

PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE REGIONAL TRIAL COURT, JUDICIAL REGION V, BRANCH 43, EPIFANIO MATIENZO, AND FLORENCIA MATIENZO, RESP...

G.R. No. 82971. September 15, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

In this petition for certiorari and prohibition with prayer for preliminary injunction, herein petitioner, Philippine National Bank (or PNB for brevity), seeks the reversal of the decision of the Court of Appeals in AC-G.R. No. CV-02959-R, entitled "Epifanio Matienzo and Florencia Matienzo, Plaintiffs-Appellants vs. Domingo Molina, Orlando Molina and Ireneo Molina, Defendants-Appellees," reversing the judgment appealed from and ordering petitioner to reconvey one-half of the mortgaged land in favor of herein private respondents, the Matienzo spouses.

Epifanio Matienzo and Florencia Matienzo were the original owners of a 4,161 sq. meter-lot registered under OCT No. 5253, Free Patent No. 27945 (pp. 3-4, Rollo) situated at Cabinitan, Virac, Catanduanes.

In May, 1977, the business partners, Domingo, Orlando and Ireneo, all surnamed Molina, were looking for a lot in Virac where they could put up a furniture shop and a 'chicharon' factory. Respondents Matienzos offered to sell their lot in Cabinitan, Virac, for the price of P10 per square meter.

The Molinas wanted to buy only one-half of the property. An affidavit (Exh. C) was executed by the parties containing the following memorandum of their agreement:

That the true intention of the parties in the Deed of Sale (Exh. A) to be executed by them was for the transfer of ownership over one-half only (2,080 sq. meters) of Matienzo's property, but the other half (2,081 sq. meters) would be included in the sale for the purpose of facilitating the defendant-partners' loan and to use it as additional collateral to enable them to secure a bigger loan from PNB. Likewise, they agreed that after five (5) or ten (10) years, Orlando Molina would, at his own expense, cause the other half portion of the land to be surveyed and titled in the name of Epifanio Matienzo.

Orlando Molina issued a promissory note (Exh. B) for P20,800, payable in installments as the price of the 2,080-sq.-meter portion of Matienzo's land. Both the affidavit (Exh. C) and the promissory note (Exh. B) were signed by Orlando Molina.

However, when the Deed of Absolute Sale (Exh. A) was presented to Matienzo for signing on November 9, 1977, Domingo Molina appeared as vendee, instead of Orlando. The spouses wondered why that was so, but they were assured that there would be no problem because Domingo Molina was one of the partners to the proposed business venture. Convinced of the group's sincerity, the respondent spouses signed the Deed of Absolute Sale.

On March 14, 1978, Domingo Molina sold the whole parcel of land to Orlando Molina for the same price of P20,800. Whereupon, Transfer Certificate of Title 1332 was issued in the name of Orlando Molina (p. 3, Rollo).

On October 8, 1979, Orlando Molina mortgaged the entire lot to the PNB branch in Virac for P15,000.

The defendants were able to pay Matienzo only P3,350 out of the P20,000 price of the sale of one-half of their property. Despite repeated demands for payment, the Molinas defaulted.

They also defaulted in paying the PNB loan. PNB foreclosed the real estate mortgage and purchased the mortgaged property as the highest bidder at the public auction sale which was conducted on March 10, 1981.

On March 31, 1981, the Matienzos filed an action for Reconveyance of Title, Recovery of Ownership and Possession, Annulment of the Document and Damages (Civil Case No. 1105), against defendants Domingo Molina, Orlando Molina and the Manager of PNB Virac Branch. Later, the complaint was amended to include another defendant, Ireneo Molina.

On June 15, 1983, the Regional Trial Court, Fifth Judicial Region, Branch 43, dismissed the case insofar as the defendant Manager of PNB Virac Branch was concerned (p. 14, Rollo). The order reads as follows:

"A perusal of the complaint will readily show that even if all the allegations in the complaint are admitted, there is no liability on the part of defendant PNB Manager. This case therefore as against the defendant PNB Manager is hereby dismissed.

"The counterclaim contained in the answer of defendant PNB Manager is also hereby dismissed as he could have prayed for the dismissal of the complaint as against him right after receipt of the copy thereof. x x x"

Meanwhile, PNB consolidated its ownership over the mortgaged land.

In August 1983, Orlando Molina deposited with PNB Virac Branch the amount of P15,000 as earnest money for the redemption of the foreclosed property.

