

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. MATIAS ATILES ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 36965. March 31, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Cases Nos. 36965 and 36966, Nos. 5160 and 5213, respectively, of the Court of First Instance of Occidental Negros, are involved in this appeal. The Philippine National Bank brought the first action to foreclose certain mortgages on real estate executed by the spouses, Matias Atilas and Magdalena Sison, and to have its mortgage credits thereon declared superior and preferential to whatever rights the other defendants, Arcadio Y. Salva and Alfonso Severino, may claim in the mortgaged properties. The second action was instituted by Alfonso Severino against the Philippine National Bank and the register of deeds of the above-mentioned province to have himself declared the sole owner of one of the mortgaged properties, exclusive of any other right the Philippine National Bank may claim therein; and to have the register of deeds issue the corresponding transfer certificate of title free from all liens and encumbrances and, particularly, without any annotation thereon of the mortgage lien claimed by the aforementioned bank.

The Philippine National Bank appealed from the dispositive part of the decision rendered by the trial court, reading as follows:

"Therefore, the court holds that Alfonso Severino, the plaintiff in case No. 5213, is entitled as owner of lots Nos. 331 of La Carlota and 1768 of Bago, to obtain and receive transfer certificates of title to the aforesaid lots, exclusive of whatever mortgage lien the Philippine National Bank may have thereon, and the register of deeds is hereby ordered to issue such certificates of title free from all liens and encumbrances, with costs against the Philippine National Bank. The deed, Exhibit AA, is hereby declared to have no further force or effect and the writ of attachment issued in civil case No. 3751 of this court, is hereby given precedence over the deed, Exhibit BB, with costs against the Philippine National Bank. The defendant, Matias Atilas, is ordered to pay to the Philippine National Bank the sum of P1,878.96, together with interest at 9 per cent per annum on the sum of P1,452.68 from October 1, 1929, until fully paid, plus a penalty of 10 per cent of the sum of P1,452.68 and of the sum of P842.62, together with interest at 9 per cent per annum on the sum of P841.16 from October 1, 1929, until fully paid, plus a penalty of 10 per cent of the last amount. A copy of this judgment shall be attached to the records of civil cases Nos. 5213 and 5160 of this court. So ordered."

Both cases were tried together and at the hearing the parties submitted the following:

"STIPULATION OF FACTS

"Counsel for Alfonso Severino and Arcadio Y. Salva and for the Philippine National Bank agree on the following stipulation of facts:

"1. That on August 7, 1918, the spouses, Matias Atilas and Magdalena Sison, mortgaged to the Philippine National Bank lots Nos. 331 of the cadastre of La Carlota and 1768 of the cadastre of Bago, Occidental Negros, P. I., to secure the payment of a loan amounting to P300. This mortgage was recorded as entry No.

3804 in the registry of deeds of Occidental Negros on August 7, 1918, and was noted on the reverse side of the certificates of title Nos. 5241 and 6102 corresponding, respectively, to said lots, which certificates of title were issued in the name of said spouses.

"2. That on May 5, 1926, the provincial sheriff of Occidental Negros presented to the register of deeds of the same province, a notice dated April 22, 1926, of the attachment of lots Nos. 331 of the cadastre of La Carlota and 1713 of the cadastre of Bago, both of the Province of Occidental Negros, accompanied with a copy of the writ of attachment issued by the Court of First Instance of Occidental Negros in civil case No. 3751—Arcadio Y. Salva, plaintiff, vs. Matias Atilas et al., defendants. No certification to the effect that the defendants therein have been notified of such attachment appears in the aforementioned documents. Neither has this attachment been noted on the reverse side of the original certificate of title No. 5241 covering lot No. 331 mentioned above.

"3. That on December 11, 1926, the spouses, Matias Atilas and Magdalena Sison, constituted another mortgage on the same lots, Nos. 331 of the cadastre of La Carlota and 1768 of the cadastre of Bago, Occidental Negros, which was presented to the register of deeds of Occidental Negros, and on December 13, 1926, the corresponding memorandum thereof was noted on the reverse side of the original certificates of title Nos. 5241 and 6102.

