

FELICITO TAN AND THE PHILIPPINE NATIONAL BANK, ROMBLON AGENCY, REPRESENTED BY FELICIDARIO D. CABRAL AND TELESFORO MADRONA, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT (TH...

G.R. No. 68834. June 06, 1990

Ponente: PARAS, J.

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PARAS, J.:

This petition for review on certiorari seeks to set aside, reverse or modify the decision of respondent court in AC-G.R. CV No. 63663-R promulgated on March 30, 1984* affirming the judgment of the Court of First Instance of Romblon in Civil Case No. V-778 as amended, the dispositive portion of which states:

"WHEREFORE, having reached the same conclusion as the Court a quo in its decision dated May 30, 1979 as amended on June 2, 1977, the same is hereby affirmed in toto." (p. 55, Rollo)

The undisputed facts of this case as established during the pre-trial conference and the trial on the merits are as follows:

"Plaintiffs Policarpio Martos, Lourdes Martos and Victoria Martos de Aquino are the surviving children of the deceased Pedro Martos and Dalmacia Madali. Plaintiff Berlina Rodeo is the wife of Policarpio Martos. Policarpio, Lourdes and Berlina are all residents of Barrio Salingsing, Calatrava, Romblon; while Victoria is a resident of San Jose, Mindoro. Victoria was informed only in the year 1975 by Policarpio and Lourdes of the mortgage of their inherited property to Felicito Tan for One Hundred Fifty Pesos.

"Said brother and sisters are co-owners of a parcel of coconut land, which is hilly, containing an area of 5.3246 hectares situated in then sitio Salingsing, barrio Calatrava (now a municipal district), San Agustin, Romblon. Their ownership is evidenced by Original Certificate of Title No. p-345 (Exh. 9-PNB) issued in the name of "HEIRS OF PEDRO MARTOS."

"On January 28, 1968 Policarpio and Lourdes encumbered said property to Tan for the sum of One Hundred Fifty Pesos, evidenced by a public document entitled "Deed of Sale with Right to REPURCHASE" (Exh. A or Exh. 1-Tan).

"It appears from Exhs. 1-PNB, 2-PNB, 3-PNB and 4-PNB, the existence merely of which were admitted by plaintiffs, that the property in question was placed as collateral for a loan in the amount of P2,400.00 obtained from the defendant Philippine National Bank (see paragraphs 9, 10 and 11 of the Pre-Trial Order). Plaintiffs also admit that a cashier's check was issued by the PNB for said amount, Exh. 5-PNB, but they deny having received said amount. Plaintiffs vigorously asserted that they never obtained any loan from defendant bank.

"The possession of said land had been with plaintiffs since the time the deed of sale with right to repurchase was executed (par. 8, Pre-Trial Order).

"A certificate of sale was issued by Deputy Sheriff Norvel R. Lim on October 4, 1972, exh. 6-PNB.

"Plaintiff Berlina Rodeo received a demand letter, Exh. 7-PNB, dated June 16, 1969 and paid partial payment on the loan account (pars. 14 and 15, Pre-Trial Order)." (pp. 48-49, Rollo)

As a result of extra-judicial sale and because plaintiffs failed to redeem the property within the reglementary period. Transfer Certificate of Title No. T-303 was issued in favor of defendant bank (see exh. 9-PNB) (Record on Appeal, pp. 87-88).

On April 24, 1975, Policarpio Martos, Berlina Rodeo and Lourdes Martos, private respondents herein, filed with the Court of First Instance of Romblon, an action for recovery of real property with rescission and annulment of contract with damages against Felicito Tan, the Philippine National Bank (Romblon Agency) and Rodrigo Roy, who was later stricken off from the complaint as per pre-trial order of August 12, 1976 (Record on Appeal, p. 63) which also ordered the filing of an amended complaint to include Victoria Martos, the other surviving daughter of Pedro Martos, as co-plaintiff. Accordingly, as amended complaint was filed on April 27, 1977 (Record on Appeal, p. 74).

After trial on the merits the trial court rendered a decision dated May 27, 1977 (Record, p. 86) in favor of plaintiffs as amended on June 2, 1977, the dispositive portion (Record, p. 100), of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendants, as follows:

"1. Declaring the contract entered into between plaintiffs Policarpio Martos and Lourdes Martos, on the one hand, and defendant Felicito Tan, on the other, as an equitable mortgage;

"2. Declaring Exhibits 1 to 5-PNB, the foreclosure proceedings had by the Sheriff's Office, and Transfer Certificate of Title No. T-303, null and void ab initio;

"3. Ordering the Register of Deeds of Romblon to issue a new Transfer Certificate of Title in favor of plaintiffs Policarpio Martos, Lourdes Martos and Victoria Martos;

"4. Ordering defendant Felicito Tan to pay plaintiffs the sum of Five Thousand (P5,000.00) Pesos, Philippine Currency, as actual, moral and exemplary damages;

"5. Ordering the defendant Bank to surrender the physical and juridical possession of the land in question to plaintiffs; and

"6. Ordering defendant Felicito Tan to pay the costs."

