

FIRST DIVISION

[G.R. No. 140528, December 07, 2011]

MARIA TORBELA, REPRESENTED BY HER HEIRS, NAMELY: EULOGIO TOSINO, HUSBAND AND CHILDREN: CLARO, MAXIMINO, CORNELIO, OLIVIA AND CALIXTA, ALL SURNAMED TOSINO, APOLONIA TOSINO VDA. DE RAMIREZ AND JULITA TOSINO DEAN; PEDRO TORBELA, REPRESENTED BY HIS HEIRS, NAMELY: JOSE AND DIONISIO, BOTH SURNAMED TORBELA; EUFROSINA TORBELA ROSARIO, REPRESENTED BY HER HEIRS, NAMELY: ESTEBAN T. ROSARIO, MANUEL T. ROSARIO, ROMULO T. ROSARIO AND ANDREA ROSARIO-HADUCA; LEONILA TORBELA TAMIN; FERNANDO TORBELA, REPRESENTED BY HIS HEIRS, NAMELY: SERGIO T. TORBELA, EUTROPIA T. VELASCO, PILAR T. ZULUETA, CANDIDO T. TORBELA, FLORENTINA T. TORBELA AND PANTALEON T. TORBELA; DOLORES TORBELA TABLADA; LEONORA TORBELA AGUSTIN, REPRESENTED BY HER HEIRS, NAMELY: PATRICIO, SEGUNDO, CONSUELO AND FELIX, ALL SURNAMED AGUSTIN; AND SEVERINA TORBELA ILDEFONSO, PETITIONERS, VS. SPOUSES ANDRES T. ROSARIO AND LENA DUQUE-ROSARIO AND BANCO FILIPINO SAVINGS AND MORTGAGE BANK, RESPONDENTS.

G.R. NO. 140553

LENA DUQUE-ROSARIO, PETITIONER, VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Presently before the Court are two consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, both assailing the Decision ^[1] dated June 29, 1999 and Resolution ^[2] dated October 22, 1999 of the Court of Appeals in CA-G.R. CV No. 39770.

The petitioners in G.R. No. 140528 are siblings Maria Torbela, ^[3] Pedro Torbela, ^[4] Eufrosina Torbela Rosario, ^[5] Leonila Torbela Tamin, Fernando Torbela, ^[6] Dolores Torbela Tablada, Leonora Torbela Agustin, ^[7] and Severina Torbela Ildefonso (Torbela siblings).

The petitioner in G.R. No. 140553 is Lena Duque-Rosario (Duque-Rosario), who was married to, but now legally separated from, Dr. Andres T. Rosario (Dr. Rosario). Dr. Rosario is the son of Eufrosina Torbela Rosario and the nephew of the other Torbela siblings.

The controversy began with a parcel of land, with an area of 374 square meters, located in Urdaneta City, Pangasinan (Lot No. 356-A). It was originally part of a larger parcel of land, known as Lot No. 356 of the Cadastral Survey of Urdaneta, measuring 749 square meters, and covered by Original Certificate of Title (OCT) No. 16676, [8] in the name of Valeriano Semilla (Valeriano), married to Potenciana Acosta. Under unexplained circumstances, Valeriano gave Lot No. 356-A to his sister Marta Semilla, married to Eugenio Torbela (spouses Torbela). Upon the deaths of the spouses Torbela, Lot No. 356-A was adjudicated in equal shares among their children, the Torbela siblings, by virtue of a Deed of Extrajudicial Partition [9] dated December 3, 1962.

On December 12, 1964, the Torbela siblings executed a Deed of Absolute Quitclaim [10] over Lot No. 356-A in favor of Dr. Rosario. According to the said Deed, the Torbela siblings "for and in consideration of the sum of NINE PESOS (P9.00) x x x transfer[red] and convey[ed] x x x unto the said Andres T. Rosario, that undivided portion of THREE HUNDRED SEVENTY-FOUR square meters of that parcel of land embraced in Original Certificate of Title No. 16676 of the land records of Pangasinan x x x." [11] Four days later, on December 16, 1964, OCT No. 16676 in Valeriano's name was partially cancelled as to Lot No. 356-A and TCT No. 52751 [12] was issued in Dr. Rosario's name covering the said property.

Another Deed of Absolute Quitclaim [13] was subsequently executed on December 28, 1964, this time by Dr. Rosario, acknowledging that he only borrowed Lot No. 356-A from the Torbela siblings and was already returning the same to the latter for P1.00. The Deed stated:

That for and in consideration of the sum of one peso (P1.00), Philippine Currency **and the fact that I only borrowed the above described parcel of land** from MARIA TORBELA, married to Eulogio Tosino, EUFROSINA TORBELA, married to Pedro Rosario, PEDRO TORBELA, married to Petra Pagador, LEONILA TORBELA, married to Fortunato Tamen, FERNANDO TORBELA, married to Victoriana Tablada, DOLORES TORBELA, widow, LEONORA TORBELA, married to Matias Agustin and SEVERINA TORBELA, married to Jorge Ildefonso, x x x by these presents do hereby cede, transfer and convey by way of this ABSOLUTE QUITCLAIM unto the said Maria, Eufrosina, Pedro, Leonila, Fernando, Dolores, Leonora and Severina, all surnamed Torbela the parcel of land described above. [14] (Emphasis ours.)