"4. That on December 14, 1926, the provincial sheriff of Occidental Negros presented to the register of deeds of this province a copy of the writ of attachment of the aforesaid lots Nos. 331 and 1713 and of lot No. 1768 of the cadastre of Bago, Occidental Negros, together with a copy of the writ of execution issued in the aforementioned civil case No. 3751. These documents have not been annotated on the reverse side of the original certificates of title Nos. 5241 and 6102 covering the said lots Nos. 331 and 1768, respectively.

"5. That on December 31, 1926, the Philippine National Bank, through the manager of its branch in Bacolod, Occidental Negros, presented to the sheriff of Occidental Negros a third party claim, under oath, alleging a better right to lots Nos. 331 and 1768 of the cadastres of La Carlota and Bago, Occidental Negros¹, which were attached by the said sheriff by virtue of the aforementioned writ of execution issued in civil case No. 3751 of this same court, entitled Arcadio Y. Salva vs. Matias Atilas et al.

"6. That on January 27, 1927, the provincial sheriff of Occidental Negros presented a copy of the certificate of sale of the said lots to the register of deeds of this province, which was recorded as entry No. 16568, and noted on the reverse side of original certificate of title No. 6102 only, covering lot No. 1768."

The pertinent facts established by the evidence are correctly summarized by the court as follows:

"1. That on July 27, 1918, the spouses, Matias Atilas and Magdalena Sison, obtained and received from the Philippine National Bank an agricultural loan of P800 for which they executed a promissory note reading as follows:

"BACOLOD, NEGROS OCCIDENTAL, P. I.

"July 27, 1918

"P800.00

"On or before the 27th day of July, 1923, for value received, we promise to pay to the Philippine National Bank at its office in Manila, Philippine Islands, the sum of Eight hundred pesos (P800) with interest thereon, payable semi-annually, at the rate of eight (8%) per cent per annum, from date until paid, and with interest at the same rate on all annual installments overdue and unpaid. Annual payments of principal and interest to be made as per amortization schedule attached to the mortgage.

(Sgd.)

"MATIAS MATILES**"MAGDALENA SISON**

(Par. XII of the first cause of action, second amended complaint.)

"2. That in order to secure the payment of said loan, the aforementioned spouses, on August 7, 1918, mortgaged their property consisting of lots Nos. 331 of the cadastre of La Carlota and 1768 of the cadastre of Bago, Occidental Negros, and executed the corresponding deed (Annex A of the complaint) which was recorded on the same date as entry No. 3804 in the registry of deeds of Occidental Negros, and noted on the reverse side of original certificates of title Nos. 5241 and 6102 corresponding respectively to the lots in question, issued in the name of the aforementioned spouses, Matias Atilas and Magdalena Sison. (Par. XIII of the first cause of action, second amended complaint; par. 1 of the stipulation of facts, Exhibit KK.)

"3. That according to the said mortgage deed (annex A), Matias Atilas and Magdalena Sison bound themselves to pay to the mortgagee, Philippine National Bank, the afore mentioned sum of P800 with interest at the rate of 8 per cent per annum, in five annual installments of P201.21 payable on or before the 27th of July of every year from the date of the contract, as follows:

"FIVE YEAR LOAN

Amount of loan P800, interest 8 per cent annually, compounded semi-annually. Loan repayable in five equal annual installments of P201.21 each.

SCHEDULE OF AMORTIZATION

End of
year

Interest
payment

Reduction of
principal

Principal
outstanding

1

P65.28

P135.93

P664.07

2

54.19

147.02

517.05

3

42.19

159.02

358.03

4

29.21

172.00

185.03

5

15.18

186.03

....."

(Par. XIV of the first cause of action, second amended complaint.)

"4. That Matias Atilas and Magdalena Sison only paid the first three installments and failed to pay the fourth and fifth corresponding to the years 1922 and 1923. They, therefore, remained indebted to the Philippine National Bank in the amount of P679.92 including interest thereon computed up to September 30, 1929, which amount remains unpaid in spite of demands made to that effect. (Pars. XV, XVI and XVII of the first cause of action, second amended complaint.)

