

## **MARIANO TORRES Y CHAVARRIA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, FRANCISCO E. FERNANDEZ AND FE FERNANDEZ, ROSARIO MOTA CUE, ERNESTO MEDINA CUE AND THE NATIONAL TREASU...**

*G.R. No. 63046. June 21, 1990*

Ponente: MEDIALDEA, J.

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### **MEDIALDEA, J.:**

This is a petition for review of the decision of the Court of Appeals in CA-G.R. No. 62248-R entitled "Mariano Torres Y Chavarria v. Francisco E. Fernandez, et al., etc.," which reversed the decision of the then Court of First Instance of Manila, Branch 7, by holding that it is the respondent Rosario Mota who is legally entitled to the disputed realties, being an innocent mortgagee and later the highest bidder when the properties were supposedly foreclosed, and not the petitioner Mariano Torres, the defrauded owner thereof; and of the resolution of that Court denying Torres' motion for reconsideration.

The parcel of land located at the corner of Quezon Boulevard and Raon Street (now Gonzalo Street), and the building erected thereon known as "M. Torres Building" is owned by Mariano Torres, the herein petitioner, as evidenced by Transfer Certificate of Title No. 53628-Manila issued in his name. As far as the records show, Torres was and still is in possession of the realties, holding safely to his owner's duplicate certificate of title, and, at least until 1971, paying the real estate taxes due thereon, and collecting rentals from his tenants occupying the building.

Sometime in 1966, Francisco Fernandez, Torres' brother-in-law, filed a petition with the Court of First Instance of Manila, docketed as LRC GLRO Cad. Rec. No. 133, where he, misrepresenting to be the attorney-in-fact of Torres and falsely alleging that the owners' duplicate copy of TCT No. 53628 was lost, succeeded in obtaining a court order for the issuance of another copy of the certificate.

Once in possession thereof, Fernandez forged a simulated deed of sale of the realties in his favor. Whereupon TCT No. 53628 in the name of Torres was cancelled and TCT No. 86018 was issued in Fernandez' name.

On various dates from December, 1966 to November, 1967 Fernandez mortgaged the realties to Rosario Mota, wife of Ernesto Cue, and also to Angela Fermin, who later assigned her credit to the spouses Cue. The mortgages were annotated at the back of TCT No. 86018 and so was the deed of assignment.

Torres, who up to this time still had possession of his owner's duplicate certificate of title and who was still collecting rentals from the occupants of the subject building, upon learning of the fraud committed by Fernandez, caused, on March 18, 1968, the annotation on the latter's TCT a notice of adverse claim.

On March 30, 1968, Torres filed Civil Case No. 72494 against Fernandez to annul TCT No. 86018 as well as the proceedings in LRC GLRO Cad. Rec. No. 133. On April 2, 1968, a notice of lis pendens was annotated at the back of Fernandez' TCT.

In the meantime, Fernandez failed to pay his various loans which prompted the Cues to institute an extrajudicial foreclosure of the mortgage.

On February 11, 1969, Fernandez filed Civil Case No. 75643 against the spouses Cue for the annulment of the mortgage with preliminary injunction.

After the foreclosure was enjoined, the parties entered into an amicable settlement, approved by the court, whereby it was stipulated that Fernandez acknowledged and promised to pay his debt to the Cues for Five Hundred Sixty-Two Thousand Nine Hundred Fifty-Five and 28/100 (P562,955.28) Pesos on or before, March 30, 1970, while the spouses bound themselves to execute and deliver, within ten (10) days from receipt of the sum mentioned such documents as are necessary to release the mortgages in favor of defendants on plaintiffs' property.

Before Fernandez could pay his obligation under the settlement agreement, a decision was rendered in Civil Case No. 72494 where it was declared that the proceedings held in LRC GLRO Cad. Rec. No. 133 was void and that TCT No. 86018, issued in the name of Fernandez, is without force and effect as TCT No. 53628 in the name of Torres is the true and legal evidence of ownership of the subject immovables. Fernandez appealed from this decision to the Court of Appeals where it was docketed as CA-G.R. No. 46386-R. The Court of Appeals, on April 20, 1979, affirmed the decision of the trial court. There being nothing on the records that would indicate that the judgment of the appellate court was elevated here, it would appear that it had become final and executory.

