JULITA GO ONG, FOR HERSELF AND AS JUDICIAL GUARDIAN OF STEVEN GO ONG, PETITIONERS, VS. THE HON. COURT OF APPEALS, ALLIED BANKING CORPORATION AND THE CITY SHERIFF OF QUEZON CITY,...

G.R. No. 75884. September 24, 1987

Ponente: PARAS, J.

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PARAS, J.:

THIS IS A PETITION FOR REVIEW ON CERTIORARI OF THE MARCH 21, 1986 DECISION* OF THE COURT OF APPEALS IN AC-G.R. CV NO. 02635, "JULITA ONG ETC. VS. ALLIED BANKING CORP. ET AL." AFFIRMING, WITH MODIFICATION, THE JANUARY 5, 1984 DECISION OF THE REGIONAL TRIAL COURT OF QUEZON CITY IN CIVIL CASE NO. Q-35230.

THE UNCONTROVERTED FACTS OF THIS CASE, AS FOUND BY THE COURT OF APPEALS, ARE AS FOLLOWS:

> "X X X: TWO (2) PARCELS OF LAND IN QUEZON CITY IDENTIFIED AS LOT NO. 12, BLOCK 407, PSD 37326 WITH AN AREA OF 1960.6 SQ. M. AND LOT NO. 1, PSD 15021, WITH AN AREA OF 3,660.8 SQ. M., ARE COVERED BY TRANSFER CERTIFICATE OF TITLE NO. 188705 IN THE NAME OF 'ALFREDO ONG BIO HONG MARRIED TO JULITA GO ONG' (EXH. D). ALFREDO ONG BIO HONG DIED ON JANUARY 18, 1975 AND JULITA GO ONG WAS APPOINTED ADMINISTRATRIX OF HER HUSBAND'S ESTATE IN CIVIL CASE NO. 107089. THE LETTERS OF ADMINISTRATION WAS REGISTERED ON TCT NO. 188705 ON OCTOBER 23, 1979. THEREAFTER, JULITA GO ONG SOLD LOT NO. 12 TO LIM CHE BOON, AND TCT NO. 188705 WAS PARTIALLY CANCELLED AND TCT NO. 262852 WAS ISSUED IN FAVOR OF LIM CHE BOON COVERING LOT NO. 12 (EXH. D-4). ON JUNE 8, 1981 JULITA GO ONG THROUGH HER ATTORNEY-IN-FACT JOVITA K. YEO (EXH. 1) MORTGAGED LOT NO. 1 TO THE ALLIED BANKING CORPORATION TO SECURE A LOAN OF P900,000.00 OBTAINED BY JK EXPORTS, INC. THE MORTGAGE WAS REGISTERED ON TCT NO. 188705 ON THE SAME DATE WITH THE FOLLOWING NOTATION: 'X X X MORTGAGEE'S CONSENT NECESSARY IN CASE OF SUBSEQUENT ALIENATION OR ENCUMBRANCE OF THE PROPERTY OTHER CONDITIONS SET FORTH IN DOC. NO. 340, PAGE NO. 69, BOOK NO. XIX, OF THE NOT. PUBLIC OF FELIXBERTO ABAD'. ON THE LOAN THERE WAS DUE THE SUM OF P828,000.00 AND ALLIED BANKING CORPORATION TRIED TO COLLECT IT FROM JULITA GO ONG, (EXH. E). HENCE, THE COMPLAINT ALLEGING NULLITY OF THE CONTRACT FOR LACK OF JUDICIAL APPROVAL WHICH THE BANK HAD ALLEGEDLY PROMISED TO SECURE FROM THE COURT. IN RESPONSE THERETO, THE BANK AVERRED THAT IT WAS PLAINTIFF JULITA GO ONG WHO PROMISED TO SECURE THE COURT'S APPROVAL, ADDING THAT JULITA GO ONG INFORMED THE DEFENDANT THAT SHE WAS PROMISED THE SUM OF P300,000.00 BY THE JK EXPORTS, INC. WHICH WILL ALSO TAKE CHARGE OF THE INTEREST OF THE LOAN.
>
> "CONCLUDING, THE TRIAL COURT RULED:

'ABSENT (OF) ANY EVIDENCE THAT THE PROPERTY IN QUESTION IS THE CAPITAL OF THE DECEASED HUSBAND BROUGHT INTO THE MARRIAGE, SAID PROPERTY SHOULD BE PRESUMED AS ACQUIRED DURING THE MARRIAGE AND, THEREFORE, CONJUGAL PROPERTY.