After the trial, the lower court on February 9, 1984, dismissed Civil Case No. 1105. It found "that no actionable wrong amounting to fraud were (sic) committed by defendants to entitle plaintiffs to the relief prayed for" (p. 26, Rollo).

Upon appeal by the Matienzos to the Court of Appeals (AC-G.R. No CV-02959-R), the appellate court reversed the appealed judgment. The dispositive part of its decision promulgated on October 31, 1985 (Annex C, pp. 27-41, Rollo) reads thus:

"WHEREFORE, PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and another one is hereby entered:

"1. Ordering the defendants-appellees Domingo Molina and Orlando Molina to pay jointly and severally the plaintiffs-appellants the remaining balance of the consideration of the Deed of Sale, Exh. A, in the amount of P17,450, with 12% interest from the time of the filing of the complaint until the amount is fully paid;

"2. Ordering the court of origin to cause the partition of the property into two equal parts, for the PNB Virac Branch, which is hereby ordered and declared a party in this appeal, to recovery (sic) the ownership and peaceful possession over 1/2 portion thereof to the plaintiffs-appellants; and ordering the Register of Deeds of Virac, Catanduanes to issue the corresponding title over said half portion in the names of plaintiffs-appellants; and

"3. Ordering the defendants-appellees Domingo Molina and Orlando Molina to pay jointly and severally the plaintiffs-appellants the amount of P10,000 as attorney's fees and litigation expenses, plus costs."

Upon remand of the case to the trial court for execution, the court issued, on motion of the plaintiffs, an order placing in custodia legis the P15,000 earnest money deposited by Orlando Molina in the PNB (p. 5, Rollo).

On January 12, 1987, the court issued an alias writ of execution ordering the PNB Virac Branch to turn over to the sheriff the amount of P15,000 as partial execution of the appellate court's judgment. An urgent motion for reconsideration of the order was filed by PNB on January 26, 1987.

On February 12, 1988, the trial court issued an order of execution against Domingo and Orlando Molina to pay the unpaid balance of P17,450 of the price of the 2,080 square meters sold to them by Matienzo, and -

"Furthermore, to completely enforce the judgment of the Intermediate Appellate Court, the parties concerned, under paragraph 2 of the dispositive portion of the decision, are hereby directed to submit their proposed project of partition of the property involved, within a period of fifteen (15) days from receipt of this order, in order that separate titles may be issued to PNB, Virac Branch, and the plaintiffs-appellants." (Annex D, p. 42, Rollo.)

On May 3, 1988, PNB filed a petition for certiorari under Rule 65 of the Rules of Court, alleging mainly:

1. That the Court of Appeals had no jurisdiction to render the judgment against it; and
2. That the decision of the Court of Appeals deprives it of its property without due process.

Upon receipt of the petition for certiorari, we issued a temporary restraining order to stop the implementation of the writ of execution issued pursuant to the order of February 12, 1988 and the decision dated October 31, 1985 of the Court of Appeals in case AC-G.R. CV No. 02959-R (p. 44, Rollo).

During the pendency of the case, Florencia Matienzo died and she was substituted by her heirs (p. 79, Rollo).

The petition is meritorious.

The Court of Appeals was aware of the dismissal of the complaint against the PNB manager for that fact was mentioned in the appealed decision of the trial court (Annex B, p. 15, Rollo) and in its own decision as follows:

"On June 18, 1983, the then Acting Presiding Judge in this Court, Hon. Silvestre S. Felix, dismissed the case insofar as defendant Manager PNB Virac Agency is concerned. To which dismissal no opposition nor appeal was interposed by the plaintiffs." (p. 28, Rollo.)

Since the PNB was not a party in the suit (only its manager was sued and then dropped from the complaint) both the trial court and the Court of Appeals did not acquire jurisdiction over said Bank. The Court of Appeals' decision ordering the Bank to reconvey to Matienzo one-half of the land which it had purchased at the foreclosure sale, was therefore null and void for lack of jurisdiction (*Paramount Insurance Corporation vs. Luna*, 148 SCRA 564; *Hyopsung Maritime Co., Ltd. vs. Court of Appeals*, G.R. No. 77369, August 31, 1988).

