

EUTQUIANO BUISER, PETITIONER, VS. BASILIA CABRERA, ETC., RESPONDENT.

G. R. No. 49217. October 21, 1948

Ponente: OZAETA, J.

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OZAETA, J.:

On November 26, 1930, Artemio Fule as principal and Nemesio Cabrera as surety executed a mortgage in favor of the Philippine Education Co., Inc., to secure the payment of any and all sums of money not to exceed P3,930 which Artemio Fule might be obligated to pay to the said company. The mortgage encumbered four parcels of land and a house of strong materials belonging to the surety Nemesio Cabrera with an aggregate assessed value of P8,185.38.

In or before 1933 the Philippine Education Co., Inc., instituted civil case No. 6189 in the Court of First Instance of Laguna against Artemio Fule and Nemesio Cabrera to foreclose said mortgage. Judgment having been rendered in favor of the plaintiff in said case, the sheriff sold the four parcels of land and the building described in the mortgage to the Philippine Education Co., Inc., as the highest bidder for P5,342.10, and executed in its favor a final certificate of sale on August 26, 1933, which was approved by the court on September 9, 1933.

On June 21, 1934, the Philippine Education Co., Inc., instituted civil case No. 2432 in the justice of the peace court of San Pablo, Laguna, against Nemesio Cabrera and Artemio Fule to oust them from the possession of the realties described in the mortgage. The defendants confessed Judgment in said case and the plaintiff succeeded in taking possession of the said properties.

Basilias Cabrera, in her capacity as judicial administratrix of the estate of Nemesio Cabrera (the latter having died), made an unsuccessful attempt to repurchase the four parcels of land described in the mortgage from the Philippine Education Co., Inc. Subsequently she instituted civil case No. 6839 in the Court of First Instance of Laguna against the Philippine Education Company to annul the judgments rendered in the foreclosure proceedings and in the forcible entry and detainer case on the ground that the defendant Nemesio Cabrera in said cases had not been legally summoned, nor notified of any of the proceedings had therein, nor had he authorized anybody to represent him therein. That case was decided in favor of the Philippine Education Co., Inc., and against the plaintiff Basilias Cabrera.

On March 23, 1937, during the pendency of the action for the annulment of the foreclosure proceedings, the Philippine Education Co., Inc., transferred and conveyed the four parcels of land described in the mortgage to Eutiquiano Buiser in consideration of the sum of P7,000, payable P2,000 down and the balance in quarterly instalments of P400 each.

On August 9, 1939, Basilias Cabrera, as judicial administratrix of the deceased Nemesio Cabrera, instituted the present action in the Court of First Instance of Laguna against Eutiquiano Buiser to recover from the latter the possession of a parcel of land of 3,518 square meters situated in the city of San Pablo. The defendant Buiser and the Philippine Education Co., Inc. (which was permitted to intervene herein to defend Buiser's title), contended

that the parcel of land sought to be recovered by the plaintiff formed part of the fourth parcel described in the mortgage, in the sheriff's certificate of sale, and in the deed of sale executed by the Philippine Education Co., Inc., in favor of Buiser. The plaintiff on the other hand contended that the fourth parcel of land above mentioned had an area of only 500 square meters, more or less, and did not include the portion of 3,518 square meters which she was seeking to recover.

The description of the fourth parcel of land contained in the mortgage, in the sheriff's certificate of sale, and in the deed of sale from the Philippine Education Co., Inc., its Eutiquiano Buiser was uniformly as follows:

"4. A piece of residential land assessed at P750.00 and the house of strong materials built thereon assessed at P3,500.00 under Tax No. 62904 for the year 1925 located in the Poblacion of San Pablo, Laguna, bounded on the North by Avenida Rizal; on the East by property of Francisco Abrebas; on the South by property of A. Fule; and on the West by property of Crispin. Cordero, having an area of 500 square meters, more or less, declared in the name of Nemesio Cabrera. The boundary lines are not visible on the land by means of monuments but by fences."

The Court of First Instance of Laguna (Judge Alejo Labrador presiding) rendered judgment on February 10, 1941, the dispositive part of which reads as follows:

"WHEREFORE, the Court renders judgment in favor of the plaintiff declaring that she is entitled to the possession, as administratrix of the estate of Nemesio Cabrera, of the undeclared residential lot object of the action, which lot is more specifically described in the plan Psu-102771-Amd as lot No. 1-C, and ordering the defendant and, intervenor to deliver the possession thereof to her, with damage at the rate of P140 a year from the filing of the action until delivery. Let there be no costs."