'AFTER THE DISSOLUTION OF THE MARRIAGE WITH THE DEATH OF PLAINTIFF'S HUSBAND, THE PLAINTIFF ACQUIRED, BY LAW, HER CONJUGAL SHARE, TOGETHER WITH THE HEREDITARY RIGHTS THEREON. (MARGATE VS. RABACAL, L-14302, APRIL 30, 1963). CONSEQUENTLY, THE MORTGAGE CONSTITUTED ON SAID PROPERTY, UPON EXPRESS AUTHORITY OF PLAINTIFF, NOTWITHSTANDING THE LACK OF JUDICIAL APPROVAL, IS VALID, WITH RESPECT TO HER CONJUGAL SHARE THEREON, TOGETHER WITH HER HEREDITARY RIGHTS.' "

ON APPEAL BY PETITIONER, RESPONDENT COURT OF APPEALS AFFIRMED, WITH MODIFICATION, THE APPEALED DECISION (RECORD, PP. 19-22). THE DISPOSITIVE PORTION OF THE APPELLATE COURT'S DECISION READS:

> "WHEREFORE, WITH THE MODIFICATION THAT THE EXTRAJUDICIAL FORECLOSURE PROCEEDINGS INSTITUTED BY DEFENDANT AGAINST PLAINTIFF SHALL BE HELD IN ABEYANCE TO AWAIT THE FINAL RESULT OF CIVIL CASE NO. 107089 OF THE COURT OF FIRST INSTANCE OF MANILA, 6TH JUDICIAL DISTRICT BRANCH XXXII, ENTITLED "IN THE MATTER OF THE INTESTATE ESTATE OF THE LATE ALFREDO ONG BIO: JULITA GO ONG, ADMINISTRATRIX'. IN PURSUANCE WITH WHICH THE RESTRAINING ORDER OF THE LOWER COURT IN THIS CASE RESTRAINING THE SALE OF THE PROPERTIES LEVIED UPON IS HEREBY ORDERED TO CONTINUE IN FULL FORCE AND EFFECT COTERMINOUS WITH THE FINAL RESULT OF CIVIL CASE NO. 107089, THE DECISION APPEALED FROM IS HEREBY AFFIRMED. COSTS AGAINST PLAINTIFF-APPELLANT.
>
> SO ORDERED."

ON APRIL 8, 1986, PETITIONER MOVED FOR THE RECONSIDERATION OF THE SAID DECISION (IBID., PP. 24-29), BUT IN A RESOLUTION DATED SEPTEMBER 11, 1986, RESPONDENT COURT DENIED THE MOTION FOR LACK OF MERIT (IBID., P. 23). HENCE, THE INSTANT PETITION (IBID., PP. 6-17).

THE SECOND DIVISION OF THIS COURT, IN A RESOLUTION DATED NOVEMBER 19, 1986 (ROLLO, P. 30), WITHOUT GIVING DUE COURSE TO THE PETITION, RESOLVED TO REQUIRE PRIVATE RESPONDENT TO COMMENT THEREON AND IT DID ON FEBRUARY 19, 1987 (IBID., PP. 37-42). THEREAFTER, IN A RESOLUTION DATED APRIL 6, 1987, THE PETITION WAS GIVEN DUE COURSE AND THE PARTIES WERE REQUIRED TO FILE THEIR RESPECTIVE MEMORANDA (IBID., P. 43).

PETITIONER FILED HER MEMORANDUM ON MAY 13, 1987 (IBID., PP. 45-56), WHILE PRIVATE RESPONDENT FILED ITS MEMORANDUM ON MAY 20, 1987 (IBID., PP. 62-68).

THE SOLE ISSUE IN THIS CASE IS ?

> WHETHER OR NOT THE MORTGAGE CONSTITUTED OVER THE PARCEL OF LAND UNDER PETITIONER'S ADMINISTRATION IS NULL AND VOID FOR WANT OF JUDICIAL APPROVAL.

THE INSTANT PETITION IS DEVOID OF MERIT.

