a procedure, for it would violate the principle that a mortgage is indivisible, and impair the mortgagee's right to sell all the mortgaged property in case of failure to pay the loan secured.

In view of the premises, I dissent from the majority opinion.

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