"5. That during the milling season of 1925-1926, Matias Atilas obtained from the Philippine National Bank a credit on crops on which he received advances amounting to P2,628.75, including the unpaid balance of the preceding years, for the purpose of planting sugar cane on his hacienda Ayungon. To secure the payment of said credit and the interest thereon at the rate of 9 per cent per annum, Matias Atilas constituted a special mortgage on all the crop produced on his hacienda Ayungon, in favor of the Philippine National Bank, which mortgage was recorded as entry No. 8596 in the registry of deeds on February 1, 1926. But after a liquidation of Matias Atilas' credit with interest thereon at 9 per cent per annum computed up to September 30, 1929, and after he was credited with the net proceeds of the sale of his sugar crop, he still remained indebted to the Bank in the sum of P842.62. This sum, together with 10 per cent thereof as attorney's fees, has not been paid to date in spite of repeated demands to that effect. (Pars. III, IV, V, VI, VII and VIII of the second cause of action, second amended complaint.)

"6. That during the milling season of 1926-1927, Matias Atilas obtained from the Philippine National Bank a credit on crops on which he received advances amounting to P2,102.20 for the purpose of planting sugar cane on his hacienda Ayungon. To secure the payment of said credit and the interest thereon at the rate of 9 per cent per annum, Matias Atilas constituted a special mortgage on all the crop produced on his hacienda Ayungon, in favor of the Philippine National Bank, which mortgage and its amendment were recorded as entries Nos. 9438 and 10755 in the registry of deeds on June 7, 1926 and February 7, 1927, respectively. But after a liquidation of Matias Atilas' credit with interest at the rate of 9 per cent per annum computed up to September 30, 1929, and after he was credited with the net proceeds of the sale of his sugar crop, he still remained indebted to the Philippine National Bank in the net amount of P1,878.96. This amount together with 10 per cent thereof as attorney's fees has not been paid to date in spite of repeated demands to that effect. (Pars. II, III, IV, V, VI, and VII of the third cause of action, second amended complaint.)

"7. That in civil case No. 3751 of this court entitled *Arcadio Y. Salva vs. Matias Atilies and the Philippine National Bank*, a writ of attachment of Matias Atilies' properties was issued at the instance of the plaintiff, Arcadio Y. Salva. On May 5, 1926, the provincial sheriff of Occidental Negros executed said writ and presented to the register of deeds of the same province, a copy of the said writ of attachment dated May 4, 1926, together with a notice to the effect that lots Nos. 331 of the cadastre of La Carlota and 1713 of the cadastre of Bago, Occidental Negros, were under attachment. It does not, however, appear from said documents that the defendant, Matias Atilies, has been notified of the attachment. Neither was the same noted on the reverse side of the original certificate of title No. 5241 covering the above-mentioned lot No. 331 of the cadastre of La Carlota. (Par. 2, Exhibit KK.)

"8. That, as additional security for the payment of the credits on crops contracted by Matias Atilies and Magdalena Sison during the milling seasons of 1925-1926 and 1926-1927, they executed a special mortgage on said lots Nos. 331 of the cadastre of La Carlota and 1768 of the cadastre of Bago in favor of the Philippine National Bank on December 11, 1926, which mortgage was duly recorded as entry No. 16336 in the registry of deeds of Occidental Negros on December 13, 1926. (Par. VIII of the third cause of action, second amended complaint; par. 3, Exhibit KK); and a memorandum thereof was noted on the reverse side of the original certificates of title Nos. 5241 and 6102 corresponding to said lots, on said date of December 13, 1926.

