

B. H. BERKENKOTTER, PLAINTIFF AND APPELLANT, VS. CU UNJIENG E HUOS, YEK TONG LIN FIRE AND MARINE INSURANCE COMPANY, MABALACAT SUGAR COMPANY AND THE PROVINCIAL SHERIFF OF PAMPANG...

G.R. No. 41643. July 31, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff, B. H. Berkenkotter, from the judgment of the Court of First Instance of Manila, dismissing said plaintiff's complaint against Cu Unjieng e Hijos et al., with costs.

In support of his appeal, the appellant assigns six alleged errors as committed by the trial court in its decision in question, which will be discussed in the course of this decision.

The first question to be decided in this appeal, which is raised in the first assignment of alleged error, is whether or not the lower court erred in declaring that the additional machinery and equipment, as improvement incorporated with the central are subject to the mortgage deed executed in favor of the defendants Cu Unjieng e Hijos.

It is admitted by the parties that on April 26, 1926, the Mabalacat Sugar Co., Inc., owner of the sugar central situated in Mabalacat, Pampanga, obtained from the defendants, Cu Unjieng e Hijos, a loan secured by a first mortgage constituted on two parcels of land "with all its buildings, improvements, sugar-cane mill, steel railway, telephone line, apparatus, utensils and whatever forms part or is a necessary complement of said sugar-cane mill, steel railway, telephone line, now existing or that may in the future exist in. said lots."

On October 5, 1926, shortly after said mortgage had been constituted, the Mabalacat Sugar Co., Inc., decided to increase the capacity of its sugar central by buying additional machinery and equipment, so that instead of milling 150 tons daily, it could produce 250. The estimated cost of said additional machinery and equipment was approximately ₱100,000. In order to carry out this plan, B. A. Green, president of said corporation, proposed to the plaintiff, B. H. Berkenkotter, to advance the necessary amount for the purchase of said machinery and equipment, promising to reimburse him as soon as he could obtain an additional loan from the mortgagees, the herein defendants Cu Unjieng e Hijos. Having agreed to said proposition made in a letter dated October 5, 1926 (Exhibit E), B. H. Berkenkotter, on October 9th of the same year, delivered the sum of ₱710 to B. A. Green, president of the Mabalacat Sugar Co., Inc., the total amount supplied by him to said B. A. Green having been ₱25,750. Furthermore, B. H. Berkenkotter had a credit of ₱22,000 against said corporation for unpaid salary. With the loan of ₱25,750 and said credit of ₱22,000, the Mabalacat Sugar Co., Inc., purchased the additional machinery and equipment now in litigation.

On June 10, 1927, B. A. Green, president of the Mabalacat Sugar Co., Inc., applied To Cu Unjieng e Hijos for an additional loan of ₱75,000 offering as security the additional machinery and equipment acquired by said B. A.

Green and installed in the sugar central after the execution of the original mortgage deed, on April 27, 1927, together with whatever additional equipment acquired with said loan. B. A. Green failed to obtain said loan.

Article 1877 of the Civil Code provides as follows.

"Art. 1877. A mortgage includes all natural accessions, improvements, growing fruits, and rents not collected when the obligation falls due, and the amount of any indemnities paid or due the owner by the insurers of the mortgaged property or by virtue of the exercise of the power of eminent domain, with the declarations, amplifications, and limitations established by law, whether the estate continues in the possession of the person who mortgaged it or whether it passes into the hands of a third person."

In the case of *Bischoff vs. Pomar and Compania General de Tabacos* (12 Phil., 690), cited with approval in the case of *Cea vs. Villanueva* (18 Phil., 538), this court laid down the following doctrine:

"1. Realty; Mortgage of Real Estate Includes Improvements and Fixtures.—It is a rule, established by the Civil Code and also by the Mortgage Law, with which the decisions of the courts of the United States are in accord, that in a mortgage of real estate, the improvements on the same are included; therefore, all objects permanently attached to a mortgaged building or land, although they may have been placed there after the mortgage was constituted, are also included. (Arts. 110 and 111 of the Mortgage Law, and 1877 of the Civil Code; decision of U. S. Supreme Court in the matter of *Royal Insurance Co. vs. R. Miller*, liquidator, and *Amadeo* [26 Sup. Ct. Rep., 46; 199 U. S., 353].)