The aforequoted Deed was notarized, but was not immediately annotated on TCT No. 52751.

Following the issuance of TCT No. 52751, Dr. Rosario obtained a loan from the Development Bank of the Philippines (DBP) on February 21, 1965 in the sum of P70,200.00, secured by a mortgage constituted on Lot No. 356-A. The mortgage was annotated on TCT No. 52751 on September 21, 1965 as **Entry No. 243537**. [15] Dr. Rosario used the proceeds of the loan for the construction of improvements on Lot No. 356-A.

On May 16, 1967, Cornelio T. Tosino (Cornelio) executed an Affidavit of Adverse Claim, ^[16] on behalf of the Torbela siblings. Cornelio deposed in said Affidavit:

3. That ANDRES T. ROSARIO later quitclaimed his rights in favor of the former owners by virtue of a Deed of Absolute Quitclaim which he executed before Notary Public Banaga, and entered in his Notarial Registry as Dec. No. 43; Page No. 9; Book No. I; Series of 1964;

4. That it is the desire of the parties, my aforestated kins, to register ownership over the above-described property or to perfect their title over the same but their Deed could not be registered because the registered owner now, ANDRES T. ROSARIO mortgaged the property with the DEVELOPMENT BANK OF THE PHILIPPINES, on September 21, 1965, and for which reason, the Title is still impounded and held by the said bank;

5. That pending payment of the obligation with the DEVELOPMENT BANK OF THE PHILIPPINES or redemption of the Title from said bank, I, CORNELIO T. TOSINO, in behalf of my mother MARIA TORBELA-TOSINO, and my Aunts EUFROSINA TORBELA, LEONILA TORBELA-TAMEN, DOLORES TORBELA, LEONORA TORBELA-AGUSTIN, SEVERINA TORBELA-ILDEFONSO, and my Uncles PEDRO TORBELA and FERNANDO, also surnamed TORBELA, I request the Register of Deeds of Pangasinan to annotate their adverse claim at the back of Transfer Certificate of Title No. 52751, based on the annexed document, Deed of Absolute Quitclaim by ANDRES T. ROSARIO, dated December 28, 1964, marked as Annex "A" and made a part of this Affidavit, and it is also requested that the DEVELOPMENT BANK OF THE PHILIPPINES be informed accordingly. ^[17]

The very next day, on May 17, 1967, the Torbela siblings had Cornelio's Affidavit of Adverse Claim dated May 16, 1967 and Dr. Rosario's Deed of Absolute Quitclaim dated December 28, 1964 annotated on TCT No. 52751 as **Entry Nos. 274471** ^[18] and **274472**, ^[19] respectively.

The construction of a four-storey building on Lot No. 356-A was eventually completed. The building was initially used as a hospital, but was later converted to a commercial building. Part of the building was leased to PT&T; and the rest to Mrs. Andrea Rosario-Haduca, Dr. Rosario's sister, who operated the Rose Inn Hotel and Restaurant.

Dr. Rosario was able to fully pay his loan from DBP. Under **Entry No. 520197** on TCT No. 52751 ^[20] dated March 6, 1981, the mortgage appearing under Entry No. 243537 was cancelled per the Cancellation and Discharge of Mortgage executed by DBP in favor of Dr. Rosario and ratified before a notary public on July 11, 1980.

In the meantime, Dr. Rosario acquired another loan from the Philippine National Bank (PNB) sometime in 1979-1981. Records do not reveal though the original amount of the loan from PNB, but the loan agreement was amended on March 5, 1981 and the loan amount was increased to P450,000.00. The loan was secured by

mortgages constituted on the following properties: (1) Lot No. 356-A, covered by TCT No. 52751 in Dr. Rosario's name; (2) Lot No. 4489, with an area of 1,862 square meters, located in Dagupan City, Pangasinan, covered by TCT No. 24832; and (3) Lot No. 5-F-8-C-2-B-2-A, with an area of 1,001 square meters, located in Nancayasan, Urdaneta, Pangasinan, covered by TCT No. 104189. [21] The amended loan agreement and mortgage on Lot No. 356-A was annotated on TCT No. 52751 on March 6, 1981 as **Entry No. 520099**. [22]

Five days later, on March 11, 1981, another annotation, **Entry No. 520469**, [23] was made on TCT No. 52751, canceling the adverse claim on Lot No. 356-A under Entry Nos. 274471-274472, on the basis of the Cancellation and Discharge of Mortgage executed by Dr. Rosario on March 5, 1981. Entry No. 520469 consisted of both stamped and handwritten portions, and exactly reads:

Entry No. 520469. Cancellation of Adverse Claim executed by Andres Rosario in favor of same. The incumbrance/mortgage appearing under Entry No. 274471-72 is now cancelled as per Cancellation and Discharge of Mortgage Ratified before Notary Public Mauro G. Meris on March 5, 1981; Doc. No. 215; Page No. 44; Book No. 1; Series Of 1981.