"9. That by virtue of the judgment rendered by this court in civil case No. 3751, sentencing the defendant, Matias Atilies, to pay to the plaintiff, Arcadio Y. Salva, the sum of P4,070.76 with legal interest thereon from February 23, 1926, a writ of execution was issued by the aforementioned court. In an undated communication addressed to the provincial sheriff of Occidental Negros, Attorney Enrique C. Locsin, counsel for the plaintiff, Arcadio Y. Salva, instructed the said sheriff to attach lots Nos. 331 of the cadastre of La Carlota and 1768 and 1713 of the cadastre of Bago, besides the palay, in case of failure to pay the amount of the judgment, and to advertise the sale at public auction of the lots in question subject to the liens thereon in favor of the Philippine National Bank, after duly serving the register of deeds with the notice of the said sale at public auction (Exhibit DD). In pursuance of said instructions, the sheriff on December 14, 1926, presented to the register of deeds of Occidental Negros, for the corresponding notation thereof, a copy of the certificate of attachment of lots Nos. 331 of the cadastre of La Carlota and 1713 and 1768 of the cadastre of Bago, together with a copy of the writ of execution. In the two documents in question, there was no certification to the effect that the judgment debtor has been notified of the attachment. Both documents, however, have not been noted on the reverse side of the original certificates of title Nos. 6241 and 5102 covering said lots Nos. 331 and 1768 respectively. (Par. 4 of the stipulation of facts, Exhibit KK; par.III of the first cause of action, second amended complaint.)

"10. That on December 20, 1926, the provincial sheriff of Occidental Negros advertised the sale at public auction of the said lots Nos. 1713 and 1768 of the cadastre of Bago, and 331 of the cadastre of La Carlota (Exhibit EE), in compliance with the instructions of Attorney Locsin contained in his communication (Exhibit DD).

"11. That on December 31, 1926, the Philippine National Bank, through the manager of its branch at Bacolod, Occidental Negros, filed a third party claim, under oath, with the sheriff, alleging superior right to the lots Nos. 331 of the cadastre of La Carlota and 1768 of the cadastre of Bago, which were attached by the sheriff by virtue of the writ of execution issued in the aforementioned civil case No. 3751 (Exhibit KK, par. 5; Exhibits II and JJ). Attorney Enrique C. Locsin, who was then the counsel for Arcadio Y. Salva in the civil case No. 3751, was notified of the third party claim by the sheriff and was required to file a bond for P4,000 if he desired to proceed with the attachment of the lots in question. (Exhibit JJ.)

"12. That in answer to such requirement of the sheriff, Attorney Locsin, in representation of his client Arcadio Y. Salva, addressed a communication dated January 4, 1927, to the deputy-provincial sheriff, requesting him to

proceed with the auction sale of the properties in question with the understanding that the purchaser thereof shall acquire them subject to the recorded legal encumbrances thereon, their order of preference to be later determined in a separate case between the purchaser thereof and the Philippine National Bank. (Exhibit B.)

"13. That in view of such request, the sheriff, on January 11, 1927, proceeded with the auction sale of the said lots Nos. 331 of the cadastre of La Carlota and 1768 and 1713 of the cadastre of Bago, and adjudicated them to Alfonso Severino, defendant in case No. 5160 and plaintiff in case No. 5213, who was the only bidder, for the sum of P3,500 (Exhibits 1 and 2 of the Philippine National Bank), the certificate of sale (Exhibit 2) issued by the provincial sheriff, containing among other things the following:

"And in compliance with section 463 of the Code of Civil Procedure, I issue to Mr. Alfonso Severino, the only bidder at the public auction, the present certificate of sale of the above-mentioned lots Nos. 1713 and 331, subject to all liens and encumbrances in favor of the Philippine National Bank, duly recorded in the registry of deeds of Occidental Negros; and also of all the rights, interests and participation of the defendant, Matias Atilas, in the aforesaid lot No. 1768, for the sum of P3,500 which has been credited to the" account of the defendant, Matias Atilas. * * * (Exhibit FF.)

"14. That on January 27, 1927, the provincial sheriff of Occidental Negros presented to the register of deeds of the same province for the corresponding notation thereof, a copy of the certificate of sale of the said lots Nos. 331 of the cadastre of La Carlota and 1713 and 1768 of the cadastre of Bago (Exhibit 2), which was recorded as entry No. 16568 and noted on the reverse side of the original certificate of title No. 6102, covering lot No. 1768 of the cadastre of Bago (par. 6, Exhibit KK). This was not done, however, with respect to lot No. 331 of La Carlota."

