

EVANGELISTA GARCIA, PETITIONER, VS. COURT OF APPEALS, AND SPOUSES MIGUEL AND ADELA LAZARO, RESPONDENTS.*G.R. No. 96141. October 02, 1991*

Ponente: SARMIENTO, J.

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This is a petition for review on certiorari praying for the reversal of the Decision of the Court of Appeals in CA-G.R. CV No. 22319[1] promulgated on August 30, 1990, together with its Resolution issued on November 20, 1990 denying reconsideration, and the reinstatement of the Order issued by the Regional Trial Court, National Capital Region, Branch 85, Quezon City,[2] on June 6, 1989, in the petition entitled, "Petition for the Issuance of Second Owner's Duplicate of TCT No. 75363 of Quezon City; Eduardo Garcia, Petitioner; Evangelista A. Garcia, Relief Petitioner," LRC Case No. Q-3660(87).

The challenged decision of the Court of Appeals disposed as follows:

WHEREFORE, premises considered, the appealed order being null and void, should be, as it is hereby, set aside, and the Petition For Relief is hereby dismissed. The mortgage of the property covered by TCT No. 366438 in favor of appellants-spouses Lazaro should be respected and entitled to protection.[3]

SO ORDERED.

The facts which gave rise to the present controversy are stated by the respondent court as follow:

x x x [G]audencio Garcia and his wife, Maria Paz Angeles-Garcia were the absolute owners of a residential lot containing an area of 1,500 square meters located in Diliman, Quezon City by virtue of TCT No. 75363 of the Quezon City Register of Deeds, dated December 9, 1963. After their demise, the spouses Garcia were succeed(ed) in the ownership of said lot by their children (one of whom is herein appellee) who commenced to possess the same in actual, open, peaceful and uninterrupted manner.

x x x on 10[th of] May, 1987, [when] Eduardo Garcia, claiming to be the owner of the above-described realty by virtue of a certain deed of absolute sale allegedly executed by the spouses Garcia in his favor on May 16, 1976, filed a petition for the issuance of a second owners' (sic) duplicate copy of TCT No. 75363 which was allegedly lost while the same was in his possession. About 12 days later or on May 22, 1987, the court a quo (conceding later on to have been misled by Eduardo Garcia's prevarication), issued an order enjoining the Register of Deeds of Quezon City "to issue xxx second owner's duplicate copy of TCT No. 75363 on the basis of the original existing at his office xxx with the notation xxx that it is issued in lieu of the lost owner's duplicate certificate of title xxx." Accordingly, the Register of Deeds issued another duplicate copy of TCT No. 75363 in the name of the late Gaudencio Garcia, which, however, (was) subsequently cancelled on the basis of the deed of sale purportedly executed by the Garcia spouses in favor of Eduardo Garcia on May 16, 1976. This paved the way for the issuance of TCT No. 365291 in the name of Eduardo Garcia.

True to form, Eduardo Garcia in an obvious attempt to make it hard for the heirs of the spouses Garcia (represented by herein appellee) to recover [demand reconveyance of] the subject realty, executed on August 12, 1987, a deed of sale thereof in favor of one Ricardo Santos. The deed of conveyance having been duly

registered, TCT No. 365291 was cancelled and in lieu thereof, TCT No. 366438 was issued on August 18, 1987, in the name of the vendee, Ricardo Santos, who on the same date, executed a deed of mortgage in favor of appellants Miguel and Adela Lazaro, which was annotated at the back of said TCT No. 366438.

While the transactions above-stated were taking place, Transfer Certificate of Title (TCT) No. 75363, allegedly lost (or stolen), was in the possession of the petitioner.

The foregoing transfers and encumbrances which were effected on the asset in dispute were discovered only on September 17, 1987, when appellee went to the Quezon City Treasurer's Office to pay the taxes due thereon. Assailing the validity of the deed of sale allegedly drawn by his parents on May 16, 1976 in favor of Eduardo Garcia, herein appellee thus commenced on October 6, 1987, the instant petition for relief and prayed, among others, for the nullification of the questioned May 22, 1987 Order of the court below as well as the cancellation of TCT No. 365291 and TCT No. 366438 in the name of Eduardo Garcia and Ricardo Santos, respectively. Due to their existing mortgage lien over the subject realty, appellants were among the parties ordered to submit their answer to the said petition.[4]

After the proper proceedings, the trial court ruled in its Order dated June 6, 1989, in favor of petitioner Evangelista Garcia, to wit:

