

EL HOGAR FILIPINO, MUTUAL BUILDING AND LOAN ASSOCIATION, PLAINTIFF AND APPELLANT, VS. SEVERINO OLVIGA ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 37434. April 05, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The plaintiff, a mutual building and loan association, brought this action to recover from the defendants the title to and possession of a parcel of land, with the improvements thereon, situated in the barrio of Esperanza, of the municipality of Lopez, Province of Tayabas, and more particularly described in transfer certificates of title Nos. 5261 and 5617, both of which were issued by the register of deeds of the said province. In the same action, the plaintiff likewise seeks to recover from the said defendants damages in the sum of P2,000 plus whatever other amount proven at the trial as value of the fruits illegally received by them.

After trial, the court rendered judgment dismissing the complaint, with costs against the plaintiff. It appealed.

The case was submitted by the parties upon a stipulation of facts quoted hereinbelow, in addition to other evidence:

"The parties agree on the following facts:

"1. That the plaintiff is a mutual building and loan association duly incorporated in accordance with the laws of the Philippine Islands.

"2. They agree as to the identity of the land in question.

"3. That the land in question formerly had original certificate of title No. 477 (Homestead Patent No. 2973) issued by the Governor-General on July 7, 1921, and registered in the registry of deeds of Tayabas on October 3, 1921, in favor of the spouses Timoteo Olviga and Rafaela Iglesia.

"4. That certificate of title No. 477 was cancelled by transfer certificate of title No. 2505 issued on August 3, 1928, in favor of Genaro T. Tabien.

"5. That on August 4, 1928, the land in question was mortgaged by said Genaro T. Tabien to El Hogar Filipino for the sum of P5,600, and said mortgage was registered in the registry of deeds of Tayabas and noted on the said transfer certificate of title No. 2505.

"6. That pursuant to the mortgage contract and Act No. 8135, the land in question was extra judicially sold at public auction and adjudicated to the plaintiff entity El Hogar Filipino, as the highest bidder, for the sum of P6,232.30.

"7. That on April 18, 1931, this court declared El Hogar Filipino, upon its petition, as the absolute owner of the land in question and ordered the cancellation of transfer certificate of title No. 2505, and the issuance in the name of said El Hogar Filipino of another certificate, which is transfer certificate of title No. 5261, of the

registry of deeds of Tayabas.

"8. That the land in question is the same land now known as lot No. 3912 of Cadastral Record No. 54 of the Cadastre of Lopez, with its original certificate of title No. 30174 in the name of the spouses Timoteo Olviga and Rafaela Iglesia, issued on June 27, 1930, and registered on July 26, 1930, in the registry of deeds of Tayabas.

"9. That on March 30, 1929, said parcel of land was sold by Timoteo Olviga, his wife, Rafaela Iglesia, and their children to the defendant spouses Bonifacio Perez and Irinea Olviga.

"10. That upon petition of the spouses Bonifacio Perez and Irinea Olviga, and pursuant to the court's order dated March 24, 1931, in lot No. 3912, Cadastral Record No. 54, the said original certificate of title No. 30174 was cancelled and a new one, transfer certificate of title No. 5617, was issued in favor of the said defendant spouses Bonifacio Perez and Irinea Olviga.

"11. That the defendant spouses Bonifacio Perez and Irinea Olviga have been in actual possession of the land in question since March 30, 1929.

"12. That during the period between March 29, 1930, and this date, November 6, 1931, the defendant spouses Bonifacio Perez and Irinea Olviga harvested from the said land fruits valued at P400, and from this date, November 6, 1931, the said land will yield fruits at the average rate of P45 every three months.

"Therefore, both parties respectfully pray the court to Admit this stipulation of facts."

The gist of the plaintiff's three assignments of error may be stated as follows: that the court erred in not declaring the plaintiff to be the owner of the land in question, entitled to the immediate possession thereof and to the value of the fruits illegally received by the defendants, which value is determined in paragraph 12 of the stipulation of facts.

The appealed judgment is based on two grounds, to wit:

(1) That the deed of sale alleged to have been executed by Timoteo Olviga in favor of Genaro T. Tabien is false and fictitious and (2) that transfer certificate of title No. 5261, which was issued in favor of the plaintiff, cannot prevail over transfer certificate of title No. 5617 issued in the name of the defendant spouses Bonifacio Perez and Irinea Olviga.

A careful examination of the evidence presented at the trial convinces this court that the said deed of sale is not fictitious but genuine. Only Timoteo Olviga and his son Severino testified in support of its falsity. The former's testimony is contained in an affidavit prepared ex parte, which was admitted by the court merely because it was not objected to upon presentation. Its admission under such circumstances did not in the least give it a greater evidentiary value than it should have under the well recognized rules of evidence. In said affidavit Timoteo asserted that he did not sign the deed of sale in question, that the signature thereon is not his, and that he was not even informed of the contents thereof. His son Severino confined himself to testifying that the signature in his father's name appearing on the said instrument is not his father's because it does not look like his real signature.