The appellant assigns the following alleged errors in the judgment appealed from:

"1. In holding that the deed, Exhibit AA, was of no further force and effect.

"2. In not holding null and void the attachment by Arcadio Y. Salva in case No. 3751 of the Court of First Instance of Occidental Negros, of lots Nos. 331 of La Carlota and 1713 of Bago, belonging to the spouses, Matias Atilas and Magdalena Sison.

"3. In not holding that the title of ownership of lots Nos. 331 of La Carlota and 1768 of Bago, acquired by Alfonso Severino by virtue of the certificate of sale (Exhibit FF) issued by the provincial sheriff of Occidental Negros, is subject to the two mortgage liens (Exhibits AA and BB) in favor of the Philippine National Bank.

"4. In holding that the writ of attachment issued in civil case No. 3751 of the Court of First Instance of Occidental Negros was superior to and enjoyed preference over the mortgage deed, Exhibit BB.

"5. In holding that Alfonso Severino, plaintiff in civil case No. 5213, is entitled, as owner of lots Nos. 331 of La Carlota and 1768 of Bago, to obtain and receive transfer certificates of title to the said lands, exclusive of whatever mortgage lien the Philippine National Bank may have thereon, and in ordering the register of deeds of Occidental Negros to issue said certificates of title free from all liens and encumbrances, with costs against the Philippine National Bank.

"6. In ordering the Philippine National Bank to pay the costs of civil cases Nos. 5160 and 5213 of the Court of First Instance of Occidental Negros.

"7. In not absolving the Philippine National Bank from the complaint filed by Alfonso Severino in civil case No. 5213 of the Court of First Instance of Occidental Negros, with costs against said Alfonso Severino.

"8. In not ordering the defendants, Matias Atilas and Magdalena Sison, in civil case No. 5160 of the said Court of First Instance of Occidental Negros, to pay to the Philippine National Bank the following sums: (a) P679.92 with interest at the rate of 8 per cent per annum on the sum of P358.03 from October 1, 1929, until fully paid;

(b) P842.62 with interest at the rate of 9 per cent per annum on the sum of P841.16 from October 1, 1929, until fully paid besides a sum equivalent to 10 per cent of the said P841.16 as attorney's fees; and (c) P1,878.96 with interest at the rate of 9 per cent per annum on the sum of P1,452.68 from October 1, 1929, until fully paid, besides a sum equivalent to 10 per cent of the aforesaid P1,452.68 as attorney's fees.

"9. In not ordering that in case the sums mentioned in the eighth assignment of error, as well as the costs of the suit, are not deposited with the clerk of the Court of First Instance of Occidental Negros within three (3) months from the date of the judgment, the provincial sheriff of Occidental Negros shall sell, at public auction, lots Nos. 331 of La Carlota and 1768 of Bago and apply the proceeds thereof to the payment of the sums mentioned in the eighth assignment of error.

"10. In not ordering Matias Atilas, Magdalena Sison and Alfonso Severino, defendants in civil case No. 5160, to pay the costs."

Without discussing all the assignments of error nor following the order in which they are enumerated, it being unnecessary to do so, we shall endeavor to decide the questions raised in the appeal, which questions may be formulated as follows: (1) Was the mortgage deed, Exhibit AA, executed on August 7, 1918, in force on May 5, 1926, the date on which the register of deeds was notified of the writ of attachment obtained by Arcadio Y. Salva? (2) Was the aforementioned writ of attachment valid in spite of the fact that Matias Atilas, the defendant in civil case No. 3751 in which the writ was issued, was not notified thereof? and (3) What legal effect has the other mortgage deed, Exhibit BB, issued on December 11, 1926?

The trial court based its conclusion that the mortgage deed, Exhibit AA, had already been cancelled, on the theory that the balance of P679.92 claimed in the first cause of action had been carried over to the subsequent accounts of the spouses Atilas, relative to the loans on crops obtained by them from the bank, and that the second real estate mortgage, Exhibit BB, was, really a novation of the first; in view of which, the court inferred that the first mortgage could not affect the right acquired by Severino on the ground that the second mortgage, or the alleged novated mortgage was recorded at a later date than that of the writ of attachment issued in civil case No. 3751.