WHEREFORE, premises considered, the petition for relief is hereby GRANTED. Consequently, (a) the resolution/order dated May 22, 1987 is hereby lifted, set aside and revoked; (b) the deed of sale dated May 16, 1976 is hereby declared null and void ab initio; (c) TCT 75363 in the name of Gaudencio Garcia, married to Maria Paz Angeles Garcia is hereby revalidated, (d) TCT No. 365291, as well as TCT No. 366438 are hereby cancelled and declared null and void ab initio; and (e) direct-ing the Register of Deeds of Quezon City to annotate this order on TCT 365291 and TCT 366438.

This order is without prejudice to whatever civil action for recovery and damages the respondents Ricardo Santos and the spouses Miguel Lazaro and Adela Lazaro may have against each other and/or against respondent-petitioner Eduardo A. Garcia. The City Fiscal of Quezon City is hereby directed to conduct an investigation against respondent Eduardo A. Garcia for falsification and/or forgery of the deed of sale allegedly executed in his favor by the late Guadencio Garcia and to file the appropriate criminal action as the evidence warrants. The Register of Deeds of Quezon City is hereby ordered to immediately annotate this resolution on TCT 365291 and TCT 366438.

SO ORDERED.[5]

On appeal only by the mortgagees-respondents-spouses, Miguel Lazaro and Adela Lazaro, the respondent court reversed the decision of the trial court and dismissed the petition for relief.[6] The petitioner filed a motion for reconsideration on September 24, 1990, but it was denied on November 20, 1990.

Hence, the present recourse.

The petition raises the following issues:

- WHETHER OR NOT PETITIONER'S PETITION FOR RELIEF AND ITS ACCOMPANYING AFFIDAVIT OF MERIT CONTAIN ALLEGATIONS OF EXTRINSIC FRAUD.
- WHETHER THE UNQUESTIONED FINDINGS OF THE TRIAL COURT ON THE NULLITY OF THE RECONSTITUTED TITLE OF THE FORGER/IMPOSTOR EDUARDO GARCIA WHICH WAS THE SOURCE OF THE SUBSEQUENT TITLE ISSUED TO THE MORTGAGOR RICARDO SANTOS NULLIFY THE RIGHTS AND INTERESTS OF THE PRIVATE RESPONDENTS SPOUSES LAZAROS, AS MORTGAGEES OF SANTOS.
- WHETHER OR NOT THE SPOUSES MIGUEL AND ADELA LAZARO COULD BE CONSIDERED TO

HAVE ACTED IN GOOD FAITH.

- WHETHER OR NOT THE TRIAL COURT CORRECTLY INVOKED ITS JURISDICTION TO SET ASIDE ITS OWN ORDER/RESOLUTION OF MAY 22, 1987 (Annex "G" of the Petition) SO THAT ITS DECISION/ORDER OF JUNE 6, 1989 (Annex "A" of Annex "D" of the Petition) BINDS PRIVATE RESPONDENTS SPOUSES MIGUEL AND ADELA LAZARO.[7]

Rule 38 of the Rules of Court governs the petition for relief from judgment. Pertinent are Sections 2 and 3 thereof which provide:

SEC. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof. — When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside.

SEC. 3. Time for filing petition; contents and verification. — A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

Jurisprudentially stated, a petition for relief is a special remedy in which equity and justice justify the grant to give the petitioner a last chance to defend his right or protect his interest.[8] It is available only after a decision or judgment from which relief is sought has become final and executory.[9] In other words, the petition for relief under Rule 38 is to be availed of only in exceptional cases, and where there is another remedy at law, it should not be allowed to be used.[10]

Additionally, the petition for relief must be accompanied with an affidavit showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. The affidavit of merit serves as the jurisdictional basis for the court to entertain a petition for relief.[11]

Where fraud is the ground, the fraud must be extrinsic or collateral. And the facts upon which the extrinsic fraud is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered.[12] For this purpose, fraud is regarded as extrinsic or collateral where it has prevented a party from having a trial or from presenting all of his case to the court.[13] Intrinsic fraud takes the form of acts of the party in a litigation during the trial, such as the use of forged instruments or perjured testimony which did not affect the presentation of the case, but did prevent a fair and just determination of the case.[14]

In this case, there is no dispute that the petition for relief from judgment availed of by petitioner in assailing the Order dated May 22, 1987 of the trial court is the correct and only remedy available. What is contested by the private respondents is whether or not the affidavit of merit of petitioner Evangelista attached to his petition for relief from judgment satisfies the requirements of Rule 38 adverted to earlier.