The judgment of the trial court was affirmed in toto by the respondent appellate court in its decision promulgated on March 30, 1984 (Rollo, p. 48). The motion for reconsideration filed by defendants-appellants, petitioners herein, was denied by respondent appellate court in its resolution dated September 28, 1984 (Rollo, p. 65). Thus, this petition for review filed with the Court on December 12, 1984 (Rollo, p. 12).

In the resolution of March 1, 1989 (Rollo, p. 155) the Court gave due course to this petition and required the parties among others, to submit their respective memoranda. Petitioner PNB filed its memorandum on May 30, 1989, while private respondents filed theirs on December 16, 1989.

The main issue in this case is whether or not the questioned loan documents are binding and enforceable against respondents Policarpio Martos, Berlina Rodeo Martos and Lourdes Martos.

The documents at issue are: (1) PNB Application for Loan (Exh. 1-PNB); (2) Real Estate Mortgage Contract (Exh. 2-PNB); (3) Promissory Note (Exh. 3-PNB); and (4) Supplement to Real Estate Mortgage Contract (Exh.

4-PNB).

The decisions of both the trial court and the respondent Court of Appeals are generally based on the conclusion that the above-enumerated documents were never executed by private respondents Policarpio, Berlina and Lourdes or if they were executed by them it was due to the misrepresentation and trickery of petitioner Felicito Tan.

All the questioned documents, dated February 8, 1968 bear the signature of Berlina Rodeo and the thumbmarks of Policarpio Martos and Lourdes Martos, private respondents herein as loan applicants, promissors and mortgagors.

Respondent appellate court laid stress on the fact that Policarpio and Lourdes are indeed illiterate, so that pitted against the bank with branches nationwide and a municipal vice-mayor, they deserve the protection mandated by Art. 24 of the Civil Code that the trial court should be vigilant for the protection of the plaintiffs who are the parties at a disadvantage in the present case (Rollo, p. 58).

It was noted however that both courts have overlooked or failed to appreciate certain facts or circumstances that would have altered the results of the case.

Berlina Rodeo admitted having signed all four documents, because she was made to understand by Felicito Tan that the documents were in connection with the mortgage instrument she signed the previous day.

Her pretenses however that she signed the documents by mistake are not persuasive and must be rejected. She can read and write having reached the third grade (TSN, Hearing of Nov. 24, 1976, p. 17). It is improbable that she missed reading the heading of the document, PHILIPPINE NATIONAL BANK, printed in bold and big letters and immediately below it also printed in bold letters, the title of the document "Application for Loan". Furthermore, she was the one identified by Felizardo Cabral, the Assistant Agent of the PNB, Romblon Agency, as the one who submitted to him the loan papers and the one who guided him when he inspected the property mortgaged (TSN, Hearing of February 24, 1977, pp. 5-6) and the one he advised after conducting the inspection and appraisal of the property, to go to Romblon to register the mortgage of the property in favor of the PNB (TSN, Hearing of February 24, 1977, p. 9). The mortgage was in fact registered with the title of the property annotated (TSN, February 24, 1977, p. 10).

Lourdes Martos did not deny having made her thumbmarks over her typewritten name in the four documents. Policarpio Martos denied having affixed his thumbmark in the four documents (TSN, Hearing November 24, 1976, p. 33), which was corroborated by the aforesaid testimony of Berlina Rodeo (TSN, Hearing of November 24, 1976, pp. 10-11). The sub-agent of petitioner PNB at San Agustin, Romblon, Solocano Faigao, identified the thumbmarks over the typewritten name of Policarpio in the four documents as belonging to Policarpio Martos himself which were affixed in his presence in his office. This includes the thumbmark over the name of Policarpio Martos appearing with the thumbmarked name of Lourdes Martos below the notation at the back of the promissory note requesting the PNB Assistant Agent, Romblon, Romblon, to deliver the proceeds of the loan to Mrs. Berlina Rodeo Martos. Private respondents signed or thumbmarked the application for loan, the real estate mortgage contract, the promissory note and the supplement to real estate mortgage before him in his office in the municipal building where he holds office as Municipal Treasurer of San Agustin, Romblon (TSN, Hearing of November 24, 1976, pp. 36-42).

His testimony was corroborated and confirmed by the testimony of Rodrigo Roy who is employed as land tax clerk in the Office of the Municipal Treasurer of San Agustin, Romblon, stating that he was the one who prepared the documents which were signed or thumbmarked by private respondents herein in the Office of the Municipal Treasurer. He absolutely denied having any part in the fraudulent transactions alluded to by the trial court. In fact

he signed the instruments together with Faigao as witness (TSN, Hearing of November 24, 1976, pp. 56-59). These testimonies belied the declarations of private respondent Berlina Rodeo that she signed the documents at her house in Barrio Salingsing where it was brought by Felicito Tan who also made her affix her thumbmark over the typewritten name of her husband, Policarpio Martos, in all the four documents. Significantly counsel for plaintiffs agreed at the pre-trial conference that the name of Rodrigo Roy be stricken off from the complaint which undoubtedly is an admission of Roy's non-involvement in any fraudulent act against private respondents.