A brief analysis of such evidence will show how insufficient it is to overcome or detract from the evidentiary force of the public instrument relating to the transfer made by Timoteo in favor of Genaro T. Tabien. It should be borne in mind that said public instrument was signed in the presence of two instrumental witnesses and appears to have been ratified by Timoteo before a notary public. If the biased and interested testimony of a grantor and the vague and uncertain testimony of his son are deemed sufficient to overcome a public instrument drawn up with all the formalities prescribed by the law then there will have been established a very dangerous doctrine which would throw wide open the doors to fraud.

The trial court, following the doctrine on the effects of the registration of a homestead patent laid down in the cases of Legarda and Prieto vs. Saleeby (31 Phil., 590), and De los Reyes vs. Razon (38 Phil., 480), held that the titles obtained by Genaro T. Tabien and the plaintiff should not prevail over those subsequently obtained by the spouses Timoteo Olviga and Rafaela Iglesia and by the spouses Bonifacio Perez and Irinea Olviga on the ground that the latter titles were issued in a cadastral proceeding while the former, in a proceeding for the registration of a homestead, in accordance with section 122 of Act No. 496.

In arriving at said conclusion of law the court undoubtedly disregarded the circumstance that the doctrines laid down in the above cited decisions have been abandoned by this court after a further study of the provisions of said section 122, as may be seen in the decisions subsequently rendered in the cases of Aquino vs. Director of Lands (39 Phil., 850), and Manalo vs. Lukban and Liwanag (48 Phil., 973). In the first case the court said:

"The proceedings under the Land Registration Law and under the provisions of Chapter VI of the Public Land Law are the same in that both are against the whole world, both take the nature of judicial proceedings, and for both the decree of registration issued is conclusive and final. (Act No. 496, sees. 35, 38, and 45, as amended; Act No. 926, sees. 59 and 63, as amended; Escueta vs. Director of Lands [1910], 16 Phil., 482; Grey Alba vs. De la Cruz [1910], 17 Phil., 49; Roxas vs. Enriquez [1914], 29 Phil., 31; Legarda and Prieto vs. Saleeby [1915], 31 Phil., 591.)"

And in the second case, the court said:

"Where a land was granted by the Government to a private individual as homesteader under the provisions of Act No. 926, and the corresponding patent was registered and issued to the grantee, said land is considered registered within the meaning of the Land Registration Act, No. 496. (Sec. 122, Act No. 496.)"

"The title to the land thus granted and registered may no longer be the subject of any inquiry, decision, or judgment in a cadastral proceeding. But a partition may be made in said proceeding, in accordance with the provisions of Act No. 2259."

Therefore it follows that inasmuch as the titles in favor of Tabien and the plaintiff have been issued in accordance with the provisions of Act No. 496, the same have all the characteristics of an irrevocable Torrens title, and since Tabien's title is prior to that issued in the name of the spouses Bonifacio Perez and Irinea Olviga, the latter title should not prevail over the former.

The case presents another legal aspect. Nobody questions the fact that the property in question was originally a public land which was granted to Timoteo Olviga and his wife as a homestead. Later the title obtained by them under the Public Land Act was registered under the Torrens System by virtue of the provisions of section 122 of Act No. 496. Thenceforth the land became subject to the provisions of the latter Act and the title issued thereunder became irrevocable. When the Olviga spouses appeared in the cadastral proceedings and applied for the cancellation of their title and the issuance of a new one to them, which was so done, the court which took cognizance of the cadastral proceedings must have known that the land already had an old title and that Genaro T. Tabien appeared in the records of the registry of deeds as the registered owner thereof. In such case it was in duty bound not to order the issuance of a new certificate of title in favor of the Olviga spouses on the ground that they had already ceased to be the registered owners of the same. The court, however, ordered the cancellation of the old title of the said Olviga spouses and the issuance to them of a new certificate of title which was later replaced by the transfer certificate of title issued in the name of the defendant spouses Bonifacio Perez and Irinea Olviga. The irregularity thus committed is due to no other cause than the failure of the Olviga spouses to inform the court, which took cognizance of the cadastral proceedings, that they had already obtained Torrens title to the said land and that in the records of the registry of deeds Genaro T. Tabien appeared as the registered owner thereof and the plaintiff as the mortgagee.

There is no question that the plaintiff is a mortgagee in good faith and for value and if that is true there is no valid reason in law for not considering it as the absolute owner of the land in question inasmuch as in enforcing its right, it foreclosed the mortgage constituted thereon in its favor and acquired the said property at public auction, and later succeeded in obtaining the issuance to it of transfer certificate of title No. 5261.

As regards the indemnity for damages and the value of the fruits which the defendant spouses Bonifacio Perez and Irinea Olviga have been receiving, this court is of the opinion that the evidence does not sufficiently show that said spouses are possessors in bad faith inasmuch as there is no sufficient proof that they were aware of the fact that Timoteo Olviga and his wife had no title to transfer the property, nor is there sufficient indication that there was collusion between the said parties. For this reason this court holds that there is no legal justification for ordering said defendant spouses to pay to the plaintiff the value of the fruits in question.