The relevant portion of the affidavit of merit under question recites:

6. Fraud, deceit, and misrepresentation was (sic) employed by Eduardo A. Garcia in securing for himself the title to said property or TCT No. 365291:

FIRST — the alleged lost owner's duplicate Certificate of Title No. 75363 had always and continuously been in my possession up to the present.

As early as 1968 or thereabout, and long before my parents died, I had been entrusted the physical possession, custody and safekeeping of all important documents involving my parents' estate. After their death, all my brothers and sisters continued to repose in me the same confidence with respect to the physical possession, custody and safekeeping of these same documents.

SECOND — The Deed of Absolute Sale allegedly executed by my parents in favor of Eduardo A. Garcia is spurious since the signatures of my parents had been falsified.[15]

The Court of Appeals in the questioned decision ruled that there is no extrinsic or collateral fraud. It made this disquisition:

Appellee's petition for relief does not indicate any allegation of extrinsic fraud that would have prevented said appellee from fully and fairly presenting his side of the case. Be it noted that the Order of May 22, 1987, which he sought to be set aside arose from an earlier petition of Eduardo Garcia for the issuance of a new duplicate certificate of title. Accordingly, while the provisions of Sec. 109 of P.D. 1529 does (sic) not specifically prescribe what shall constitute sufficient notice as regards the hearing thereof, the standard practice methodically adhered to by Our courts has been to enjoin the service of copies of said petition on the Register of Deeds, and encumbrances, (sic) if any, as well as the posting of copies of the notice of hearing of the petition on the main entrance of the municipal building and the provincial building or city hall of the municipality or city in which the land is situated at least 2 weeks prior to the date of hearing (Noblejas, Registration of Land Titles and Deeds, 1983, p. 143). This minimal requirement as regards notice of hearing, We believe was duly complied with in accordance with the legal presumption laid down in Sec. 5(m), Rule 131 of the Revised Rules of Court that official duty has been regularly performed. Consequently, it is, therefore, incumbent upon appellee to allege in his petition for relief that he had been fraudulently deprived of said notice of hearing as to likewise deprive him of the opportunity to present his side of the case (Amiran vs. Aquino, 38 Phil. 29). Unfortunately, appellee failed in this score for the alleged fraud he relied upon in his petition for relief referred only to the acts of Eduardo Garcia in the litigation during the trial, such as the introduction of a forged deed of sale, which did not affect the presentation of the case, but did prevent a fair and just determination of the case (Palanca vs. American Food Manufacturing Co., L-22822, Aug. 30, 1968). This partakes the nature of intrinsic fraud which is not the kind sufficient to set aside the questioned Order for well-settled is the rule that only when the fraud is extrinsic or collateral, that is, fraud in the means whereby the order was procured and not fraud in the cause of action or matter put in issue and presented for adjudication (Cordonis vs. De Obias, L-24080, April 26, 1968) may said order be annulled.[16]

On the other hand, the petitioner submits that there is no rule or provision of law as to the form or style on how the allegation of extrinsic fraud should be worded. Rule 38 of the Rules of Court is couched in general terms. Suffice it to say, the petitioner's affidavit of merit attached to the petition for relief complies with the said provision of law. "The fraudulent act," the petitioner continues, "of forging the signatures of the registered owners (Dr. and Mrs. Gaudencio Garcia) by making it appear that they transferred the ownership of the property in a Contract of Sale executed in favor of Eduardo Garcia, and then presented said forged deed to support his petition for the issuance of a second owner's duplicate of title prevented (or precluded) the petitioner (and his co-owners) from having any knowledge of the proceedings (or getting any notice thereof), involving their property and the consequent issuance of a second owner's duplicate copy of the title thereto and the series of transactions that followed. x x x"[17] In other words, the primary purpose of the requisite affidavit of merit is to show that the party seeking the relief appears to have been, as in this case, denied, or was not afforded, due process. Thus the owners were to be deprived of their property without knowing anything about it. Had not the petitioner discovered the fraud when he did, more transfers of the property would have been effected making more difficult its recovery by the true owners. The entire procedure adopted by Eduardo Garcia is a studied case of deception and fraud. We

can not countenance it to deprive the petitioner and his co-owners of what is justly and legally their own property.

