

FRANCISCO SABAS, PLAINTIFF AND APPELLANT, VS. FRANCISCO GARMA ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 44802. November 16, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The plaintiff, Francisco Sabas, appeals to this court from the judgment of the Court of First Instance of Cagayan, the dispositive part of which reads as follows:

"For all the foregoing, the court declares the foreclosure of the mortgage claimed by the plaintiff to be untenable, but orders the defendant Francisco Garma to pay to said plaintiff the sum of P2,099.03 plus the costs of the suit. The defendants Victorio, Juliana, Uldarico, Aurora, Juana, Damiana and Victoria, all surnamed Garma, and the defendant Pascual de Guzman, are absolved from the complaint."

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

The pertinent facts necessary for the determination of the questions of law raised by the appellant in this appeal, which are stated in the appealed judgment, are as follows:

"The evidence presented during the trial of this case shows that since the year 1920 the plaintiff Francisco Sabas and the defendant Francisco Garma, together with his deceased wife Tarcila Vilaray, have had between them various loan transactions involving money, the latter spouses being the debtors and Francisco Sabas the creditor. On November 10, 1930, a liquidation was made by them, as a result of which the spouses Francisco Garma and Tarcila Vilaray appeared to be indebted in the sum of P2,187.53. For this reason said spouses, on the same date, executed an instrument of mortgage in which they promise to pay the sum in question on or before August 30, 1933 (Exhibit A). The land given as security by the spouses Garma and Vilaray was acquired by them as Homestead, whose patent was issued by the Governor-General on September 14, 1926. The corresponding original certificate of title was issued by the register of deeds of Cagayan on October 18, 1926. Said instrument of mortgage was registered in the office of said register of deeds only on October 5, 1932 (Exhibit B). The defendant Garma and his deceased wife have failed to pay said loan of P2,187.53, although they were able to deliver to the plaintiff two lots of tobacco as payment on account of the loan in question. The first lot, which consisted of 10 bales of tobacco valued at P50, was received by the plaintiff on September 18, 1931 (Exhibit 2), and the second lot, which consisted of 11 bales valued at P38.50, was received by the plaintiff in the year 1932. These two lots of tobacco, the total value of which amounts to P88.50, should be deducted from the mortgage credit claimed by the plaintiff.

"The evidence does not establish the defendant Garma's allegation that he signed the instrument Exhibit A through force and intimidation.

"It does not appear from the evidence that the children of the deceased Tarcila Vilaray have inherited something from their deceased mother. Therefore, they cannot be compelled to pay for the mortgage credit claimed by the plaintiff.

"With respect to the mortgage constituted by the defendant Francisco Garma in favor of the other defendant Pascual de Guzman, the evidence shows that Garma obtained a loan of P1,500 from De Guzman, for which reason he executed, on June 12, 1933, an instrument of mortgage on the same land mortgaged to the plaintiff Francisco Sabas, which mortgage was registered in the office of the register of deeds on June 26, 1933 (Exhibits 2-Guzman and 3-Guzman)."

The principal question to be decided is that raised in the first assignment of alleged error, consisting in whether or not the lower court erred in declaring null and void from its execution the mortgage constituted by Francisco Garma and his wife Tarcila Vilaray in favor of the plaintiff-appellant Francisco Sabas.

The legal provisions pertinent to the case are those contained in sections 116 and 122 of Act No. 2874, the former section as amended by section 23 of Act No. 3517, both of which read as follows:

"Sec. 116. Except in favor of the Government or any of its branches, units, or institutions, or legacy constituted banking corporations, lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations."

"Sec. 122. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and sixteen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty, and one hundred and twenty-one of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized, or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the Government."

According to the above-quoted legal provisions, lands acquired under free patent or homestead cannot be encumbered or alienated from the date of the approval of the application and for a term of five years from and after the date of the issuance of the patent or grant, nor are they liable to the satisfaction of any debt contracted prior to the expiration of said period, except in favor of the Government or any of its branches, units, or institutions. Only the improvements introduced thereon and the crops produced on the same may be mortgaged or pledged to qualified persons, associations, or corporations. Any contract encumbering said lands made or executed within the above-stated period of time, shall be unlawful and null and void from its execution.

That part of the contract entered into between the plaintiff-appellant Francisco Sabas and the defendants-appellees Francisco Garma and Tarcila Vilaray, whereby the latter, on November 10, 1930, constituted a mortgage on a parcel of land which had been applied for by them as homestead, the patent of which had been issued by the Governor-General on September 14, 1926, and the corresponding original certificate of title issued by the register of deeds of Cagayan on October 18th of said year (Exhibit A), to secure the payment of an obligation resulting from a liquidation of accounts made on November 10, 1930, was null and void ab initio on the ground that it was executed within the period of five years from and after the date of the issuance of the homestead patent or grant. The fact that said instrument of mortgage was registered in the office of the register of deeds of Cagayan on October 5, 1932 (Exhibit 3), after the expiration of the above-stated period of five years, did not and could not give said mortgage the legal effect of encumbering said land because, if it were to produce such effect, it would subject the same to the satisfaction of an obligation contracted prior to the expiration of said period of five years, which is not permitted by the above-quoted section 116 of Act No. 2374, as amended by section 23 of Act No. 3517.

Having arrived at this conclusion, it becomes unnecessary to pass upon the remaining assignments of alleged

error.

For the foregoing considerations, this court is of the opinion and so holds that an instrument, constituting a mortgage on a parcel of land for which an application for the issuance of a homestead or free patent has been filed and approved, prior to the expiration of the period of five years fixed by law from and after the issuance of the homestead or free patent, is null and void ab initio, and the notation thereof upon the original, certificate of Torrens title issued to the applicant does not give validity to said mortgage, on the ground that it would subject said land to the satisfaction of an obligation contracted prior to the expiration of the above-stated period of five years.

Wherefore, and although upon a different ground, the appealed judgment is affirmed, with the costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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