But meanwhile, prior to the Court of Appeals' decision mentioned above, Fernandez failed to comply with his obligation under the amicable settlement and whereupon the Cues applied for and were granted a writ of execution. The subject realties were then levied upon and sold at public auction where Rosario Mota was the highest bidder.

On August 31, 1971, the redemption period for the subject immovables having lapsed without Fernandez nor Torres redeeming the properties, Rosario Mota was issued the Sheriff's Deed of Sale. Thereafter, TCT No. 86018 was cancelled and TCT No. 105953 was issued in her name.

On December 7, 1971 Mota, through her lawyer, notified the tenants occupying "M. Torres Building" that she is the new owner thereof and henceforth, payment of their rentals should be made to her.

On December 17, 1971 Torres filed a complaint, which later gave rise to this petition, with the Court of First Instance of Manila, docketed as Civil Case No. 85753, against Fernandez and his spouse and the Cues to restrain the latter from collecting rentals and for the declaration as void TCT No. 105953. The Cues in turn filed a cross-claim against Fernandez spouses and a third party complaint against the National Treasurer as the custodian of the Assurance Fund.

During the proceeding, Mariano Torres, having died sometime in 1974, was substituted by his widow. On June 3, 1977, the trial court rendered its decision declaring TCT No. 105953 in the name of Rosario Mota null and void as it upheld the validity of TCT No. 53628 in the name of Torres as the true evidence of title to the disputed realties, and at the same time dismissing the Cue's third party complaint and cross claim.

The decision was reviewed by the respondent court at the instance of the Cues which, as aforementioned, reversed the trial court in its decision dated July 30, 1982 and the Resolution of January 14, 1983. Hence, this petition.

There is nothing on the records which shows that Torres performed any act or omission which could have jeopardized his peaceful dominion over his realties. The decision under review, however, in considering Mota an innocent mortgagee protected under Section 55 of the Land Registration Law, held that Torres was bound by the mortgage. Inevitably, it pronounced that the foreclosure sale, where Mota was the highest bidder, also bound

Torres and concluded that the certificate of title issued in the name of Mota prevails over that of Torres'. As correctly pointed out by Torres, however, his properties were sold on execution, and not on foreclosure sale, and hence, the purchaser thereof was bound by his notice of adverse claim and *lis pendens* annotated at the back of Fernandez' TCT. Moreover, even if We grant Mota the status of an innocent mortgagee, the doctrine relied upon by the appellate court that a forged instrument may become the root of a valid title, cannot be applied where the owner still holds a valid and existing certificate of title covering the same interest in a realty. The doctrine would apply rather when, as in the cases for example of *De La Cruz v. Fabie*, 35 Phil. 144 [1916], *Fule v. De Legare*, No. L-17951, February 28, 1963, 7 SCRA 351, and *Republic v. Umali*, G.R. No. 80687, April 10, 1989, the forger thru insidious means obtains the owner's duplicate certificate of title, converts it in his name, and subsequently sells or otherwise encumbers it to an innocent holder for value, for in such a case the new certificate is binding upon the owner (Sec. 55, Act 496; Sec. 53, P.D. No. 1529). But if the owner holds a valid and existing certificate of title, his would be indefeasible as against the whole world, and not that of the innocent holder's. "Prior tempore potior jure" as We have said in *Register of Deeds v. Philippine National Bank*, No. L-17641, January 30, 1965, 13 SCRA 46, citing *Legarda v. Saleeby*, 31 Phil. 590, *Roman Catholic Bishop v. Philippine Railway*, 49 Phil. 546, *Reyes v. Borbon*, 50 Phil. 791.