We studied carefully the contents of the affidavit of merit above-quoted and are convinced that the same constitute substantial compliance with the requirements of Rule 38 of the Rules of Court. The case of *Conde vs. Intermediate Appellate Court*[18] invoked by the private respondents which held that:

(I)n the case at bar, the fraud was in the nature of documents allegedly manufactured by Marcelo Gutierrez, to make it appear that he was the rightful heir of the disputed property. Hence, the Intermediate Appellate Court is correct in finding the fraud to be intrinsic in nature.

is not applicable to the present case. In *Conde*, the petitioners were not prevented from presenting their case before the trial court; on the other hand, they actively participated in it. It was only late in the day, so to speak, that petitioners cried fraud—alleging that Marcelo Gutierrez manufactured documents to make it appear that he, was the rightful owner of the disputed property. In the case at bar, the averments in the affidavit of merit, though worded in general terms, point to the fact that the petitioner herein was effectively shut off from presenting his case, i.e. opposing the petition of the impostor, Eduardo Garcia, for the issuance of a second owner's duplicate transfer certificate of title, before the trial court. He was not at all given the opportunity to rebut the false claims of Eduardo Garcia in the latter's petition for the issuance of the second owner's duplicate copy of TCT No. 75363 of the Quezon City Registry in lieu of the one allegedly lost. (Actually the TCT was taken in a robbery at the house of Eduardo Garcia in his absence, according to him.) For no notice had been sent by the trial court to the address of the registered owners, Sps. Gaudencio Garcia and Maria Paz Angeles Garcia, represented by petitioner in this case, because as found by the trial court (which is not disputed), their address was incorrectly indicated by Eduardo Garcia.[19] This is the extrinsic fraud that Rule 38 of the Rules of Court speaks of.

Another point. Even if we disregard the affidavit of merit annexed to the petition for relief, the present petition will still be sustained on jurisdictional concerns. It is true that:

By statutory requirements, a petition for relief, must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or, defense, as the case may be. This is an indispensable requirement under Section 3, Rule 38 of the Rules of Court which must be strictly observed considering that the affidavit of merit serves as the jurisdictional basis for a court to entertain a petition for relief. When said petition for relief is flawed by such serious defect; the court with which such petition is filed is not called upon to entertain the same.[20]

And the reason for the rule is:

x x x that it is the affidavit of merit which serves as jurisdictional basis for a court to entertain a petition for relief.[21]

But, be this as it may, the rule just enunciated accepts certain exceptions—i.e. where the attachment of the affidavit of merit in the petition for relief is unnecessary. We take note that the affidavit of merit has a known purpose: courts should not require the machinery of justice to grind anew, if the prospects of a different conclusion can not be reasonably reached should the relief from judgment be granted.[22] Otherwise stated, the affidavit of merit is essential because a new trial would be a waste of the court's time if the complaint turned out to be groundless or the defense ineffective.[23] Thus, where there was no jurisdiction over the defendant or the subject matter of the action, where a judgment was taken by default before defendant's time to answer had expired, where it was entered by mistake, or was obtained by fraud, and other similar cases, as when the applicant had no notice of the trial, we ruled that an affidavit of merit is unnecessary.[24]

Here, we earlier stressed that the fraudulent schemes perpetrated by Eduardo A. Garcia seemed so perfect that the deceased spouses (the late Chairman of the Commission on Elections Dr. Gaudencio Garcia and Mrs. Maria Paz

Angeles-Garcia), and upon their deaths, their heirs, represented herein by the petitioner, were all deliberately kept ignorant of the proceedings before the trial court involving their property. No notice of any kind was given to them by the trial court because as it noted (which is not controverted), their address had been incorrectly indicated by Eduardo Garcia.

Said the trial court:

x x x [t]he address of Gaudencio Garcia was deliberately placed in the fake deed of sale as "750 Noe, 1660 Union, Paco, Manila", and that of respondent-petitioner was placed at "750 Noe St., Paco, Manila", which is inexistent, in order to mislead the sending and delivering of notices and other court processes by the sheriff and/or mail carrier, with the end in view of concealing the proceedings from Gaudencio Garcia and in depriving him and his heirs of their day in court and/or opportunity to oppose the petition. x x x[25]

The fraud was discovered only later, on September 17, 1987—with all the transactions already entered in the title—when the petitioner went to the Quezon City Treasurer to pay the realty taxes due thereon. In other words, the circumstances under which petitioner and his co-owners were deprived of the ownership of their property show the total absence of due process. Hence, like the cases cited above, the instant petition need not be accompanied with affidavit of merit.

