

FIRST DIVISION

[G.R. NO. 157862, April 16, 2009]

**PHILIPPINE COUNTRYSIDE RURAL BANK (LILOAN, CEBU), INC.,
PETITIONER, VS. JOVENAL B. TORING, RESPONDENT.**

DECISION

CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari^[1] assailing the Resolution^[2] dated 12 March 2003 of the Court of Appeals, which reversed its earlier Decision^[3] dated 30 September 2002 in CA-G.R. SP No. 68131 and affirmed the Summary Judgment dated 27 June 2000 of the Regional Trial Court of Mandaue City, Branch 55, in Civil Case No. MAN-2647.

The Facts

Jovenal B. Toring, respondent, is the registered owner of a 13,890 square meter parcel of land located in Barrio Basak, Lapu-Lapu City. The land, identified as Lot 2842 of the Cadastral Survey of Opon, L.R.C. Record No. 1003, is covered by Transfer Certificate of Title (TCT) No. 26401.^[4]

On 8 July 1993, respondent secured a P2,000,000 loan from petitioner Philippine Countryside Rural Bank (Liloan, Cebu), Inc. To secure the loan, respondent mortgaged to petitioner a portion of the land consisting of 8,890 square meters. The remaining 5,000 square meters were allegedly sold by respondent to Edwin Jumao-as as evidenced by a Deed of Absolute Sale^[5] dated 25 May 1993. A month after, through a Deed of Donation,^[6] Edwin Jumao-as contributed a portion of the same land, consisting of 2,000 square meters, in favor of Barangay Basak, Lapu-Lapu City. Petitioner allegedly only approved a loan amounting to P1,000,000 after knowing that a portion of the land was sold to a third party.

However, in the Real Estate Mortgage contract^[7] executed between petitioner and respondent, the entire land area of 13,890 square meters was mortgaged. Also, the appraised value of the land, estimated at P2,000,000, was the amount included in the mortgage contract as the value of the principal loan. Thereafter, respondent surrendered to petitioner the owner's duplicate copy of TCT No. 26401 and the actual physical possession of the land.

On 22 March 1996, due to non-payment of the mortgage debt, petitioner sent a demand letter to respondent informing him of petitioner's intention to foreclose the mortgage.^[8] Respondent reacted by filing a Complaint for Mandamus with Damages and with Prayer for Temporary Restraining Order and a Writ of Preliminary

Injunction against petitioner with the Regional Trial Court (RTC) of Mandaue City, Branch 55, docketed as Civil Case No. MAN-2647.^[9]

In the complaint, respondent prayed to restrain petitioner from foreclosing the entire property covered by the mortgage contract because only the remaining 8,890 square meters and not the entire area of 13,890 square meters of the land was validly mortgaged by respondent to petitioner. Respondent further requested the trial court to direct petitioner to lend the owner's duplicate copy of TCT No. 26401 for the purpose of annotating with the Register of Deeds of Lapu-Lapu City the deed of sale made to Edwin Jumao-as and the deed of donation to Barangay Basak in accordance with an order of a co-equal court, RTC of Lapu-Lapu City, Branch 53, in Cadastral Case No. 19.

Earlier, the Register of Deeds of Lapu-Lapu City refused to register the deed of sale and the deed of donation involving respondent's title and to issue the corresponding transfer certificates of title because of the non-submission of the pertinent subdivision plan and technical descriptions approved by the Bureau of Land as required by Section 58 of Presidential Decree No. 1529 (PD1529).^[10] Thus, Barangay Basak filed with the RTC of Lapu-Lapu City, Branch 53, a Petition for the Registration and/or Annotation of the Deed of Absolute Sale and Deed of Donation on TCT No. 26401, docketed as Cadastral Case No. 19.

