

ANTONIO GONZALEZ, PETITIONER AND APPELLEE, VS. FELICIANO BASA, JR., AND PILAR LOPEZ DE BASA, OPPOSITORS AND APPELLANTS.

G.R. No. 48695. September 30, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from a decision of the fourth branch of the Court of First Instance of Manila instructing the register of deeds of Manila to register a certain project of partition in its entirety as requested by the appellee and not in a mutilated form as requested by the appellants.

It appears that in the matter of the estate of the deceased Amalia Arcega y Alfonso Vda. de Baaa, case No. 50872 of the Court of First Instance of Manila, Pilar Lopez de Baaa, as administratrix; Feliciano Basa, Jr., as sole and universal heir, and Antonio Gonzalez, aa creditor and attorney of the estate, presented to the court a project of partition jointly signed by them and asked that it be approved. The said document consists of several clauses. Clause 2 contains an inventory of the properties left by the deceased, and clause 3 contains a list of all the obligations of the estate. Among and obligations is that specified on page 22, letter (d), as follows:

"(d)

"Se ha presentado ante los comisionados de avaluo y reclamaciones, con la conformidad de los infrascritos, una reclamacion por el Sr. Antonio Gontitez por la cautiotad de veinte mil doscientos cincuenta pesos (P20,250) que la finada Amalia Arcega y Alfonso Vda. de Bana le debia al tiempo de su muerte.

"La naturaleza de la reclamacion aparece explicada en el escrito presentado por dicho Sr. Antonio Gonzalez al que va unido los documentos correspondientes. Los infrascritos Pilar Lopez de Basa, como ndroinistradora judicial, y Feliciano Basa Jr., como tinico heredero de la finada Amelia Arcega y Alfonso Vda. de Basa, han prestado su conformidad a dicha reclamacion por ser justa y fundada. Y los comisionados lo han aprobado en su totalidad.

"Ademas, los infrascritos Pilar Lopez de Basa, como administradora judicial, y Feliciano Basa Jr. como unico heredero de la causante Amalia Arcega y Alfonso Vda. de Basa, han convenirto con el referido Sr. Antonio Gonzalez en que el importe de sus honorarion como abogado por la tramitacion de este expediente es de cinco mil pesos (P5,000), los euales sumados a los veinte mil doscientos cincuenta pesos (P20,250) dan un total de vcinticinco mil doscientos cineuenta, cantidad esta que ni la infrancrita administradora ni el infrascrito heredero Feliciano Basa Jr. pueden pagar ahora por no tener dinero: pero diehoa Pilar Lopez de Basa y el referido Feliciano Basa Jr. mancomunada y solidariamente se comprometen y obligan a pagarlo en lo futuro, devengando mientras tanto dicha cantidad de P22,250 intereses a razon del ocho por eiento (8%) anual, y en garantia del pago de dicho principal e interests el Sr. Feliciano Basa Jr. cede y traspasa en hipoteca a favor del Sr. Antonio Gonzalez LOS BIENES INMUEBLES descritos en la elauaula segunda (A) Nos. 1 al 48 de este proyecto de partition, par lo que la adjudication de dichos bienes inmuebles a favor del infrascrito Feliciano Basa Jr. se hace sujeto a dicha hipoteca a favor del Sr. Antonio Gonzalez."

The adjudication is contained in clause 4, which reads as follows:

"ADJUDICACION

"Como quiera que la causante AMALIA ARCEGA y ALFONSO VDA. DE BASA murio viuda y no tuvo en an mstrintonio mas que un solo hijo, el mencionado FELICIANO BASA jr., y como quicra que en el testamento legalizado en este expediente al referido Sr. FELICIANO BASA jr. se instituye unico y universal heredero de todos los bienes dejadoo por la finada, se le adjudica en este proyecto de particion todos dichos bienes mencionados y descritos en la CLAUSULA SECUNDA de este proyecto do particion; pero sujeta dicha adjudication a los gravámenes hipotecarios mencipnados en los parrafos (a), (b) y (d) de la clausuta tercera, intitulada OBLIGACIONES, de este proyecto de particion, sobre los bienes ahi mencionados y especificados."

Said project of partition was approved by the court "en todas sus partes" in an order dated January 12, 1938.

Thereafter Feliciano Basa, Jr., thru his present attorney Mr. Benedicto M. Javier, procured from the clerk of court a certified copy of said project of partition in a modified or mutilated form in that page 22 thereof, which we have copied above, was omitted at the express request of Attorney TM Javier. The certification of the clerk of court, dated June 18, 1941, reads in part as follows:

"I, L. PASICOLAN, Clerk of the above-entitled Court, do hereby certify that the attached documents, consisting of 26 pages, are true and correct copies of 'LETTERS OF ADMINISTRATION' dated March 16, 1937, 'PROYECTO DE PARTICION' dated December 29, 1937 except the entire page 22 thereof, and the letter 'd' in parenthesis and the words 'de la elausula tercera' appearing on page 24, which letter 'd' represents the said entire page 22; the 'ORDER, dated January 12,1938, and the 'WHEN' dated February 12, 1938.