Assuming arguendo that the affidavit of merit contained no allegations of extrinsic fraud, the ruling of the respondent Court of Appeals that the trial court has no jurisdiction to entertain the petition for relief is incorrect.

The verified answer of the Lazaros filed with the trial court, specifically admitted:

9. — That while this Honorable Court has jurisdiction to set aside the Resolution of May 22, 1987, we respectfully submit that it has no jurisdiction in the present petition to act on the cancellation and annulment of T.C.T. No. 365291 and T.C.T. No. 366438 as prayed for.[26]

Not only that. The records disclose that the matter of extrinsic fraud had never been raised as an issue by the Lazaros in the trial court. In short, the jurisdiction of the trial court to hear and decide the petition for relief had never been questioned by the Lazaros; it was only raised for the first time in the Court of Appeals. While it is true that any decision rendered without jurisdiction is a total nullity and may be struck down at any time even on appeal before the Supreme Court,[28] the records show that the Lazaros are in estoppel to raise the issue of jurisdiction. They argue that they did not submit any evidence before the trial court because the same would be considered a waiver of the court's lack of jurisdiction and that for the same reason, they did not present evidence that they were mortgagees in good faith.[29]

The argument has no merit. The records reveal that the Lazaros actively participated in the proceedings on the petition for relief in the trial court. Recounted the said court:

During the hearings conducted on March 24, 1988, April 15 and 27, 1988, May 16, 1988, all the respondents appeared (except Santos on the latter date), and cross-examined and/or waived cross-examination of relief petitioner and his witnesses.

xxx xxx xxx

It is noteworthy that the respondents were given their day in court. They filed their answers and actively participated in the trial of the case. In short they submitted themselves to the court's jurisdiction.[29]

No doubt that is estoppel. Apropos this point, we already had several occasions to rule thus:

It has been consistently held by this court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before the court without jurisdiction will estop such party from assailing

such lack of jurisdiction[30]

At this juncture, it bears stress that the title of the property mortgaged to the Lazaros was a second owner's duplicate TCT, which is, in effect a reconstituted title. This circumstance should have alerted them to make the necessary investigation, but they did not.

In Republic vs. Court of Appeals,[31] we held:

xxx xxx xxx

To sustain the validity of the reconstituted titles in these cases would be to allow Republic Act. No. 26 to be utilized as an instrument for land grabbing (See Republic v. Court of Appeals, Ocampo and Anglo, L-31303-04, May 31, 1978, 83 SCRA 453, 480 per J.G.S. Santos) or to sanction fraudulent machinations for depriving a registered owner of his land, to undermine the stability and security of Torrens titles and to impair the Torrens system of registration.

The theory of A & A Torrijos Engineering Corporation that it was a purchaser in good faith and for value is indefensible because the title of the lot which it purchased unmistakably shows that such title was reconstituted. That circumstance should have alerted its officers to make the necessary investigation in the registry of deeds of Caloocan City and Rizal where they could have found that Lot 918 is owned by the State.

The Lazaros argue that because the TCT of the property on which their mortgage lien was annotated did not contain the annotation: "Reconstituted title," Republic is not applicable. This argument is without merit. The nature of a reconstituted Transfer Certificate of Title of registered land is similar to that of a second Owner's Duplicate Transfer Certificate of Title. Both are issued, after the proper proceedings, on the representation of the registered owner that the original of the said TCT or the original of the Owner's Duplicate TCT, respectively, was lost and could not be located or found despite diligent efforts exerted for that purpose. Both, therefore, are subsequent copies of the originals thereof. A cursory examination of these subsequent copies would show that they are not the originals. Anyone dealing with such copies are put on notice of such fact and thus warned to be extra-careful. This warning the mortgagees-Lazaros did not heed, or they just ignored it. Not only that. The records of the case clearly show that the property in question had been subjected to a series of almost-simultaneous transactions precluding any consideration of good faith on the part of the private respondents-Lazaros and of their mortgagor, Ricardo Santos, to wit:

1. May 16, 1976 — Deed of Sale allegedly executed by Gaudencio Garcia over a parcel of land situated at Quezon City covered by TCT No. 75363 in favor of Eduardo Garcia.