On 23 November 1993, the RTC of Lapu-Lapu City, Branch 53, granted the petition.^[11] The RTC ruled that Section 58 of PD 1529 allows the annotation of the deed of sale on TCT No. 26401, which has the effect of showing the purchaser's title to the portion conveyed to him. However, with regard to the deed of donation, its annotation on the title must wait until the approved subdivision plan and technical descriptions have been submitted to the Register of Deeds in accordance with the same provision of law. The dispositive portion states:

WHEREFORE, the foregoing considered, this Court hereby directs the Register of Deeds of Lapu-Lapu City to annotate on Transfer Certificate of Title No. 26401 the Deed of Absolute Sale dated May 25, 1993 executed by Jovenal B. Toring in favor of Edwin T. Jumao-as, which was acknowledged before Notary Public Rosario E. Mendoza. In this connection, Jovenal B. Toring, who has expressed his conformity to the petition, is hereby ordered to make available his owner's duplicate of TCT No. 26401.

SO ORDERED.^[12]

Respondent, in order to abide by the decision made by the trial court, allegedly made several requests to petitioner to produce the owner's duplicate copy of TCT No. 26401 so that it may be presented to the Register of Deeds for titling. However, all his requests were supposedly ignored by petitioner.

On 19 April 1996, the RTC of Mandaue City, Branch 55, issued a temporary restraining order to prevent petitioner from foreclosing the entire property and from selling it in public auction.^[13]

On 3 May 1996, petitioner filed an Opposition^[14] to respondent's application for

preliminary injunction. Petitioner claimed that respondent never presented a copy of the deed of absolute sale dated 25 May 1993 and that the RTC Order dated 23 November 1993 had already been cancelled as annotated at the back of TCT No. 26401.

At the hearing held on 10 May 1996, the trial court ordered the parties to submit their respective memoranda. Accordingly, respondent submitted his Memorandum in Support of the Application for Writ of Preliminary Injunction dated 16 May 1996. Here, respondent cited the testimony given by petitioner's branch manager, Joshur Judd D. Lanete (Lanete) in another case, Civil Case No. 2893-L entitled "*Barangay Basak, Lapu-Lapu City v. Romulo Jereza, Gerardo Petalinghug and Galleon & Agra Realty Development Corporation*" filed with the RTC of Lapu-Lapu City, Branch 27. In the testimony, Lanete admitted that petitioner had knowledge of the sale of the land to Edwin Jumao-as and that petitioner approved the loan of respondent in the amount of P1,000,000.

On 13 June 1996, petitioner filed its Answer with Counterclaim.^[15] Petitioner admitted that respondent secured a loan with the bank; that the collateral given to secure the payment of the loan involved the entire 13,890 square meter land covered by TCT No. 26401 which is owned by respondent; and that petitioner threatened to foreclose the mortgage for non-payment of the debt as it fell due.

However, petitioner denied knowledge that the 5,000 square meter portion of the land mortgaged by respondent was sold to Edwin Jumao-as; that 2,000 square meters of the portion sold were donated to Barangay Basak; and that respondent only mortgaged the remaining area of 8,890 square meters to petitioner. Petitioner alleged that the deed of sale executed was simulated and that the mortgage contract clearly showed that the entire area of 13,890 square meter of land had been included in the contract.

Further, petitioner denied knowledge of the filing of a petition in court by Barangay Basak and the issuance by Lanete of the two certifications^[16] dated 19 November 1993. The two certifications indicated that petitioner had no objection to the donation made with the portion of the land covered by TCT No. 26401 and that such portion was free from liens and encumbrances. The certifications state:

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that we have no objection to the noble purpose in the pursuit of public interest regarding the donation of Mr. Edwin T. Jumao-as in favor of Barangay Basak of the 2,000 sq. m. that will be annotated at the back of TCT No. 26401.

This certification is issued for whatever purpose it may serve.

Issued this 19th day of November, 1993.

x x x x

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that Lot 2842-A subdivided by Engr. Vicente Concepcion, Geodetic Engineer comprising an area of 2,000 sq. m. donated to Barangay Basak part of TCT No. 26401 is free from liens & encumbrances.

This certification is issued for whatever purpose it may serve.

x x x x

In an Order^[17] dated 18 June 1996, the trial court favorably granted the issuance of a writ of preliminary injunction.