The then Court of Appeals (before it was reorganized into regional Courts of Appeals) affirmed that judgment on September 24, 1943. The appellant filed a motion for reconsideration which the newly organized Court of Appeals of Southern Luzon decided adversely to him on June 3, 1944.

The case is now before us on appeal by certiorari to review the decision of the Court of Appeals.

The contention of the petitioner (defendant below) is that although the area stated in the description is only 500 square meters, more or less, the boundaries given embrace an area of 4,000 square meters, more or less, and that in case of conflict between the boundaries and the area the former should prevail.

At this juncture it is pertinent to note that when the contract of mortgage was signed by Nemesio Cabrera, he was the owner not only of the first three parcels of land described in the mortgage but also of a fourth parcel of land containing a total area of 4,008 square meters which he had inherited from his father Valentin Cabrera and which originally formed part of a larger parcel that subsequent to the death of his father was partitioned equally among four heirs, as shown in the sketch Exhibit A. The portion that corresponded to Nemesio Cabrera in the partition was the extreme eastern part of the whole parcel and was bounded on the north by the provincial road and on the west by the lot that corresponded to Petronila Cabrera.

The question to decide is whether, in describing the fourth parcel of land, the parties to the said contract of mortgage intended to include therein the entire lot of 4,008 square meters which Nemesio Cabrera had inherited from his father or only that portion of 500 square meters on which his house was built.

In support of his contention the petitioner Eutiquiano Duiser invokes article 1471 of the Civil Code, which reads as follows:

"ART. 1471. In case of the sale of real estate for a lump sum and not at the rate of a specified price for each unit of measure or number there shall be no increase or decrease of the price even if the area or number be

found to be more or less than that stated in the contract.

"The same rule shall apply when two or more real properties are sold for a single price; but, if in addition to a statement of the boundaries, which is indispensable in every conveyance of real estate, their area or number should be designated in the contract, the vendor shall be obliged to deliver all that is included within such boundaries, even should it exceed the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction of the price in proportion to what is lacking of the area or number, unless the contract be annulled by reason of the vendee's refusal to accept anything other than that which was stipulated."

and the decision of this court in *Loyola vs. Bartolome*, 39 Phil. 544, in which it was held (quoting from the syllabus) as follows:

"A judgment in an action to recover a parcel of land and to obtain a judicial declaration of ownership in favor of the plaintiff is not vitiated by an erroneous statement relative to the area of the questioned parcel, where it appears that the land is so described by boundaries as to put its identification beyond doubt. That which really defines a piece of ground is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits."

Petitioner-appellant's contention is based upon the finding of the trial court which was quoted by the Court of Appeals in its decision of September 24, 1943, to the effect that in the tax declaration Exhibit 5-A the land assessed is only 500 square meters "although the boundaries given are those of the whole residential lot." (The boundaries and the area of the land given in the tax declaration Exhibit 5-A are the same as those given in the mortgage.) That finding or conclusion of fact, however, was qualified or rectified by the same Court of Appeals when it said: "Upon comparing the boundaries in the deed of mortgage Exhibit 1 with the actual boundaries of the lot Exhibit 5, we find a complete discrepancy, except as to the northern boundary." And the Court of Appeals of Southern Luzon, in resolving the herein petitioner's motion for reconsideration by its resolution of June 3, 1944, expressly deleted said conclusion of the trial court as erroneous. Said that court:

"Teniendo a la vista estos linderos consignados en los exhs. 1 y 5-a, se preguntat Que parcela de terreno se ha tratado de identificar con los mismos? Es el lot num. 1-A del exh. 8? Es el lote compuesto de los lotos 1-A y 1-C del exh. 8? Es la parcela total heredada de su padre por los cuatro hermanos compuesta de cuatro lotes segun el exh. A? La contestacion que tenemos que dar a estas preguntas en vista de todos los hechos expuestos mas arriba, es ninguno de ellos. Para comprender mejor esta contestacion, tal vez fuera conveniente recurrir al sketch figura num. 5 que aparece en la contrarreplica de la apelada a la replica del demandado apelante. Los linderos mencionados en la escritura de hipoteca, son los mismos indicados en dicha figura. Lo ma's que se puede deducir de esos linderos es que son algunos de los linderos de la parcela grande de los cuatro hermanos de apellido Cabrera. Declmos algunos porque faltan en la enumeracion los dos terrenos colindantes de Rufino Alcantara al Este, el de Catalino Menes y Pedro Calumpiano al Sur y el de Melecio Fule al Oeste (exh. A), y, por tanto, insuficientes para identificar la parcela grande de los cuatro hermanos de apellido Cabrera. Pero de ninguna manera pueden ajustarse dichos linderos el al lote num. 1-C ni al lote num. 1-A el a ambos Juntos, del exh. 8. De ahl que sea patente, quela conclusion del Juzgado de Prlmera Instancia de que los linderos a e aparecen en las hojas de amillaramiento exhs. 5 y 5-a son los de todo el lote de Nemesio Cabrera although the boundaries given are those of the whole residential lot, segun las palabras textuales del Juzgado p. de a., p. 21), no es correcta y, por tanto, en el uso de las facultades conferidas a este Tribunal (articulo 5 de la Regla 53 de las Reglas de los Tribunals), la eliminamos de la decision anterior de este Tribunal."

We do not feel justified in reversing the conclusion of the Court of Appeals that the boundaries given in the mortgage as hereinabove quoted do not identify with certainty the whole lot of about 4,000 square meters claimed to have been included in the mortgage. An examination of the plan Exhibit A, which shows the configuration and boundaries of the entire land inherited by the Cabrera brothers from their father, and of the plan Exhibit 8, which shows the configuration and boundaries of the lot of 4,008 square meters which corresponded to Nemesio Cabrera

in the partition, demonstrates that the western boundary given in the mortgage Exhibit 1 as well as in the tax declaration Exhibit 5-A, namely, "property of Crispin Cordero," does not correspond to the western boundary of the lot of 4,008 square meters of Nemesio Cabrera but to the western boundary of the entire land of his father Valentin Cabrera. There is no question that the western boundary of the lot of 4,008 square meters of Nemesio Cabrera is, and since 1915 has been, the lot of Petronila Cabrera. Thus, if we are to be guided by the boundaries given in the mortgage Exhibit 1 and in the tax declaration Exhibit 5-A, we would have to conclude that Nemesio Cabrera intended to mortgage not only his lot of 4,008 square meters but also those of his coheirs Petronila and Maria Cabrera—a fact which the petitioner himself does not claim. That only goes to show that the boundaries given in the mortgage are incorrect and unreliable.

There is another relevant fact which the Court of Appeal of Southern Union found, and which in our opinion even more patently that the boundaries given in the mortgage Exhibit 1 and in the tax declaration Exhibit 5-A did not correspond to the correct boundaries of Nemesio Cabrera's entire lot of 4,008 square meters, and that is the following: In 1936, after the Philippine Education Co., Inc., had succeeded in taking possession of the said entire lot, a new tax declaration for the year 1937 (Exhibit 5-B) was prepared in the name of the "Philippine Education Co., Inc., owner, % Eutiquiano Bulser, administrator." In that tax declaration the property was classified as "residential, class 1, 1,500 square meters, value P2,250; secano class 1-a, 2,830 square meters, value P56.60," or a total area of 4,330 square meters with a total assessed value of P2,306.60. The assessment of the house of strong materials remained the same—P3,500. The boundaries of the land were given as follows: "North, Ave. Rizal; east, Florentina Hernandez and Consorcia Dichoso; south, Lucas Guevara, Nemesio and Petronila Cabrera; west, Petronila Cabrera." Thus the boundaries, the area, and the assessed value of the land which in 1936 the Philippine Education Co., Inc., claimed to have acquired from Nemesio Cabrera thru the foreclosure of the mortgage were entirely different from the boundaries, area, and assessed value of the fourth parcel of land described in said mortgage. Nevertheless, when subsequently, that is to say, on March 26, 1937 the Philippine Education Co., Inc., transferred and conveyed supposedly that same land to Eutiquiano Buiser, the boundaries, area, and assessed value given in the contract of sale were not those set forth in the new tax declaration Exhibit 5-B but exactly those set forth in the mortgage Exhibit 1. Thus, even with the full knowledge that the fourth parcel of land which it claimed to have acquired from Nemesio Cabrera contained an area of more than 4,000 square meters, when the Philippine Education Co., Inc., agreed to transfer and convey to Eutiquiano Buiser all the properties it had acquired from Nemesio Cabrera thru foreclosure of mortgage, it did not describe said fourth parcel of land as containing 4,330 square meters with an assessed value of P2,306.60 in accordance with the tax declaration for 1937 but only 500 square meters with an assessed value of P750.