Furthermore, the notary public who notarized the documents, Lorenzo J. Morada, testified that all three private respondents appeared in his office in connection with their application for a loan with the PNB, which they personally presented to him together with two other documents - a real estate mortgage for P2,400 and supplement to real estate mortgage - for notarization. Since the documents were already signed he simply summoned all of them and asked them one by one whether the signatures and thumbmarks appearing on top of their names were their true and genuine signatures and they answered in the affirmative (TSN, Hearing of November 24, 1976, pp. 68-71).

Thus the fact that Policarpio Martos, with his wife Berlina Rodeo and Lourdes Martos did execute the application for loan, the real estate mortgage securing the loan of P2,400.00, the promissory note, and the supplement to real estate mortgage, has been established by the testimonies not only by the government officials whose presumption of regularity in the performance of duty has not been rebutted but also by the notary public before whom the notarized instrument was verified which is admissible as evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, in the absence of clear and convincing evidence to the contrary (*Baranda vs. Baranda*, 150 SCRA 59, 60 [1987]). All these unquestionably overrule the uncorroborated and self-serving denials of Policarpio Martos of his participation in the questioned documents and the improbable declarations of Berlina Rodeo that she signed the documents and thumbmarked them for Policarpio Martos, as requested by Felicito Tan without knowing that she was executing an application for loan.

Moreover although the trial court had the thumbmarks of Policarpio Martos and Berlina Martos taken for analysis by the NBI there is nothing in the records to show that such analysis if any had been presented to support the view that aforesaid thumbmarks belong to Berlina and not to Policarpio (TSN, Hearing of November 24, 1976, p. 35).

Accordingly it having been shown that a contract of loan has been consummated or fully performed by private respondents with the PNB, Romblon Agency, the existence and binding effect of the documents can no longer be disputed (*Weldon Construction Corporation v. Court of Appeals*, 154 SCRA 618 [1987]).

More importantly, the mortgage constituted was not a mere private document. It was registered (Exhibits, p. 15) and therefore its validity cannot be questioned (*Hechanova v. Adil*, 144 SCRA 450 [1986]). It is not, however valid and binding against private respondent Victoria Martos, one of the heirs of Pedro Martos, as she never benefitted from such mortgage (*Ameral v. Bagumbayab*, 154 SCRA 398 [1987]). In fact, it was not disputed that she had no knowledge of the mortgage in question (TSN, Hearing of November 24, 1976, p. 27), and even the mortgage of the property executed in favor of Felicito Tan in 1968 except in 1975 when the complaint for recovery of property and rescission of contract was filed with the trial court.

Furthermore, the registered owners of the mortgaged property are the "Heirs of Pedro Martos", but petitioner bank failed to ascertain who the heirs of Pedro Martos are, thereby abetting the mortgage of the property in question without the knowledge of Victoria Martos, one of the heirs of Pedro Martos. Consequently, Victoria Martos cannot be bound by the ensuing transactions.

On the other hand, it is evident that Berlina Rodeo received the proceeds of the loan in the amount of P2,400.00. Telesforo Madrona, Cashier-Teller of the PNB Romblon Agency testified that the check issued by the PNB in the

name of Berlina Rodeo was personally cashed by her. When she presented the check to him for payment he asked her for identification. She presented a residence certificate. Only then did he tell her to endorse the check at the back (TSN, Hearing of November 24, 1977, pp. 31-32). Berlina Rodeo did endorse the check (Exhibits, p. 9).

PREMISES CONSIDERED, the judgment of respondent Court affirming in toto the decision of the lower court is hereby REVERSED insofar as the Philippine National Bank, Romblon Agency is concerned and an Order MODIFYING the dispositive portion of the affirmed decision is issued: (1) DECLARING the questioned documents valid and binding as against private respondents Pedro Martos, Berlina Rodeo Martos and Lourdes Martos, but not against the share of Victoria Martos who had no knowledge of the same; (2) ORDERING the Register of Deeds of Romblon to cancel TCT No. T-303 and to ISSUE a new title in favor of PNB covering only the shares of Policarpio and Lourdes and another title in favor of Victoria Martos but covering only her share; (3) EXEMPTING Felicito Tan from liability for damages as adjudged by the trial court, there being no sufficient evidence to support the view that he masterminded the fraudulent transactions; (4) holding instead, Berlina Rodeo Martos liable to PNB for the payment of Five Thousand (P5,000.00) Pesos, Philippine Currency, as actual, moral and exemplary damages and to pay the costs and attorney's fees.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Associate Justice Floreliana Castro Bartolome concurred in by Associate Justices Jorge R. Coquia and Mariano A. Zosa

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