THE WELL-SETTLED RULE THAT THE FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT RESPECT, CARRIES EVEN MORE WEIGHT WHEN AFFIRMED BY THE COURT OF

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APPEALS AS IN THE CASE AT BAR.

IN BRIEF, THE LOWER COURT FOUND: (1) THAT THE PROPERTY UNDER THE ADMINISTRATION OF PETITIONER - THE WIFE OF THE DECEASED, IS A COMMUNITY PROPERTY AND NOT THE SEPARATE PROPERTY OF THE LATTER; (2) THAT THE MORTGAGE WAS CONSTITUTED IN THE WIFE'S PERSONAL CAPACITY AND NOT IN HER CAPACITY AS ADMINISTRATRIX; AND (3) THAT THE MORTGAGE AFFECTS THE WIFE'S SHARE IN THE COMMUNITY PROPERTY AND HER INHERITANCE IN THE ESTATE OF HER HUSBAND.

PETITIONER, ASSERTING THAT THE MORTGAGE IS VOID FOR WANT OF JUDICIAL APPROVAL, QUOTED SECTION 7 OF RULE 89 OF THE RULES OF COURT AND CITED SEVERAL CASES WHEREIN THIS COURT RULED THAT THE REGULATIONS PROVIDED IN THE SAID SECTION ARE MANDATORY.

WHILE PETITIONER'S ASSERTION MAY HAVE MERIT INSOFAR AS THE REST OF THE ESTATE OF HER HUSBAND IS CONCERNED, THE SAME IS NOT TRUE AS REGARDS HER CONJUGAL SHARE AND HER HEREDITARY RIGHTS IN THE ESTATE. THE RECORDS SHOW THAT PETITIONER WILLINGLY AND VOLUNTARILY MORTGAGED THE PROPERTY IN QUESTION BECAUSE SHE WAS PROMISED BY JK EXPORTS, INC. THE SUM OF P300,000.00 FROM THE PROCEEDS OF THE LOAN; AND THAT AT THE TIME SHE EXECUTED THE REAL ESTATE MORTGAGE, THERE WAS NO COURT ORDER AUTHORIZING THE MORTGAGE, SO SHE TOOK IT UPON HERSELF, TO SECURE AN ORDER.

THUS, IN CONFIRMING THE FINDINGS OF THE LOWER COURT, AS SUPPORTED BY LAW AND THE EVIDENCE, THE COURT OF APPEALS APTLY RULED THAT SECTION 7 OF RULE 89 OF THE RULES OF COURT IS NOT APPLICABLE, SINCE THE MORTGAGE WAS CONSTITUTED IN HER PERSONAL CAPACITY AND NOT IN HER CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF HER HUSBAND.

NEVERTHELESS, PETITIONER, CITING THE CASES OF PICARDAL, ET AL. VS. LLADAS (21 SCRA 1483) AND FERNANDEZ, ET AL. VS. MARAVILLA (10 SCRA 589), FURTHER ARGUES THAT IN THE SETTLEMENT PROCEEDINGS OF THE ESTATE OF THE DECEASED SPOUSE, THE ENTIRE CONJUGAL PARTNERSHIP PROPERTY OF THE MARRIAGE IS UNDER ADMINISTRATION, WHILE SUCH MAY BE IN A SENSE TRUE, THAT FACT ALONE IS NOT SUFFICIENT TO INVALIDATE THE WHOLE MORTGAGE, WILLINGLY AND VOLUNTARILY ENTERED INTO BY THE PETITIONER. AN OPPOSITE VIEW WOULD RESULT IN AN INJUSTICE. UNDER SIMILAR CIRCUMSTANCES, THIS COURT APPLIED THE PROVISIONS OF ARTICLE 493 OF THE CIVIL CODE, WHERE THE HEIRS AS CO-OWNERS SHALL EACH HAVE THE FULL OWNERSHIP OF HIS PART AND THE FRUITS AND BENEFITS PERTAINING THERETO, AND HE MAY THEREFORE ALIENATE, ASSIGN OR MORTGAGE IT, AND EVEN SUBSTITUTE ANOTHER PERSON IN ITS ENJOYMENT, EXCEPT WHEN PERSONAL RIGHTS ARE INVOLVED. BUT THE EFFECT OF THE ALIENATION OR MORTGAGE, WITH RESPECT TO THE CO-OWNERS, SHALL BE LIMITED TO THE PORTION WHICH MAY BE ALLOTTED TO HIM IN THE DIVISION UPON THE TERMINATION OF THE CO-OWNERSHIP (PHILIPPINE NATIONAL BANK VS. COURT OF APPEALS, 98 SCRA 207 [1980]).