The jurisprudence cited by the petitioner to the effect that where it appears that the land is so described by boundaries as to put its identification beyond doubt, an erroneous statement relative to the area of the questioned parcel may be disregarded because what really defines a piece of ground is not the area but the boundaries therein laid down, is not applicable for the reason that the boundaries herein relied upon do not identify the land beyond doubt. Neither can article 1471 of the Civil Code cited by the petitioner be of any avail to him. In the first place, said article found in Title IV of Book IV, which regulates the contract of purchase and sale, does not apply to the contract of mortgage, which is governed by Title XV, Articles 1857-1880; and in the second place, said article 1471 applies to a transaction entirely different from that involved in this case. There is no question here of any increase or decrease of the price or of an annulment of the contract, with which said article deals.

We think the applicable provisions are those found in articles 1283 and 1289 of the Civil Code, which read as follows:

"ART. 1283. However general the terms of a contract may be, it shall not be construed as including things and cases different from those with respect to which the persons interested intended to contract."

"ART. 1289. If it should be absolutely impossible to solve, by the rules established by the preceding articles any doubts concerning the incidental details of a gratuitous contract, they should be settled in such a way as to effect the least possible transmission of rights or interests. When such doubt arises in construing onerous contracts, it shall be resolved in favor of the greatest reciprocity of interests.

There is no question that the parties intended to include in the mortgage the land described in tax declaration Exhibit 5-A. The question is whether that tax declaration embraces a residential lot of 500 square meters or a lot of 4,008 square meters. We have seen that the boundaries given, as correctly found by the Court of Appeals of Southern Luzon, do not identify with certainty either the lot of 500 square meters or the larger lot of 4,008 square meters. Therefore, only the unequivocal statement given in the mortgage and in said tax declaration identifying the property mortgaged as "a piece of residential land assessed at P750.00 and the house of strong materials built therein assessed at P3,500.00 under Tax No. 62904 for the year 1925 located in the Poblacion of San Pablo, Laguna, having an area of 500 square meters, more or less," can be taken into consideration. On the identity of the property thus described and the intention of the parties to include only that property in the mortgage, the trial court found, and the Court of Appeals adopted that finding, as follows:

"The configuration of the land in question confirms our belief that the deceased Nemesio Cabrera did intend to declare for tax purposes only the land of 500 square meters area on which the house is built. An ocular inspection shows that the bigger portion of the lot is covered by many fruit trees. The 500 square meters area is separated on the east side from the bigger portion by having been leveled at a plane lower than the rest of the land. The eastern and bigger portion is from one foot to two feet higher in elevation than the plane on which the house is built. It is not used as a garden either; it appears to be an orchard where permanent fruit trees are sown without order or plan. It may have been the intention of its owner to make a different tax declaration, or not to declare it at all; but certainly it could never have been his intention to include the whole area in the tax declaration of the house and of the lot on which it stands."

The deed of mortgage Exhibit 1 was prepared in Manila by the attorney for the mortgagee, Philippine Education Co., Inc., apparently from the descriptions of the properties mortgaged contained in their respective tax declarations. In this connection the Court of Appeals noted "that there is no proof [it] had previously sent a representative to view the premises." Under the circumstances, it is reasonable to assume that when it signed and accepted the mortgage the mortgagee, Philippine Education Co., Inc., took into consideration the area and the assessed value of the property rather than its boundaries; for the boundaries gave no idea of the value of the property, whereas the area and the assessed value furnished a concrete idea of its extent and worth. When the Philippine Education Co., Inc., took a mortgage on a residential lot of 500 square meters, it certainly could not and did not expect to receive as security a lot more than eight times larger than that—4,008 square meters. Hence the applicability of article 1283 of the Civil Code, which says that however general the terms of a contract may be in this case the boundaries are not only general but vague) it shall not be construed as including things and cases different from those with respect to which the persons interested intended to contract.