"The elimination of the aforementioned page 22, and the letter 'd' and the words 'de la clausula tercera' has been expressly requested by Attorney Benedicto M. Javier."

That certified copy, together with the owner's duplicates of the certificates of title covering the real properties adjudicated to Feliciano Basa, Jr., was presented to the register of deeds of Manila for registration with a view to the issuance of the corresponding transfer certificates of title in the name of Feliciano Basa, Jr., free from the mortgage lien in favor of Antonio Gonzalez. The latter, upon learning thereof, objected to the registration of the project of partition as thus mutilated and requested the register of deeds, in lieu thereof, to register the certified complete copy of said document which he then and there presented with a view to the annotation of the mortgage in his favor on the certificates of title to be issued in the name of Peliciano Basa, Jr. The register of deeds refused to accede to said request of Attorney Goniaiei on the ground that Attorneys Javier & Javier, representing Feliciano Basa Jr., refused to grant him authority to annotate said mortgage on the certificates of title to be issued in the name of Basa, and that since a mortgage is presumed to be a voluntary transaction between the parties he had no authority to make such annotation without the consent of both parties. Thereupon Attorney Gonzalez submitted the matter to the fourth branch of the Court of First Instance of Manila in consulta under section 200 of the Administrative Code, with the result already indicated at the outset.

Both parties have filed lengthy briefs entirely out of proportion to the nature of the question involved. The appellants oppose the registration of the complete certified copy of the project of partition and try to justify their presentation to the register of deeds of said document in a mutilated condition by alleging (1) that they are not indebted to Attorney Gonzalez in the sum of P25,250 or any part thereof; (2) "that in the remote event that they have signed any contract of indebtedness for any amount in favor of Attorney Antonio Gonzalez, the same was without consideration and they have been deceived in signing it without being first aware of its contents, insofar [inasmuch] as Attorney Antonio Gonzalez is their 'compadre' and formerly enjoyed their absolute confidence"; and (3) that the mortgage obligation in question was inserted in said project of partition by Attorney Antonio Gonzalez without their knowledge and consent.

In deciding to comply with the request of the appellants for the registration of the project of partition as mutilated, over the objection of the appellee, who tendered a complete, certified true copy of the same document, the register of deeds of Manila impliedly conceded to them the right to repudiate and annul an obligation evidenced by said document against the will of the obligee and without judicial intervention. That is obviously wrong. It is precisely his duty to see to it that a document presented for registration is regular and in due form. The mutilated certified copy was irregular on its face and should have been rejected by him. In fact his authority in the premises goes no farther than this. He has no authority to inquire into the intrinsic validity of a document based upon proofs aliunde. If he had no authority to inquire into the truth of appellants' allegation as to lack of consideration for the mortgage in question, much less was he authorized to assume the truth of such allegation without any investigation. The project of partition in question, having been signed by the parties and approved by the court, is presumed to be valid and is acceptable for registration in its entirety. Neither of the parties may alter it without the consent of the other and the approval of the court.

The reasoning of the register of deeds that, inasmuch as a mortgage is a voluntary transaction, he had no authority to register it without the consent of both parties, is fallacious. He confuses the execution of a mortgage with its registration. It is the execution of the mortgage that is voluntary. Once a mortgage has been signed in due form, the mortgagee is entitled to its registration as a matter of right. By executing the mortgage the mortgagor is understood to have given his consent to its registration, and he cannot be permitted to revoke it unilaterally. The validity and fulfilment of contracts cannot be left to the will of one of the contracting parties (article 1256 of the Civil Code).

In the last analysis, the case is as if Feliciano Basa, Jr., had presented to the register of deeds a certified complete copy of the project of partition with the request that the register of deeds take into consideration only the rights, and ignore the obligations, evidenced by said document. It is the same as if a buyer of real property who mortgaged the property bought to secure the payment of the purchase price, had presented the combined deed of sale and mortgage to the register of deeds with the request to transfer the title to him without annotating the mortgage thereon. Is the register of deeds authorized to comply with such request? No reasonable person would so contend; and yet that is what the register of deeds of Manila proposes to do in the present case.

Feliciano Basa, Jr., claims the right to have the properties of his deceased mother transferred to his name by the register of deeds in virtue of the adjudication contained in the project of partition which was duly approved by the court; but that adjudication was made expressly subject to the mortgage obligation in question. Basa certainly cannot invoke and at the same time repudiate the said document. If he wants to annul the mortgage stipulated in said project of partition and secure a clean title to the property adjudicated to him, he should first procure the annulment by appropriate judicial action before presenting said document for registration. He cannot arrogate to himself the right to annul said mortgage or to amend the court's order approving the project of partition "in all its parts."

The questions of fact raised by appellants in this proceeding concerning the alleged lack of consideration for the mortgage in question and the circumstances under which they signed the project of partition, should be litigated in an appropriate judicial action and not in this consulta, wherein the only question that may properly be determined is whether the register of deeds should accept for registration a certified mutilated copy or a certified complete copy of the project of partition in question. Needless to say, the decision on this question cannot affect the right of the appellants to attack the validity of the mortgage in question in an appropriate separate action.

The decision appealed from is affirmed, with costs. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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