

PRUDENTIAL BANK, PETITIONER, VS. HONORABLE DOMINGO D. PANIS, PRESIDING JUDGE OF BRANCH III, COURT OF FIRST INSTANCE OF ZAMBALES AND OLONGAPO CITY; FERNANDO MAGCALE & TEODULA BAL...

G.R. No. 50008. August 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the November 13, 1978 Decision* of the then Court of First Instance of Zambales and Olongapo City in Civil Case No. 2443-0 entitled "Spouses Fernando A. Magcale and Teodula Baluyut-Magcale vs. Hon. Ramon Y. Pardo and Prudential Bank" declaring that the deeds of real estate mortgage executed by respondent spouses in favor of petitioner bank are null and void.

The undisputed facts of this case by stipulation of the parties are as follows:

"x x x on November 19, 1971, plain-tiffs-spouses Fernando A. Magcale and Teodula Baluyut Magcale secured a loan in the sum of P70,000.00 from the defend-ant Prudential Bank. To secure payment of this loan, plaintiffs executed in favor of 'defendant on the aforesaid date a deed of Real Estate Mortgage over the following described properties:

'1. A 2-STOREY, SEMI-CONCRETE, residential building with ware-house spaces containing a total floor area of 263 sq. meters, more or less, generally constructed of mixed hard wood and concrete materials, under a roofing of cor. g. i. sheets; declared and assessed in the name of FERNANDO MAGCALE under Tax Declaration No. 21109, issued by the Assessor of Olongapo City with an assessed value of P35,290.00. This building is the only improvement on the lot.

'2. THE PROPERTY hereby conveyed by way of MORTGAGE includes the right of occupancy on the lot where the above property is erected, and more parti-cularly described and bounded, as follows:

'A first class residential land identified as Lot No. 720, (Ts-308, Olongapo Townsite Subdivision) Ardoin Street, East Bajac-Bajac, Olongapo City, containing an area of 465 sq. m., more or less; declared and assessed in the name of FERNANDO MAGCALE under Tax Declaration No. 19595 issued by the Assessor of Olong-apo City with an assessed value of P1,860.00; bounded on the

NORTH : By No. 6, Ardoin Street

SOUTH : By No. 2, Ardoin Street

EAST : By 37 Canda Street and

WEST : By Ardoin Street.'

All corners of the lot marked by conc. cylindrical monuments of the Bureau of Lands as visible limits.' (Exhibit

"A", also Exhibit "1" for defendant).

Apart from the stipulations in the printed portion of the aforesaid deed of mortgage, there appears a rider typed at the bottom of the reverse side of the document under the lists of the properties mortgaged which reads, as follows:

'AND IT IS FURTHER AGREED that in the event the Sales Patent on the lot applied for by the Mortgagors as herein stated is released or issued by the Bureau of Lands, the Mortgagors hereby authorize the Register of Deeds to hold the Registration of same until this Mortgage is cancelled, or to annul this encumbrance on the Title upon authority from the Secretary of Agriculture and Natural Resources, which title with annotation, shall be released in favor of the herein Mortgage.'

From the aforesaid stipulation, it is obvious that the mortgagee (defendant Prudential Bank) was at the outset aware of the fact that the mortgagors (plaintiffs) have already filed a Miscellaneous Sales Application over the lot, possessory rights over which, were mortgaged to it.

Exhibit "A" (Real Estate Mortgage) was registered under the Provisions of Act 3344 with the Registry of Deeds of Zambales on November 23, 1971.

On May 2, 1973, plaintiffs secured an additional loan from defendant Prudential Bank in the Sum of P20,000.00. To secure payment of this additional loan, plaintiffs executed in favor of the said defendant another deed of Real Estate Mortgage over the same properties previously mortgaged in Exhibit "A". (Exhibit "B"; also Exhibit "2" for defendant). This second deed of real Estate Mortgage was likewise registered with the Registry of Deeds, this time in Olongapo City, on May 2, 1973.