Lastly, it is to be noted that insofar as Nemesio Cabrera is concerned, the contract of mortgage in question was purely gratuitous, he having merely consented to respond with his properties for the obligations of his son-in-law Artemio Fule up to the amount of P3,930. Therefore, in accordance with article 1289 of the Civil Code, said contract should be so interpreted as "to effect the least possible transmission of rights or interests."

In this case it appears that on account of an obligation of his son-in-law Artemio Fule to the Philippine Education Co., Inc., which he guaranteed up to the sum of P3,930, Nemesio Cabrera forfeited four parcels of land together with a house of strong materials with a total assessed value as of 1925 of P8,185.38. The house of strong materials alone was assessed in 1925 at P3,500 and the residential lot of 500 it turns out to be square meters on which it is built, at P750. Under the circumstances, to so construe the contract in question as to include not only the

residential lot of 516 square meters (lot 1-A) but also the adjoining orchard of 3,492 square meters now sought to be recovered by the respondent (lot 1-C, Exhibit 8), would in our opinion do violence to equity and justice as safeguarded by the two articles of Civil Code last above cited.

We find no merit in petitioner's contention that the present action is barred by case No. 6189 (the foreclosure proceedings) and case No. 2432 (the unlawful detainer case). There is no identity of subject matter between the present case and either of said two cases. Neither is there any merit in petitioner's contention that the respondent is guilty of laches. Aside from the fact that this defense was not presented in the trial court, it is not supported by the facts.

The petitioner also contends that the respondent was estopped from questioning his right and title to the property in question because she had repeatedly attempted to repurchase said property from the Philippine Education Co., Inc., along with the others of which it was and is a part and parcel, thereby recognizing the said company as the owner thereof. We find this defense of estoppel equally untenable because it is based on the erroneous assumption that the portion now in question was included in the mortgage. What the respondent attempted to repurchase from the Philippine Education Co., Inc., was the four parcels of land and building described in the mortgage. Since, as we have found, lot 1-C in question was not included in the mortgage but only lot 1-A of 516 square meters and the building constructed thereon, the theory of estoppel founded on the respondent's offer to redeem or repurchase the mortgaged properties must fall for lack of basis. At most, such an offer can only be considered as one of compromise (Rule 123) Rules of Court), does not and cannot constitute estoppel.

The judgment is affirmed, with costs. SO ORDERED.

Moran, C. J., Paras, Feria, Pablo, Perfecto, Briones, and Montemayor, JJ., concur.

DISSENTING

TUASON, J.:

I am constrained to dissent from the majority decision.

The preponderance of probabilities leans on the side of the defendant-appellant. Amidst vagueness, inadequacies and inaccuracies in the description of the mortgaged land, two things stand out clearly.

1. This land as described in the land tax declaration and in the deed of mortgage can not refer to the portion of 500 square meters alone, for if that were the case, the description would have cited Nemesio Cabrera himself as the adjoining owner on two sides, and we should have to admit that the rest, and by far the greater portion, of the land has never been assessed for purposes of taxation, a wrong which the owner and/or the assessor can not be presumed to have committed, or allowed to take advantage of.
2. The intention of the parties especially that of the mortgagor, controls, as the decision says. That the parties understood the entire parcel of 4,000 odd square meters to have been mortgaged is evident from these facts: The mortgagee, through its representative; took actual and physical possession of the entire lot and enjoyed and gathered its products. In this possession, the mortgagor and/or his heirs acquiesced for several years. It was only after the plaintiff had failed, in her efforts to eject the mortgagee from the whole parcel in a possessory action, to annul the foreclosure of the mortgage, and lastly to repurchase the property, that the thought dawned upon her to bring the present suit to recover the land in excess of 500 square meters.

The rule of interpretation to the effect that obscurity in a contract should be construed against the party who drew

the instrument can not apply to the mortgagee in this case. Rather it should be invoked against the mortgagor, for the obscurity is not in the terms and conditions of the mortgage but in the description of the mortgaged property, description which was furnished by him and which misled a subsequent, innocent purchaser for value.

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