Lingayen, Pangasinan, 3-11, 19981

[Signed: Pedro dela
Cruz]

Register of Deeds [24]

On December 8, 1981, Dr. Rosario and his wife, Duque-Rosario (spouses Rosario), acquired a third loan in the amount of P1,200,000.00 from Banco Filipino Savings and Mortgage Bank (Banco Filipino). To secure said loan, the spouses Rosario again constituted mortgages on Lot No. 356-A, Lot No. 4489, and Lot No. 5-F-8-C-2-B-2-A. The mortgage on Lot No. 356-A was annotated on TCT No. 52751 as **Entry No. 533283** [25] on December 18, 1981. Since the construction of a two-storey commercial building on Lot No. 5-F-8-C-2-B-2-A was still incomplete, the loan value thereof as collateral was deducted from the approved loan amount. Thus, the spouses Rosario could only avail of the maximum loan amount of P830,064.00 from Banco Filipino.

Because Banco Filipino paid the balance of Dr. Rosario's loan from PNB, the mortgage on Lot No. 356-A in favor of PNB was cancelled per **Entry No. 533478** [26] on TCT No. 52751 dated December 23, 1981.

On February 13, 1986, the Torbela siblings filed before the Regional Trial Court (RTC) of Urdaneta, Pangasinan, a Complaint for recovery of ownership and possession of Lot No. 356-A, plus damages, against the spouses Rosario, which was docketed as **Civil Case No. U-4359**. On the same day, Entry Nos. 593493 and 593494 were made on TCT No. 52751 that read as follows:

Entry No. 593494 – Complaint – Civil Case No. U-4359 (For: Recovery of Ownership and Possession and Damages. (Sup. Paper).

Entry No. 593493 – Notice of Lis Pendens – The parcel of land described in this title is subject to Lis Pendens executed by Lilirosa B. Rosario, CLAO, Trial Attorney dated February 13, 1986. Filed to TCT No. 52751 February 13, 1986-1986 February 13 – 3:30 p.m.

(SGD.) PACIFICO M. BRAGANZA
Register of Deeds [27]

The spouses Rosario afterwards failed to pay their loan from Banco Filipino. As of April 2, 1987, the spouses Rosario's outstanding principal obligation and penalty charges amounted to P743,296.82 and P151,524.00, respectively. [28]

Banco Filipino extrajudicially foreclosed the mortgages on Lot No. 356-A, Lot No. 4489, and Lot No. 5-F-8-C-2-B-2-A. During the public auction on April 2, 1987, Banco Filipino was the lone bidder for the three foreclosed properties for the price of P1,372,387.04. The Certificate of Sale [29] dated April 2, 1987, in favor of Banco Filipino, was annotated on TCT No. 52751 on April 14, 1987 as **Entry No. 610623**. [30]

On December 9, 1987, the Torbela siblings filed before the RTC their Amended Complaint, [31] impleading Banco Filipino as additional defendant in Civil Case No. U-4359 and praying that the spouses Rosario be ordered to redeem Lot No. 356-A from Banco Filipino.

The spouses Rosario instituted before the RTC on March 4, 1988 a case for annulment of extrajudicial foreclosure and damages, with prayer for a writ of preliminary injunction and temporary restraining order, against Banco Filipino, the Provincial *Ex Officio* Sheriff and his Deputy, and the Register of Deeds of Pangasinan. The case was docketed as **Civil Case No. U-4667**. Another notice of *lis pendens* was annotated on TCT No. 52751 on March 10, 1988 as **Entry No. 627059**, viz:

Entry No. 627059 – Lis Pendens – Dr. Andres T. Rosario and Lena Duque Rosario, Plaintiff versus Banco Filipino, et. al. Civil Case No. U-4667 or Annulment of ExtraJudicial Foreclosure of Real Estate Mortgage – The parcel of land described in this title is subject to Notice of Lis Pendens subscribed and sworn to before Notary Public Mauro G. Meris, as Doc. No. 21; Page No. 5; Book 111; S-1988. March 7, 1988-1988 March 10, 1:00 p.m.

(SGD.) RUFINO M. MORENO, SR.
Register of Deeds [32]

The Torbela siblings intervened in Civil Case No. U-4667. Eventually, on October 17, 1990, the RTC issued an Order [33] dismissing without prejudice Civil Case No. U-4667 due to the spouses Rosario's failure to prosecute.