On April 24, 1973, the Secretary of Agriculture issued Miscellaneous Sales Patent No. 4776 over the parcel of land, possessory rights over which were mortgaged to defendant Prudential Bank, in favor of plaintiffs. On the basis of the aforesaid Patent, and upon its transcription in the Registration Book of the Province of Zambales, Original Certificate of Title No. P-2554 was issued in the name of Plaintiff Fernando Magcale, by the Ex-Officio Register of Deeds of Zambales, on May 15, 1972.

For failure of plaintiffs to pay their obligation to defendant Bank after it became due, and upon application of said defendant, the deeds of Real Estate Mortgage (Exhibits "A" and "B") were extrajudicially foreclosed. Consequent to the foreclosure was the sale of the properties therein mortgaged to defendant as the highest bidder in a public auction sale conducted by the defendant City Sheriff on April 12, 1978 (Exhibit "E"). The auction sale aforesaid was held despite written request from plaintiffs through counsel, dated March 29, 1978, for the defendant City Sheriff to desist from going with the scheduled public auction sale (Exhibit "D")." (Decision, Civil Case No. 2443-0, Rollo, pp. 29-31).

Respondent Court, in a Decision dated November 3, 1978 declared the deeds of Real Estate Mortgage as null and void (Ibid., p. 35).

On December 14, 1978, petitioner filed a Motion for Reconsideration (Ibid., pp. 41-53), opposed by private respondents on January 5, 1979 (Ibid., pp. 54-62), and in an Order dated January 10, 1979 (Ibid., p. 63), the Motion for Reconsideration was denied for lack of merit. Hence, the instant petition (Ibid., pp. 5-28).

The First Division of this Court, in a Resolution dated March 9, 1979, resolved to require the respondents to comment (Ibid., p. 65), which order was complied with the Resolution dated May 18, 1979, (Ibid., p. 100), petitioner filed its Reply on June 2, 1979 (Ibid., pp. 101-112).

Thereafter, in the Resolution dated June 13, 1979, the petition was given due course and the parties were required to submit simultaneously their respective memoranda. (Ibid., p. 114).

On July 18, 1979, petitioner filed its Memorandum (Ibid., pp. 116-144), while private respondents filed their Memorandum on August 1, 1979 (Ibid., pp. 146-155).

In a Resolution dated August 10, 1979, this case was considered submitted for decision (Ibid., p. 158).

In its Memorandum, petitioner raised the following issues:

1. WHETHER OR NOT THE DEEDS OF REAL ESTATE MORTGAGE ARE VALID; AND
2. WHETHER OR NOT THE SUPERVENING ISSUANCE IN FAVOR OF PRIVATE RESPONDENTS OF MISCELLANEOUS SALES PATENT NO. 4776 ON APRIL 24, 1972 UNDER ACT NO. 730 AND THE COVERING ORIGINAL CERTIFICATE OF TITLE NO. P-2554 ON MAY 15, 1972 HAVE THE EFFECT OF INVALIDATING THE DEEDS OF REAL ESTATE MORTGAGE. (Memorandum for Petitioner, Rollo, p. 122).

This petition is impressed with merit.

The pivotal issue in this case is whether or not a valid real estate mortgage can be constituted on the building erected on the land belonging to another.

The answer is in the affirmative.

In the enumeration of properties under Article 415 of the Civil Code of the Philippines, this Court ruled that, "it is obvious that the inclusion of 'building' separate and distinct from the land, in said provision of law can only mean that a building is by itself an immovable property". (Lopez vs. Orosa, Jr., et al., L-10817-18, Feb. 28, 1958; Associated Inc. and Surety Co., Inc. vs. Iya, et al., L-10837-38, May 30, 1958).

Thus, while it is true that a mortgage of land necessarily includes, in the absence of stipulation of the improvements thereon, buildings, still a building by itself may be mortgaged apart from the land on which it has been built. Such a mortgage would be still a real estate mortgage for the building would still be considered immovable property even if dealt with separately and apart from the land (Leung Yee vs. Strong Machinery Co., 37 Phil. 644). In the same manner, this Court has also established that possessory rights over said properties before title is vested on the grantee, may be validly transferred or conveyed as in a deed of mortgage (Vda. de Bautista vs. Marcos, 3 SCRA 438 [1961]).

