

SUSANA SALIDO, PETITIONER, VS. COURT OF APPEALS AND CORAZON REYES, RESPONDENTS.

G.R. No. 76671. May 17, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a petition for review on certiorari seeking to reverse and set aside: (a) the resolution of the Court of Appeals dated September 15, 1986 issued in CA-G.R. SP No. 04629 entitled "Susana Salido v. Hon. Eduardo C. Tutaan, etc., et al." denying due course to the petition for certiorari and (b) the resolution dated November 21, 1986 denying petitioner's motion for reconsideration.[1]

The factual background of this case as found by the Court of Appeals, is as follows:

On July 16, 1981, the spouses Jose and Adelaida Perez executed a promissory note in the amount of P252,200.00 in favor of petitioner Susana Q. Salido, secured by a duly notarized deed of chattel mortgage over leasehold rights and goodwill value of stalls located at Cartimar Shopping Center, Midland International Shopping Center and Cash and Carry Shopping Center. The said chattel mortgage was entered into between Adelaida Perez and petitioner. The document did not contain the conforme of Jose Perez, the spouse. It was not registered in the proper chattel mortgage register.[2]

Barely a month later or on August 12, 1981, the Perez spouses filed with the then Court of First Instance of Rizal, Branch V, Quezon City, a petition for voluntary insolvency alleging that the sales in their three stores had dropped to a point where they incurred heavy losses and liabilities amounting to P1,922,200.00 leaving them with no alternative but to close their business.

In its order dated August 24, 1981, the trial court declared the Perezes insolvent, directed the sheriff to take possession of all their properties and set the election of an assignee.

On September 2, 1981, petitioner Salido finally registered the chattel mortgage earlier executed in her favor in the chattel mortgage register of both Pasay City and Quezon City. Thereafter she sought authority from the trial court to foreclose the mortgage, but the court held her motion in abeyance pending the submission of an inventory by the assignee, herein private respondent Corazon Reyes. On February 8, 1982, petitioner filed a motion to exclude from the inventory the properties covered by the chattel mortgage on the ground that under Section 59 of the Insolvency Law, petitioner was entitled to have the encumbered property sold to satisfy her claim.

The assignee, however, had other plans for the mortgaged stalls. On February 16, 1982, she filed an inventory which included the subject leasehold rights and goodwill of the three stalls. Subsequently, on June 16, 1982, she informed the court that she had surrendered possession of the stalls to their respective lessors and in so doing realized the sum of P86,000.00 representing goodwill. The court ordered her to deposit the amount at the Philippine National Bank branch in Cubao.

Petitioner filed a motion seeking payment to her of P86,000.00 on the basis of her claim that she was a secured

creditor, which the Perezes opposed on the ground that petitioner's unregistered chattel mortgage gave the petitioner no preference over the other creditors.

The lower court denied petitioner's motion holding that it lacked "legal and factual basis" in its Order of September 15, 1982, as well as her motion for reconsideration in an Order dated November 10, 1982. Questioning the aforesaid orders, petitioner filed a petition for certiorari in the Court of Appeals.[3] She argued that while it is true that her chattel mortgage was not recorded at the time of the filing of the insolvency proceedings, its subsequent registration had the effect of making her a preferred creditor entitled to foreclose the mortgage.

On March 22, 1983, the appellate court, through Justice Vicente Mendoza, dismissed her petition. It ruled that under Article 2140 of the Civil Code, registration is essential to the validity of the chattel mortgage and although the mortgage is subsequently registered, said registration cannot retroact to the date of the institution of the insolvency proceedings so as to give the petitioner an advantage over the other creditors. In view thereof, the petition for certiorari is dismissed.[4]

Undeterred, petitioner tried a different approach. She filed a motion for clarification before the appellate court to the effect that while the registration of her mortgage on September 2, 1981 had no retroactive effect to make her a preferred creditor, she is, nevertheless, to be considered a secured creditor within the purview of the following provisions of the Civil Code which read:

"Art. 2244. With reference to the other property, real and personal, of the debtor, the following claims or credits shall be preferred in the order named:

"(14) Credits which, without special privilege, appear in [a] a public instrument; or [b] in a final judgment, if they have been the subject of litigation. These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively."

The appellate court denied petitioner's motion for clarification and held:

"The Ruling in this case is limited to the issue raised by petitioner, namely, whether considering that the chattel mortgage in her favor had not been recorded at the time of the filing of the petition for insolvency on August 12, 1981, she was entitled to foreclose such a mortgage or to receive the P86,000.00 realized by the assignee from the surrender of the leasehold rights of which the mortgage is constituted pursuant to Section 59 of the Insolvency Law.

"On this question this Court ruled that petitioner's mortgage was not valid and, therefore, she is not entitled to receive the P86,000.00. Whether petitioner may be considered a secured creditor within the meaning of Article 2244, par. 14 in view of the subsequent registration of the mortgage is not in issue and this Court declines to rule on it."[5]

On May 27, 1983, the trial court adjudicating the insolvency proceedings issued an order giving all creditors of the Perez spouses (listed at fifty-five) up to August 31, 1983 within which to present proof of their respective claims against the estate of the insolvent Perezes. Thereafter the assignee filed her evaluation of claims whereby she considered petitioner as an ordinary creditor.