"2. Id.; Id.; Inclusion or Exclusion of Machinery, etc.—In order that it may be understood that the machinery and other objects placed upon and used in connection with a mortgaged estate are excluded from the mortgage, when it was stated in the mortgage that the improvements, buildings, and machinery that existed thereon were also comprehended, it is indispensable that the exclusion thereof be stipulated between the contracting parties."

The appellant contends that the installation of the machinery and equipment claimed by him in the sugar central of the Mabalacat Sugar Company, Inc., was not permanent in character inasmuch as B. A. Green, in proposing to him to advance the money for the purchase thereof, made it appear in the letter, Exhibit E, that in case B. A. Green should fail to obtain an additional loan from the defendants Cu Unjieng e Hijos, said machinery and equipment would become security therefor, said B. A. Green binding himself not to mortgage nor encumber them to anybody until said plaintiff be fully reimbursed for the corporation's indebtedness to him.

Upon acquiring the machinery and equipment in question with money obtained as loan from the plaintiff-appellant by B. A. Green, as president of the Mabalacat Sugar Co., Inc., the latter became owner of said machinery and equipment, otherwise B. A. Green; as such president, could not have offered them to the plaintiff as security for the payment of his credit.

Article 334, paragraph 5, of the Civil Code gives the character of real property to "machinery, liquid containers, instruments or implements intended by the owner of any building or land for use in connection with any industry or trade being carried on therein and which are expressly adapted to meet the requirements of such trade or industry."

If the installation of the machinery and equipment in question in the central of the Mabalacat Sugar Co., Inc., in lieu of the other of less capacity existing therein, for its sugar industry, converted them into real property by reason of their purpose, it cannot be said that their incorporation therewith was not permanent in character because, as essential and principal elements of a sugar central, without them the sugar central would be unable to function or carry on the industrial purpose for which it was established. Inasmuch as the central is permanent in character, the necessary machinery and equipment installed for carrying on the sugar industry for which it has been established must necessarily be permanent.

Furthermore, the fact that B. A. Green bound himself to the plaintiff B. H. Berkenkotter to hold said machinery and equipment as security for the payment of the latter's credit and to refrain from mortgaging or otherwise encumbering them until Berkenkotter has been fully reimbursed therefor, is not incompatible, with the permanent character of the incorporation of said machinery and equipment with the sugar central of the Mabalacat Sugar Co., Inc., as nothing could prevent B. A. Green from giving them as security at least under a second mortgage.

As to the alleged sale of said machinery and equipment to the plaintiff and appellant after they had been permanently incorporated with the sugar central of the Mabalacat Sugar Co., Inc., and while the mortgage constituted on said sugar central to Cu Unjieng e Hijos remained in force, only the right of redemption of the vendor Mabalacat Sugar Co., Inc., in the sugar central with which said machinery and equipment had been incorporated, was transferred thereby, subject to the right of the defendants Cu Unjieng e Hijos under the first mortgage.

For the foregoing considerations, we are of the opinion and so hold: (1) That the installation of a machinery and equipment in a mortgaged sugar central, in lieu of another of less capacity, for the purpose of carrying out the industrial functions of the latter and increasing production, constitutes a permanent improvement on said sugar central and subjects said machinery and equipment to the mortgage constituted thereon (article 1877, Civil Code) ; (2) that the fact that the purchaser of the new machinery and equipment has bound himself to the person supplying him the purchase money to hold them as security for the payment of the latter's credit, and to refrain from mortgaging or otherwise encumbering them does not alter the permanent character of the incorporation of said machinery and equipment with the central; and (3) that the sale of the machinery and equipment in question by the purchaser who was supplied the purchase money, as a loan, to the person who supplied the money, after the incorporation thereof with the mortgaged sugar central, does not vest the creditor with ownership of said machinery and equipment but simply with the right of redemption.

Wherefore, finding no error in the appealed judgment, it is affirmed in all its parts, with costs to the appellant. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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