In *C.N. Hodges v. Dy Buncio & Co., Inc.*, No. L-16096, October 30, 1962, 6 SCRA 287, 292, We laid down the doctrine that:

"The claim of indefeasibility of the petitioner's title under the Torrens land title system would be correct if previous valid title to the same parcel of land did not exist. The respondent had a valid title x x x. It never parted with it; it never handed or delivered to anyone its owner's duplicate of the transfer certificate of title; it could not be charged with negligence in the keeping of its duplicate certificate of title or with any act which could have brought about the issuance of another certificate upon which a purchaser in good faith and for value could rely. If the petitioner's contention as to indefeasibility of his title should be upheld, then registered owners without the least fault on their part could be divested of their title and deprived of their property. Such disastrous results which would shake and destroy the stability of land titles had not been foreseen by those who had endowed with indefeasibility land titles issued under the Torrens system. Veronica Bareza perpetrated the fraud by making false representations in her petition and the title issued to her being the product of fraud could not vest in her valid and legal title to the parcel of land in litigation. As she had no title to the parcel of land, in the same way that a thief does not own or have title to the stolen goods, she could not transmit title which she did not have nor possess."

We have applied this doctrine in the case of the *Register of Deeds v. P.N.B.*, supra, where We noted that said ruling is "a mere affirmation of the recognized principle that a certificate is not conclusive evidence of title if it is shown that the same land had already been registered and an earlier certificate for the same land is in existence." Again in the case of *Baltazar v. Court of Appeals*, G.R. No. 78728, December 8, 1988, 168 SCRA 354, We held that as between two persons both of whom are in good faith and both innocent of any negligence, the law must protect and prefer the lawful holder of registered title over the transfer of a vendor bereft of any transmissible rights.

In view of the foregoing, to hold, for the purpose of enforcing the mortgage, that Mota was an innocent mortgagee would be futile because, as above shown, no certificate of title covering the subject realties in derogation of Torres' certificate of title may validly be issued.

Then it becomes evident that the remaining possible remedies of the Cues are to go against Fernandez or the Assurance Fund, as they in fact had done in the lower court by filing a cross claim and third party complaint. The lower court dismissed the Cues' cross-claim against Fernandez reasoning out that their remedy is to cause the final judgment (compromise agreement) in Civil Case No. 75643 executed. This, of course, is correct since the rights

and obligations of both parties had been determined in that case.

The trial court also dismissed the Cues' third party complaint against the Treasurer of the Philippines as custodian of the Assurance Fund after finding them negligent in protecting their interest. The trial court recognized the principle that a person dealing with registered lands need not go beyond the certificate of title but nevertheless pointed out that there are circumstances in this case which should have put the Cues on guard and prompted them to investigate the property being mortgaged to them, thus:

"The property in question is a very valuable property, in fact accepted by defendants Mota and Medina Cue as collateral for more than half a million pesos in loans granted by them to Fernandez. Its value lies principally in its income potential, in the form of substantial monthly rentals. Certainly, the registered title does not yield any information as to the amount of rentals due from the building, much less on who is collecting them, or who is recognized by the tenants as their landlord. Any prospective buyer or mortgagee of such a property, if prudent and in good faith, is normally expected to inquire into all these and related facts and circumstances.

"Besides, by the course of visible dimensions of the M. Torres Building, it should be readily obvious to any one that the area of the two lots x x x covered by TCT No. 86018 cannot accommodate the building, as in fact it also rests upon a lot covered by TCT No. 56387, and partly upon a lot leased by (Torres) from the City of Manila. Had (the Cues) known of this fact would they have accepted the mortgage alone over TCT No. 86018? The answer is obvious. And yet, to all indications, they never bothered to look into this fact about the M. Torres Building.

"x x x.

Another thing that defendants Mota and Medina Cue must have investigated, as any prudent buyer or mortgagee should before consummating any transaction on real property, is the matter of payment of taxes on the property. After all, the big value of the property in question necessarily means that even real estate taxes on it alone would involve big amounts of money, and if there are tax arrearages, any buyer or subsequent owner of the property will have to come face to face with the tax lien attaching to the property wherever its owner may be. x x x. " (p. 257, Record on Appeal)

We likewise take note of the manifestation of the Office of the Solicitor General that the Cues failed to contest the ruling of the trial court negating the liability of the Assurance Fund. For these reasons, We hold that the Cues' remedy merely is to go against Francisco Fernandez or rather his estate since record shows that he died sometime in 1983.

ACCORDINGLY, the decision and resolution under review are REVERSED and the decision of the then Court of First Instance, Branch 7, Manila in Civil Case No. 85753 is REINSTATED.

**SO ORDERED.**

Narvasa, Cruz, and Gancayco, JJ., concur.

Grino-Aquino, J., for personal reason takes no part.

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