On 19 February 1999, respondent filed a Motion for Leave to File Incorporated Amended Complaint. In the amended complaint, respondent alleged that aside from the remaining 8,890 square meter land covered by TCT No. 26401, another property was also mortgaged to secure the payment of the loan. This property was a condominium unit located in Natividad Centrum I, Cebu City, covered by Condominium Certificate of Title (CCT) No. 209.^[18] Respondent stated that the loan had already been fully paid, as evidenced by the Cancellation and Discharge of Mortgage on the condominium unit issued by petitioner on 11 October 1995.^[19] The respondent prayed for the return of TCT No. 26401, as the loan secured by the mortgage had already been paid.

On 30 April 1999, petitioner filed a Motion to Declare Plaintiff in Contempt of Court with Opposition to Amend the Complaint.^[20] Petitioner denied the claim that the mortgage over the condominium unit was constituted to guarantee the same loan as that secured by the land covered by TCT No. 26401. Petitioner cited that the mortgage over the condominium unit was a totally different transaction executed a year after the mortgage on the land.

On 8 October 1999, respondent filed a Motion for Summary Judgment^[21] under Rule 35 of the 1997 Rules of Civil Procedure based on respondent's affidavit attached to the motion reiterating the allegations in his complaint. Petitioner, in turn, filed its opposition to the motion^[22] insisting that summary judgment is proper only where there are no genuine issues as to any material fact. However, all the material allegations in the complaint have been disputed by petitioner.

On 27 June 2000, the trial court granted the motion for summary judgment and decided the case in favor of respondent.^[23] The dispositive portion of the decision states:

WHEREFORE, judgment is rendered in favor of plaintiff Jovenal B. Toring and against defendant Philippine Countryside Rural Bank (Liloan, Cebu), ordering the bank to surrender the owner's duplicate copy of TCT No. 26401 for the purpose of annotating/registering with the Register of Deeds of Lapu-Lapu City the Deed of Absolute Sale and the Deed of Donation above-mentioned in accordance with the Order of the Regional

Trail Court, Branch 53, Lapu-Lapu City in Cad. Case No. 19. Likewise, the writ of injunction issued is ordered made permanent.

SO ORDERED.^[24]

Petitioner filed an appeal with the Court of Appeals, docketed as CA-G.R. SP No. 68131.

The Ruling of the Court of Appeals

On 30 September 2002, the appellate court reversed the decision of the trial court and recognized the authority of petitioner to foreclose the mortgage on the entire property covered by TCT No. 26401.^[25] The relevant portions of the decision state:

A cursory examination of TCT No. 26401 reveals that the alleged Deed of Sale dated May 25, 1993 was never registered and annotated therein. What appears on the said title is a Deed of Absolute Sale in favor of Edwin Jumao-as dated September 3, 1993. As such, the Deed of Donation in favor of Barangay Basak is not valid since at the time of its execution, the alleged donor Edwin Jumao-as has not yet acquired any portion of TCT No. 26401. As aptly put by defendant-appellant, it would be putting the cart before the horse.

Defendant-appellant contended that the trial court erred in giving credence to the testimony of the bank manager given in another case. We believe the trial court, indeed, erred in doing so.

It bears stressing that what was given weight by the trial court are the several pages of Transcript of Stenographic Notes (TSN) relating to the testimony given by the bank manager of defendant-appellant bank. The testimony deserves scant consideration for two obvious reasons: (1) It was made in another entirely different case involving different parties and; (2) The bank manager was not actually presented in court for cross-examination.

The actual presentation of the bank manager would have clarified the circumstances surrounding the issuance of the aforesaid two (2) letters both dated November 19, 1993. The circumstances surrounding the issuance of the said letters and the reasons for their issuance should have been unearthed in a full-blown trial in view of the claim by defendant-appellant that it *"suffered damages out of and from the malicious maneuvers of the plaintiff in successfully winning the feeling of defendant's Branch Manager."* Hence, in light of these doubts, plaintiff-appellant cannot unduly benefit from the trial court's decision to grant his motion for summary judgment which deprived defendant-appellant its right to cross-examine its own bank manager and squeeze the entire truth from him.

x x x x

WHEREFORE, premises considered, plaintiff-appellant's Appeal is hereby DENIED for lack of merit while that of defendant-appellant is hereby