Wherefore, the judgment appealed from is hereby reversed, by declaring the plaintiff as the absolute owner of the land in question and ordering the spouses Bonifacio Perez and Irinea Olviga to deliver the possession and enjoyment of the same to the said plaintiff, with the costs of both instances against the said Perez spouses. The register of deeds of Tayabas shall cancel de oficio original certificate of title No. 30171 and transfer certificate of title No. 5617. So ordered.

Malcolm, Villa-Real, Abad Santos, Hull, and Goddard, JJ., concur.

DISSENTING

STREET, J.,

In view of the finding that the deed under which the plaintiff claims in this case was forged, I am of the opinion that the judgment should be affirmed. Negligence should not be imputed to Olviga from the fact that he placed his owner's duplicate certificate in the hands of Juan Tabien, for that act was done for a legitimate purpose and no negligence existed.

DISSENTING

DIAZ, J.,

It is with regret that I have to dissent from the majority opinion. Timoteo Olviga's affidavit and the testimony of his son Severino are not the only evidence on the falsity of the deed of sale by means of which Juan T. Tabien and his brother Genaro T. Tabien, on August 3, 1928, obtained the issuance of transfer certificate of title No. 2505 in favor of Genaro; but so are Juan T. Tabien's two letters to Timoteo Olviga, dated July 1, 1928, and March 23, 1929, respectively. Between Timoteo Olviga and Juan T. Tabien, there never existed any relation of principal and agent. In order to induce Timoteo Olviga to deliver to him Olviga's certificate of title No. 477, Juan T. Tabien resorted to the trick of informing Olviga that the latter's son-in-law named Bonifacio Perez was under arrest, that he (Perez) had to file a bond in order to be set at liberty, and that it was necessary for said Olviga to deliver to said Tabien his certificate of title and become one of Perez's bondsmen. This fact appears in Juan T. Tabien's aforesaid letter dated July 1, 1928. Thus induced, Timoteo Olviga, who, by the way, is illiterate and furthermore an old man

seventy-seven years of age, delivered the certificate of title required of him by Juan T. Tabien who, after obtaining possession of the same, with the aid of his brother Genaro T. Tabien, forged the aforesaid deed of sale in favor of Genaro, making it appear therein that the same had been executed and signed by Timoteo Olviga, who never did so in fact, thus pitilessly abusing the old man's good faith.

When Timoteo Olviga asked Juan T. Tabien to return his certificate of title, the latter wrote him the letter dated March 21, 1929, promising to return the said certificate as soon as possible, although he knew positively that such thing was impossible because he did not have it in his possession, nor could he again have possession of the same on the ground that it had been cancelled upon the issuance of transfer certificate of title No. 2505 in favor of Genaro T. Tabien by the register of deeds of Tayabas. With the aid of the said forged deed and the exhibition of Timoteo Olviga's certificate of title, the two Tabien brothers succeeded in inducing the said register of deeds to act as he did, and with the new certificate of title issued by the said official to Genaro T. Tabien, the two likewise succeeded in inducing the herein appellant to buy with pacto de retro from Genaro the land covered by the said certificate.

Upon the facts just stated, I am of the opinion that the doctrine laid down by this court in the case of *De la Cruz vs. Fabie* (35 Phil., 144), is not applicable to the case at bar on the ground that the facts of that case are not similar to those of the instant case. In the case of *De la Cruz vs. Fabie*, Vedasto Velasquez really acted as Gregoria Hernandez's attorney in fact to sell or otherwise encumber the land in question, while in this case it cannot be said that there has existed the same relation of agent or attorney in fact and principal between Juan T. Tabien and Timoteo Olviga. The above cited case was decided adversely to Gregoria Hernandez because it was held that said woman was negligent while in this case the same cannot be said as regards Timoteo Olviga for, in the first place, if Olviga acceded to Juan T. Tabien's request for the delivery to him of the former's certificate of title, it was simply because Olviga was made to believe that such delivery was only for the purpose of qualifying him as one of the bondsmen of his son-in-law Bonifacio Perez; in the second place, said Juan T. Tabien was never authorized by Olviga to sell the latter's land or obtain from anybody any loan secured by said property, and in the third place, Olviga did not fail to require Tabien to return his document. Such acts do not constitute negligence.

On the other hand, the same section 55 of Act No. 496, as amended by Act No. 3322, contains a clause which protects Timoteo Olviga, providing as follows: "That after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void."

Wherefore, I am of the opinion that the appealed judgment should be affirmed and that charges for falsification of a public document should be filed against the brothers Juan T. Tabien and Genaro T. Tabien, without prejudice to the appellant's right to recover from Genaro T. Tabien or from both of said brothers the amount paid by it for Timoteo Olviga's land.

BUTTE, J.;

I concur fully in the views expressed in Justice Diaz dissenting opinion

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