On July 25, 1984, petitioner filed another motion to be declared as a preferred creditor under Article 2244, paragraph 14 of the Civil Code, which the lower court denied on August 8, 1984. Reconsideration having been likewise denied, petitioner filed a second petition for certiorari with the Court of Appeals on November 2, 1984, questioning the latest order of the trial court which rejected her claim for a preferred status.[6]

In the resolution of September 15, 1986, the Court of Appeals, through Justice Ricardo Pronove, Jr., denied due course to the petition and held that if respondent trial court had erred, it was merely one of judgment, correctible

by appeal and not by the special civil action of certiorari, and petitioner should have raised her present contention in her first petition for certiorari for she cannot be allowed to assail at every turn the orders of the court below.[7]

On November 21, 1986, the appellate court denied petitioner's motion for reconsideration of the above-mentioned resolution.

Hence, this petition.

Petitioner contends that while the chattel mortgage, which is in a public document, is not valid as a chattel mortgage, so that petitioner has no preference as a secured creditor over the specific properties stated in said mortgage, still she has preference as a secured creditor over the properties in general of the insolvent and entitled to preference in the order of priority under Article 2244 of the Civil Code, as distinguished from a mere ordinary creditor who is entitled to share pro-rata in the assets of the insolvent after the secured creditors are satisfied. In support of her assertion as a preferred creditor, petitioner cites the 1908 case of McMicking v. Kimura.[8]

The McMicking case is authority for the ruling that the fact that a document evidencing a debt is not valid as a chattel mortgage, because it was not duly filed, does not prevent the holder thereof from asserting the right of preference to which he may be entitled by virtue of the provision of Article 1924, now Article 2244, paragraph 14 of the Civil Code.

While the aforecited codal provision is decidedly in petitioner's favor, it cannot save the day for her, the fundamental reason being that it was a point belatedly raised.

The ultimate issue therefore, is whether or not the matter of the applicability of Article 2244 of the Civil Code to the case at bar can be raised for the first time in the appellate court.

Records disclose that the theory that petitioner could still be a preferred creditor by virtue of Article 2244 was more of an afterthought. Petitioner did not raise it up as an alternative argument to buttress her claim for priority before the trial court. Neither did she raise it in her first petition for certiorari in the Court of Appeals. It was only in her motion for clarification of the March 22, 1983 decision of the appellate court which invalidated the chattel mortgage executed for her benefit did she unearth the long-decided case of McMicking v. Kimura[9] which would authorize her to be paid first from the assets of the insolvent spouses which is reportedly only P166,800.00 now on deposit with the Philippine National Bank.[10]

For reasons known only to herself, petitioner chose not to elevate that particular Court of Appeals ruling in CA-G.R. SP No. 15350, thus allowing the dismissal to assume the character of finality. Instead, petitioner pursued the issue before the trial court in another duplicitous motion to have herself declared as a secured creditor, no longer by reason of the deed of chattel mortgage per se, but because the obligation of the insolvent Perezes was embodied in a public instrument. When the lower court once again disallowed her motion, petitioner sought recourse in the Court of Appeals in another petition for certiorari[11] ostensibly based on a different cause of action.

The Court of Appeals did not err in summarily dismissing the petition in CA-G.R. SP No. 04629 which is barred by res judicata, since the prior ruling in CA-G.R. SP No. 15350 which rejected petitioner's claim for preference bars a relitigation of the same issue on a different ground. Shorn of its trappings, the second petition merely re-echoes the basic issue of whether or not petitioner is a preferred creditor.

In *Florendo vs. Vda. de Gonzales*,[12] we said:

"The rule of res judicata x x x is very sound. To permit a litigant to renew a suit on the same claim or demand, invoking a ground of recovery which, though different from that relied upon in the first suit, existed on the date

of the filing thereof, would be harassing. As aptly remarked in the case of *Little v. Smith* (47 Cal. A., 8; 189 Pac., 1059), 'If a party is allowed to urge one ground at a time, or even all grounds except one or two, it would result in piecemeal and endless litigation, which the law seeks to avoid.'

"That is why the rule is well settled that 'a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies.'"[13]

WHEREFORE, the questioned resolutions dated September 15, 1986 and November 21, 1986 of the Court of Appeals are **AFFIRMED** and the instant petition is **DENIED**.

SO ORDERED.

Guitierrez, Jr., Bidin, and Cortes, JJ., concur.

Feliciano, J., no part.

[1] Rollo, p. 13

[2] Rollo, pp. 28-29

[3] AC-G.R. SP No. 15350

[4] Rollo, pp. 33-36

[5] Rollo, pp. 31-32

[6] CA-G.R. SP No. 04629

[7] Rollo, pp. 38-39

[8] 12 Phil. 98

[9] *Supra*

[10] Rollo, p. 85

[11] CA-G.R. SP No. 04629

[12] 87 Phil. 631, 638

[13] *Peñalosa v. Tuason*, 22 Phil. 303, 311-313; reiterated in *Ibabao v. Intermediate Appellate Court*, G.R. No. 74848, May 20, 1987, 150 SCRA 76; *Valera v. Bañez*, 116 SCRA 648 (1982); *Ramos v. Pangasinan*, 79 SCRA 171 (1977)

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