2. May 10, 1987 —

Eduardo Garcia claiming to be the owner of the property in question by virtue of that alleged Deed of Sale filed with the RTC, Branch 85, Quezon City, a petition for the issuance of a second owner's duplicate copy of TCT No. 75363 allegedly lost in November, 1985.

3. May 22, 1987 —

Resolution dated May 22, 1987 of the trial court declaring the alleged lost TCT No. 75363, as null and void, and ordering the Registry of Deeds of Quezon City to issue a second owner's duplicate TCT.

4. July 31, 1987 —

TCT No. 365291, was issued in the name of Eduardo A. Garcia by virtue of an alleged Deed of Sale executed by Gaudencio Garcia.

5. August 18, 1987 —

Deed of Sale executed by Eduardo Garcia in favor of Ricardo Santos for which TCT No. 366438 was issued in the name of the latter.

6. August 18, 1987 —

Ricardo G. Santos executed the mortgage in favor of the Lazaros, to secure the payment of a loan by Santos in the sum of P400,000.

7. August 18, 1987 —

The mortgage in favor of the Lazaros was inscribed and annotated on TCT No. 366438.

8. October 1, 1988 —

Ricardo G. Santos executed a deed of sale in favor of Rosalinda S. Cobar for the price of P1.2M.

9. September 20, 1990 —

Rosalinda S. Cobar executed a deed of sale in favor of Felipe Enriquez in the sum of P1.5M.

Under the circumstances enumerated above there is no way the Lazaros can claim that they were not aware that the title of the property on which their mortgage was inscribed was not issued on the same day (August 18, 1991) as the date of the acquisition by the mortgagor of the same property from the previous registered owner (Eduardo Garcia). Indeed, if the Lazaros took the ordinary precautions of honest persons in doing business, they should have examined the records in the Registry of Deeds of Quezon City. This they should have done considering the huge amount of money they were parting with. Had they been thus careful, they could have easily also discovered, among others,[32] that:

x x x Eduardo A. Garcia submitted in the office of the Register of Deeds a sworn statement, date August 20, 1987, stating that he was a real estate dealer and therefore exempt from payment of capital gains tax on his sale of the property to respondent Santos (Exh. M). It appears that this affidavit was not signed by respondent Garcia but by someone else. For this reason the title should not have been issued on the basis of the alleged sale in favor of respondent Santos. Nevertheless, it was issued. Again, in the BIR confirmation receipt No. B-13063394, dated October 10, 1987 (Exh. N), the given address of respondent Garcia is "750 Union St., Paco, Manila," which does not exist, and the additional payment of P28,000 for documentary stamps was merely a veiled attempt to cover the anomalous underpayment of documentary stamps by respondent Santos on August 20, 1987 in the amount of only P405.00 (Exh. Q), long after the title, TCT No.366438 (Exh. P) was issued in his (Santos') favor on August 18, 1987. x x x[33]

But the Lazaros, as stated earlier, did not examine the pertinent records of the property being mortgaged to them

for a very substantial sum of money in the Registry of Deeds of Quezon City. So between two innocent, persons (even granting that the Lazaros were innocent), the mortgagees and the true owners of the mortgaged property, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss.[34] The Lazaros can not now claim good faith. And so they must suffer the consequences of their ill-placed confidence. As correctly ruled by the trial court:

x x x Eduardo A. Garcia is no more than an imposter. He has not for a single moment been the owner of the land in dispute. He had no right thereto he could convey. The sale purportedly executed by him in favor of respondent Ricardo S. Santos conveyed no title or any interest at all to the latter for the simple reason that the supposed vendor had no title or interest to transfer. On the same vein, neither did Santos acquire any title or interest in subject property which he could mortgage in favor of the respondents Lazaros.[35]

Finally, we can not stamp the imprimatur of validity and binding effect on the mortgage executed by the vendee, Ricardo S. Santos, from the vendor-impostor, Eduardo A. Garcia, in favor of the private respondents, mortgages-Lazaros, to the prejudice of the innocent owners, the petitioner and his co-owners. It would be iniquitous to burden the petitioner and his co-owners with a mortgage lien not of their own making and from which they derived no benefit at all. The consequences of the void mortgage must be left between the mortgagor and the mortgagees. In a large measure, the Lazo spouses might even be faulted for failing to investigate the true ownership of Ricardo Santos of the mortgaged real property.[36] Considering all the circumstances, the mortgagees' total reliance on the transfer certificate of title of Santos was misplaced, if not foolish. Certainly, the land registration system can not be a shield for fraud and chicanery.