CONSEQUENTLY, IN THE CASE AT BAR, THE TRIAL COURT AND THE COURT OF APPEALS CANNOT BE FAULTED IN RULING THAT THE QUESTIONED MORTGAGE CONSTITUTED ON THE PROPERTY UNDER ADMINISTRATION, BY AUTHORITY OF THE PETITIONER, IS VALID, NOTWITHSTANDING THE LACK OF JUDICIAL APPROVAL, WITH RESPECT TO HER CONJUGAL SHARE AND TO HER HEREDITARY RIGHTS. THE FACT THAT WHAT HAD BEEN MORTGAGED WAS

IN CUSTODIA LEGIS IS IMMATERIAL, INSOFAR AS HER CONJUGAL SHARE AND HEREDITARY SHARE IN THE PROPERTY IS CONCERNED, FOR AFTER ALL, SHE WAS THE ABSOLUTE OWNER THEREOF. THIS OWNERSHIP BY HERS IS NOT DISPUTED, NOR IS THERE ANY CLAIM THAT THE RIGHTS OF THE GOVERNMENT (WITH REFERENCE TO TAXES) NOR THE RIGHTS OF ANY HEIR OR ANYBODY ELSE HAVE BEEN PREJUDICED OR IMPAIRED. AS STATED BY ASSOCIATE JUSTICE (LATER CHIEF JUSTICE) MANUEL MORAN IN JAKOSALEM VS. RAFOLS, ET AL., 73 PHIL. 618 –

> "THE LAND IN QUESTION, DESCRIBED IN THE APPEALED DECISION, ORIGINALLY BELONGED TO JUAN MELGAR. THE LATTER DIED AND THE JUDICIAL ADMINISTRATION OF HIS ESTATE WAS COMMENCED IN 1915 AND CAME TO A CLOSE ON DECEMBER 2, 1924, ONLY. DURING THE PENDENCY OF THE SAID ADMINISTRATION, THAT IS, ON JULY 5, 1917, SUSANA MELGAR, DAUGHTER OF THE DECEASED JUAN MELGAR, SOLD THE LAND WITH THE RIGHT OF REPURCHASE TO PEDRO CUI, SUBJECT TO THE STIPULATION THAT DURING THE PERIOD FOR THE REPURCHASE SHE WOULD CONTINUE IN POSSESSION OF THE LAND AS LESSEE OF THE PURCHASE. ON DECEMBER 12, 1920, THE PARTITION OF THE ESTATE LEFT BY THE DECEASED JUAN MELGAR WAS MADE, AND THE LAND IN QUESTION WAS ADJUDICATED TO SUSANA MELGAR. IN 1921, SHE CONVEYED, IN PAYMENT OF PROFESSIONAL FEES, ONE-HALF OF THE LAND IN FAVOR OF THE DEFENDANT-APPELLEE NICOLAS RAFOLS, WHO ENTERED UPON THE PORTION THUS CONVEYED AND HAS BEEN IN POSSESSION THEREOF UP TO THE PRESENT. ON JULY 23, 1921, PEDRO CUI BROUGHT AN ACTION TO RECOVER SAID HALF OF THE LAND FROM NICOLAS RAFOLS AND THE OTHER HALF FROM THE OTHER DEFENDANTS, AND WHILE THAT CASE WAS PENDING, OR ABOUT AUGUST 4, 1925, PEDRO CUI DONATED THE WHOLE LAND IN QUESTION TO GENEROSA TEVES, THE HEREIN PLAINTIFF-APPELLANT. AFTER TRIAL, THE LOWER COURT RENDERED A DECISION ABSOLVING NICOLAS RAFOLS AS TO THE ONE-HALF OF THE LAND CONVEYED TO HIM BY SUSANA MELGAR, AND DECLARING THE PLAINTIFF OWNER OF THE OTHER HALF BY EXPRESS ACKNOWLEDGMENT OF THE OTHER DEFENDANTS. THE PLAINTIFF APPEALED FROM THAT PART OF THE JUDGMENT WHICH IS FAVORABLE TO NICOLAS RAFOLS.
>
> "THE LOWER COURT ABSOLVED NICOLAS RAFOLS UPON THE THEORY THAT SUSANA MELGAR COULD NOT HAVE SOLD ANYTHING TO PEDRO CUI BECAUSE THE LAND WAS THEN IN CUSTODIA LEGIS, THAT IS, UNDER JUDICIAL ADMINISTRATION. THIS IS ERROR. THAT THE LAND COULD NOT ORDINARILY BE LEVIED UPON WHILE IN CUSTODIA LEGIS, DOES NOT MEAN THAT ONE OF THE HEIRS MAY NOT SELL THE RIGHT, INTEREST OR PARTICIPATION WHICH HE HAS OR MIGHT HAVE IN THE LANDS UNDER ADMINISTRATION. THE ORDINARY EXECUTION OF PROPERTY IN CUSTODIA LEGIS IS PROHIBITED IN ORDER TO AVOID INTERFERENCE WITH THE POSSESSION BY THE COURT. BUT THE SALE MADE BY AN HEIR OF HIS SHARE IN AN INHERITANCE, SUBJECT TO THE RESULT OF THE PENDING ADMINISTRATION, IN NO WISE STANDS IN THE WAY OF SUCH ADMINISTRATION."