As already stated, the inaccuracy of this conclusion is due to the fact that the aforesaid balance of P679.92 was considered as paid although the evidence shows that it still remains unpaid, and that the mortgage deed, Exhibit BB, was treated as a novation of the first mortgage. With respect to the balance of P679.92 left from the original debt of P800, it cannot be admitted that it had been settled or carried over to the subsequent debts contracted by the spouses Atilas, through loans on crops for the simple reason that, according to the court, these debtors admitted under oath during the trial that they owed said balance and that it was still unpaid. This admission excludes every possibility that the balance in question had been carried over to the subsequent accounts, otherwise, the Atilas would not have acquiesced to having a judgment rendered against them for the three balances claimed separately in the amended complaint.

With respect to the mortgage evidenced by the deed, Exhibit BB, a perusal thereof shows that it can have no other significance than that it was merely an amplification of the mortgages on agricultural crops, previously executed by the Atilas in favor of the Philippine National Bank. It has in no way affected the mortgage, Exhibit AA, executed on August 7, 1918, and duly noted on the debtor's certificates of title. And the reason is obvious, taking into consideration that both mortgages were executed to secure obligations entirely separate and independent of one another. The mortgage evidenced by Exhibit AA was executed to secure a loan of P800 while that expressed in Exhibit BB was executed to secure loans on crops advanced to the Atilas by their creditor.

Speaking now of the efficacy of the writ of attachment obtained by Arcadio Y. Salva in civil case No. 3571, the court found, and the parties stipulated, that the defendant in the case, Matias Atilas, had not been notified of said attachment or of the notice thereof served on the register of deeds by the sheriff. This failure to notify rendered

the said writ of attachment ineffectual according to the doctrine enunciated in the case of *Chua Pua Hermanos vs. Register of Deeds of Batangas* (50 Phil., 670), in which the court said: "Under section 429 of the Code of Civil Procedure the leaving of such copy with the register of deeds, with a description of the property and certification of notice to the judgment debtor, is essential to the effectuation of an attachment. Where this step is not taken the attachment is necessarily ineffectual."

With respect to the last proposition, we are of the opinion that the mortgage, Exhibit BB, was executed and recorded after notice of the writ of attachment had been served on the register of deeds, but, inasmuch as the said writ produced no legal effect whatever, it is obvious that said mortgage prejudiced the right subsequently acquired by Severino at the auction sale conducted by the sheriff with respect to the two lots in question. Neither can Severino allege that he was an innocent purchaser thereof, inasmuch as the two mortgages had already been noted on the certificates of title to said lands. Furthermore, it was clearly stated in the certificate of sale issued to him by the sheriff that the lots in question were adjudicated to him subject to the liens existing thereon in favor of the Philippine National Bank.

In view of the foregoing considerations, the judgment appealed from is hereby reversed, and the spouses, Matias Atilas and Magdalena Sison, are ordered to pay to the Philippine National Bank the following sums: P679.92 with interest at the rate of 8 per cent per annum on the sum of P358.03 from October 1, 1929, until fully paid; P842.03 with interest at the rate of 9 per cent per annum on the sum of P841.16 from October 1, 1929, until fully paid, in addition to ten per cent (10%) of P841.16 as attorney's fees; and P1,878.96 with interest at the rate of 9 per cent per annum on the sum of P1,452.68 from October 1, 1929, until fully paid, in addition to ten per cent (10%) of P1,452.68 as attorney's fees. The above-mentioned sums shall be paid to or deposited with the clerk of court within three months from this date, and in case of failure to do so, the properties known as lots Nos. 331 of La Carlota and 1768 of the cadastre of Bago, shall be sold at public auction in accordance with the law.

The complaint filed in case No. 36966 is hereby dismissed.

The costs of both instances in the case No. 36965 shall be charged against Arcadio Y. Salva and Alfonso Severino, and the costs of both instances in the case No. 36966 shall be charged exclusively against Alfonso Severino. So ordered.

Villamor, Ostrand, Villa-Real, and Vickers, JJ., concur.

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