WHEREFORE, the assailed Decision of the Court of Appeals is REVERSED and SET ASIDE, and in lieu thereof the Order of the trial court dated June 6, 1989, is REINSTATED.

Costs against the private respondents.

SO ORDERED.

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

[1] Second Division, Justice Antonio M. Martinez, ponente; Justices Jose A.R. Melo and Nicolas Lapeña, concurring.

[2] Bernardo P. Abesamis, Presiding Judge.

[3] Decision, Court of Appeals, rollo, 42-43.

[4] Ibid., 38-39.

[5] Order of the trial court; rollo, 109-110.

[6] Ibid., 44.

[7] Petitioner's Memorandum, 5, rollo, 220.

[8] Commissioner of Customs v. JEA Commercial, 102 Phil. 894.

[9] Quirino v. Phil. National Bank, 101 Phil. 705.

[10] Alquesa, et al. vs. Canada, et al., L-16735, October 31, 1961, 3 SCRA 428, Fajardo vs. Bayan, L-8314, March 23, 1956.

- [11] Abar vs. Virtucio, et al., L-16429, October 25, 1960; Omandam vs. Director of Lands, 95 Phil. 450; Fernandez vs. Tan Tiong Tick, et al., L-15877, April 28, 1961, 1 SCRA 1138, 1145; Torno vs. Intermediate Appellate Court, et al., 166 SCRA 712.
- [12] Libudan vs. Gil, L-25495, May 17, 1972.
- [13] Conde vs. Intermediate Appellate Court, 144 SCRA 144.
- [14] Conde vs. Intermediate Appellate Court, *supra*, citing Libudan vs. Palma, 45 SCRA 17.
- [15] Rollo, 117.
- [16] *Ibid.*, 40-41.
- [17] Rollo, 222.
- [18] No. 70443, September 15, 1986, 144 SCRA 144, 153.
- [19] Rollo, 105.
- [20] Torno vs. IAC, et al., No. 72622, October 28, 1988, 166 SCRA 742, 748.
- [21] Fernandez vs. Tan Tiong Tick, No. L-15877, April 28, 1961, 1 SCRA 1138, 1145.
- [22] Consul vs. Consul, L-22713, July 26, 1966, 17 SCRA 667, 671.
- [23] 2 Moran, 215, 1979 ed., citing Vda. de Yulo v. Chua Chuco, et al., 48 O.G. 554; Baquiran v. C.A., L-14551, July 31, 1961, 2 SCRA 873.
- [24] 2 Moran, 231, 1979 ed. [Citing Lapisan v. Alfonso, et al., 78 Phil. 842; Coombs v. Santos, 24 Phil. 446; McGrath v. Del Rosario, 49 Phil. 330; Navarro v. Bello, L-11647, January 31, 1958; Gattar v. Sarenase, L-11752, July 30, 1958; Vasqani vs. Tarachard Bros., L-15800, December 29, 1960; Valerio v. Tan, et al., L-6446, September 19, 1955]; Consul vs. Consul, *supra*.
- [25] Rollo, 105.
- [26] *Ibid.*, 151-152.
- [27] Solid Homes, Inc. vs. Payawal, 177 SCRA 72, 80 (1989).
- [28] Rollo, 258.
- [29] *Ibid.*, 18, 98, 104.
- [30] Tajonera vs. Lamaroza, (1981) 110 SCRA 438; Nieta vs. Manila Banking Corporation, (1983) 124 SCRA 455; cited in Sps. Antonio Martinez and Benedict Balatbat vs. The Hon. Judge de la Merced, et al., G.R. No. 82039, June 20, 1989; Echaus vs. Blanco, 179 SCRA 704, 705, December 4, 1989.
- [31] Nos. L-46626-27, December 27, 1979, 94 SCRA 865, 872.
- [32] See Jose vs. C.A., et al., G.R. No. 85157, December 26, 1990, 192 SCRA 735, 742.
- [33] Rollo, 108-109.
- [34] Pichay vs. Celestino, Nos. L-19292-94, May 30, 1967, 20 SCRA 314; Blondeau and De la Cantera vs. Nano & Vallejo, 61 Phil. 625, 630.
- [35] Rollo, 108.

[36] Amerol, et al. vs. Molok Bagumbaran, G.R. No. L-33261, September 30, 1987, 154 SCRA 396.

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