

**BASILIA CABRERA ET AL., PLAINTIFFS-APPELLANTS, VS.
FLORENCIA BELEN ET AL., DEFENDANTS. PHILIPPINE NATIONAL
BANK, DEFENDANT-APPELLEE.**

G.R. No. 49124. August 18, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from the Court of First Instance of Laguna, which dismissed the plaintiffs complaint insofar as the defendant Philippine National Bank was concerned, on the ground that it did not state a cause of action against said bank.

From the allegations of the original complaint we deduce the following pertinent facts: The plaintiffs are purchasers of a portion of four (4) hectares of a parcel of land of 35.9338 hectares formerly described in transfer certificate of title No. 5979 in the name of Eusebia Disingco, the original vendor of plaintiffs' predecessors in interest. After Disingco's death, the title was transferred to her daughter and only heir, the defendant Florencia Belen, to whom was issued transfer certificate of title No. 15952, covering the said parcel of land. The sale of the portion of four hectares in question was never annotated on the transfer certificate of title, nor was a separate title therefor ever issued to the plaintiffs or to any of their various successive predecessors in interest, altho the original sale by Eusebia Disingco to one Marciano Celino is alleged to have taken place as early as March 9, 1917. On August 27, 1937, the defendant Florencia Belen mortgaged the entire parcel of 35-odd hectares covered by said transfer certificate of title No. 15952 to the Philippine National Bank to secure a loan of P4,500. Among the prayers of the complaint was, that the defendant Florencia Belen and her husband Alfonso Buiser be required to pay off the mortgage to the Philippine National Bank and to execute a new deed of sale of the portion of land in question in favor of the plaintiffs free from all liens and encumbrances.

Upon motion of the bank, the trial court dismissed the complaint against it for lack of a cause of action. A motion for reconsideration and an amended complaint were subsequently filed. The court denied said motion and rejected the amended complaint insofar as it referred to the bank.

Leaving aside the questions raised by the parties as to whether the appeal was filed on time and as to whether the amended complaint has changed the theory of the original complaint insofar as the bank is concerned, we shall examine the new allegations of the amended complaint and determine whether it states a sufficient cause of action against the bank to justify the latter's inclusion therein as a party defendant.

The pertinent allegations of the amended complaint are the following:

"16.—Estando registrada en el registro la venta a favor de la demandante Cabrera y estando poseido el terreno adversamente por los causantes de ella en la fecha de la hipoteca, el demandado Banco Nacional Filipino, que tiene la practica de inspeccionar el terreno ofrecido en hipoteca, tenia motivos de saber y averiguar que la deudora Belen no era la dueña ni poseedora del terreno en cuestion, y no obstante concedio el credito hipotecario arriba mencionado.

"17.—Aun suponiendo el demandado Banco Nacional Filipino acreedor hipotecario de buena fe, una vez enterado de que acepto como garantia una propiedad ajena, es su deber no permitir aumento de gravamen desde entonces y reconocer al dueño verdadero el derecho de liberar del mismo la propiedad, permitiendole el rescate de todo el inmueble hipotecado caso preciso."

It is not alleged that the sale in favor of the plaintiff Cabrera was annotated on the certificate of title. Neither is it alleged that the bank had knowledge of the alleged sale of the portion of land in question by the registered owner thereof in favor of the plaintiffs or their predecessors in interest. The sale alleged to have been registered (presumably under the Administrative Code and not under the Land Registration Act) was that referred to in paragraph 12 of the complaint, namely, the sale to the plaintiff Basilia Cabrera by the spouses Artemio Fule and Paz Cabrera dated February 28, 1935. Artemio Fule and Paz Cabrera are not alleged to have ever been the registered owners of the land in question. The allegation that "the defendant Philippine National Bank, which has the practice of inspecting the land offered in mortgage, had reasons to know and find out that the debtor Belen was neither the owner nor the possessor of the land in question," is not sufficient, in our opinion, to charge the bank with knowledge of the alleged sale to the plaintiff Cabrera, or with bad faith in accepting the mortgage from the registered owner. It is not alleged or pretended that, as a matter of fact, the bank did inspect the land and did find out that the mortgagor Florencia Belen was not the owner and possessor thereof. It must be borne in mind that the land in question (4 hectares), is only a small portion of the parcel of 35-odd hectares mortgaged to the bank, and even if a representative of the bank had in fact inspected it, he was not bound to inquire whether or not any portion thereof was possessed and owned by some person other than the registered owner. It is not alleged that a representative of the bank inspected the land and that the plaintiffs or someone in their behalf told him that they were the owners and possessors of a portion thereof.

It is, nevertheless, further alleged that "even supposing that the defendant Philippine National Bank is a mortgage creditor in good faith, once it learned that it had accepted as security another person's property, it was its duty not to permit any increase of the encumbrance thereafter and to recognize in the true owner the right to free the property from the mortgage by permitting the redemption of the entire property." But who is the true owner of the property? That question is still under litigation between the plaintiffs and the defendants Florencia Belen and Alfonso Buiser. The bank cannot arrogate to itself the authority to decide that question. Pending the court's decision, the bank cannot recognize the plaintiffs as the true owners in lieu of the registered owner, for the simple reason that the certificate of Torrens title is presumed to speak the truth.

Appellants' pretensions against the bank under their original as well as their amended complaint cannot be entertained in view of the provisions of sections 38, 39, 45, and 50 of the Land Registration Act, and the various decisions of this Court, among the latest of which is that of *Sutnira vs. Vistan*, 1 Off. Gaz., [Nov. 1943], 133-136, which is on all fours with the present case.

The orders appealed from are affirmed, with costs against the appellants.

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

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