Coming back to the case at bar, the records show, as aforesaid that the original mortgage deed on the 2-storey semi-concrete residential building with warehouse and on the right of occupancy on the lot where the building was erected, was executed on November 19, 1971 and registered under the provisions of Act 3344 with the Register of Deeds of Zambales on November 23, 1971. Miscellaneous Sales Patent No. 4776 on the land was issued on April 24, 1972, on the basis of which OCT No. 2554 was issued in the name of private respondent Fernando Magcale on May 15, 1972. It is therefore without question that the original mortgage was executed before the issuance of the final patent and before the government was divested of its title to the land, an event which takes effect only on the issuance of the sales patent and its subsequent registration in the Office of the Register of Deeds (Visayan Realty Inc. vs. Meer, 96 Phil. 515; Director of Lands vs. De Leon, 110 Phil. 28; Director of Lands vs. Jurado, L-14702, May 23, 1961; Pena, "Law on Natural Resources, p. 49). Under the foregoing considerations, it is evident that the mortgage executed by private respondent on his own building which was erected on the land belonging to the government is to all intents and purposes a valid mortgage.

As to restrictions expressly mentioned on the face of respondents' OCT No. P-2554, it will be noted that Sections 121, 122 and 124 of the Public Land Act, refer to land already acquired under the Public Land Act, or any improvement thereon and therefore have no application to the assailed mortgage in the case at bar which was

executed before such eventuality. Like-wise, Section 2 of Republic Act No. 730, also a restriction appearing on the face of private respondent's title has likewise no application in the instant case, despite its reference to encumbrance or alienation before the patent is issued because it refers specifically to encumbrance or alienation on the land itself and does not mention anything regarding the improvements existing thereon.

But it is a different matter, as regards the second mortgage executed over the same properties on May 2, 1973 for an additional loan of P20,000.00 which was registered with the Registry of Deeds of Olongapo City on the same date. Relative thereto, it is evident that such mortgage executed after the issuance of the sales patent and of the Original Certificate of Title, falls squarely under the prohibitions stated in Sections 121, 122 and 124 of the Public Land Act and Section 2 of Republic Act 730, and is therefore null and void.

Petitioner points out that private respondents, after physically possessing the title for five years, voluntarily surrendered the same to the bank in 1977 in order that the mortgage may be annotated, without requiring the bank to get the prior approval of the Ministry of Natural Resources beforehand, thereby implicitly authorizing Prudential Bank to cause the annotation of said mortgage on their title.

However, the Court, in recently ruling on violations of Section 124 which refers to Sections 118, 120, 122 and 123 of Commonwealth Act 141, has held:

"x x x Nonetheless, we apply our earlier rulings because we believe that as in *pari delicto* may not be invoked to defeat the policy of the State neither may the doctrine of estoppel give a validating effect to a void contract. Indeed, it is generally considered that as between parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy (19 Am. Jur. 802). It is not within the competence of any citizen to barter away what public policy by law seeks to preserve (*Gonzalo Puyat & Sons, Inc. vs. De los Amas and Alino*, supra). x x x." (*Arsenal vs. IAC*, 143 SCRA 54 [1986]).

This pronouncement covers only the previous transaction already alluded to and does not pass upon a new contract between the parties (*Ibid.*), as in the case at bar. It should not preclude new contracts that may be entered into between petitioner bank and private respondents that are in accordance with the requirements of the law. After all, private respondents themselves declare that they are not denying the legitimacy of their debts and appear to be open to new negotiations under the law (*Comment; Rollo*, pp. 95-96). Any new transaction, however, would be subject to whatever steps the Government may take for the reversion of the land in its favor.

PREMISES CONSIDERED, the decision of the Court of First Instance of Zambales & Olongapo City is hereby **MODIFIED**, declaring that the Deed of Real Estate Mortgage for P70,000.00 is valid but ruling that the Deed of Real Estate Mortgage for an additional loan of P20,000.00 is null and void, without prejudice to any appropriate action the Government may take against private respondents.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

* Penned by Judge Domingo D. Panis.

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