THE REFERENCE TO JUDICIAL APPROVAL IN SEC. 7, RULE 89 OF THE RULES OF COURT CANNOT ADVERSELY AFFECT THE SUBSTANTIVE RIGHTS OF PRIVATE RESPONDENT TO DISPOSE OF HER IDEAL [NOT INCHOATE, FOR THE CONJUGAL PARTNERSHIP ENDED WITH HER HUSBAND'S DEATH, AND HER HEREDITARY RIGHTS ACCRUED FROM THE MOMENT OF THE DEATH OF THE DECEDENT (ART. 777, CIVIL CODE)] SHARE IN THE CO-HEIRSHIP AND/OR CO-OWNERSHIP FORMED BETWEEN HER AND THE OTHER HEIRS/CO-OWNERS (SEE ART. 493, CIVIL CODE, SUPRA.). SEC. 7, ART. 89 OF THE CIVIL CODE APPLIES IN A CASE WHERE JUDICIAL APPROVAL HAS TO BE SOUGHT IN CONNECTION WITH, FOR INSTANCE, THE SALE OR MORTGAGE OF PROPERTY UNDER ADMINISTRATION FOR THE PAYMENT, SAY OF A CONJUGAL DEBT, AND

EVEN HERE, THE CONJUGAL AND HEREDITARY SHARES OF THE WIFE ARE EXCLUDED FROM THE REQUISITE JUDICIAL APPROVAL FOR THE REASON ALREADY ADVERTED TO HEREINABOVE, PROVIDED OF COURSE NO PREJUDICE IS CAUSED OTHERS, INCLUDING THE GOVERNMENT.

MOREOVER, PETITIONER IS ALREADY ESTOPPED FROM QUESTIONING THE MORTGAGE. AN ESTOPPEL MAY ARISE FROM THE MAKING OF A PROMISE EVEN THOUGH WITHOUT CONSIDERATION, IF IT WAS INTENDED THAT THE PROMISE SHOULD BE RELIED UPON AND IN FACT IT WAS RELIED UPON, AND IF A REFUSAL TO ENFORCE IT WOULD BE VIRTUALLY TO SANCTION THE PERPETRATION OF FRAUD OR WOULD RESULT IN OTHER INJUSTICE (GONZALO SY TRADING VS. CENTRAL BANK, 70 SCRA 570).

PREMISES CONSIDERED, THE INSTANT PETITION IS HEREBY DENIED AND THE ASSAILED DECISION OF THE COURT OF APPEALS IS HEREBY AFFIRMED.

SO ORDERED.

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

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* PENNED BY JUSTICE LEONOR INES LUCIANO, CONCURRED IN BY JUSTICES RAMON G. GAVIOLA, JR. AND MA. ROSARIO QUETULIO-LOSA.

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