"x x x For the respondent court, in the instant case, to have rendered a decision against petitioners who were neither appellants nor appellees in the appeal brought before said court, is to act entirely without jurisdiction. As a corollary, petitioners would also be denied due process, never having been put on notice that they were involved in the appeal so that they would have tried to prevent the appellate court from rendering an adverse decision against them in the ordinary course of law." (*Fernando Go, et al. vs. Court of Appeals, et al.* G.R. No. L-25393, October 30, 1980, p. 74, Rollo.)

The decision of the Court of Appeals ordering the PNB to reconvey one-half of the lot in question to Matienzo without giving PNB a chance to defend its own title to the property, furthermore constitutes a deprivation of property without due process, hence, null and void for that cause.

Mere service of the appellants' brief on PNB did not operate to bring the Bank into the case. Jurisdiction over a person is acquired by service of summons and copy of the complaint on him (Rule 14, Rules of Court). PNB could not be expected to answer the appellants' brief not only because it was not a party in the appeal (nor in the trial court) but also because the dismissal of the complaint against the PNB manager in Virac was not one of the errors argued in the appellants' brief.

The trial court and the Court of Appeals found as a fact that, as stated in the affidavit of Orlando Molina (Exh. C).

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"Epifanio Matienzo allowed Orlando Molina to use the other half of the property as additional collateral of a loan to be made with the DBP (sic)."

The trial court found that when plaintiffs entered into the contract of sale of the lot in question, they knew the purpose for which the property was being purchased by the defendants Domingo Molina and Orlando Molina. As stated by Pio Tiu, the reduction of the consideration in the Deed of Sale was explained to the plaintiffs, without them interposing any objection. The plan of the defendants Orlando Molina and Ireneo Molina to mortgage the property in question to the PNB or other banking institution to obtain capital for the business they intended to put up, was likewise explained to plaintiff spouses, as borne out by the testimony of plaintiff Florencia Matienzo (pp. 31-32, Rollo). For that reason, Matienzo signed the Deed of Sale for the whole of his land, although the true agreement with Molina was to sell to him only one-half of it.

Under the circumstances, the trial court correctly found no fraud or deceit both in the execution of the deed of sale by Matienzo and in the mortgage of the whole lot to the PNB by Molina.

PNB was an innocent mortgagee (and purchaser) of the property for value. It had no notice of the adverse claim of Matienzo to one-half of the mortgaged property. The title in the name of Orlando Molina was clean. The filing of Civil Case No. 1105, after the property had been sold to the Bank at the foreclosure sale, did not invalidate the sale nor the title of the Bank.

The Court of Appeals' finding that the order dismissing the complaint against the Bank's manager in Virac "has never become final" (p. 40, Rollo) has no basis. While it is true, as observed by the Court, that the PNB was an indispensable party in Civil Case No. 1105 without whom no complete relief could be accorded to the plaintiffs (p. 40, Rollo), the fact is it was never actually joined as a defendant in the case. The Bank manager in Virac (who was sued but later dropped from the complaint) is not the PNB. He is only an employee of the bank. Upon noticing that an indispensable party had not been impleaded, the Court of Appeals should have sent back the case to the trial court for it to order the plaintiffs to amend their complaint, bring in the PNB as an additional defendant, and for the Bank to answer the amended complaint and present its evidence in the case (*Banco Español-Filipino vs. Palanca*, 37 Phil. 921; *Infante vs. Toledo*, 44 Phil. 834; *Nilo vs. Romero*, L-15195, March 29, 1961).

Sending a copy of the appellants' brief to a lawyer of the Bank in the Virac agency was not the proper way to implead the bank. Neither could it be done by a peremptory declaration in the dispositive portion of the Court's decision that the PNB "is hereby ordered and declared a party in this appeal" even if it never was (p. 41, Rollo).

WHEREFORE, the petition for certiorari is granted. Paragraph 2 of the dispositive portion of the decision of the Court of Appeals:

"2. Ordering the court of origin to cause the partition of the property into two equal parts, for the PNB Virac Branch, which is hereby ordered and declared a party in this appeal, to recover the ownership and peaceful possession over 1/2 portion thereof to the plaintiffs-appellants; and ordering the Register of Deeds of Virac,

Catanduanes to issue the corresponding title over said half portion in the names of plaintiffs-appellants." (p. 41, Rollo.)

is annulled and set aside. The temporary restraining order which we issued is hereby made permanent with regard to said paragraph 2, but it is lifted with regard to paragraphs 1 and 3 of the dispositive portion of the same decision which are affirmed. Costs against the private respondents.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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