

SECOND DIVISION

[G.R. No. 135796, October 03, 2002]

CHINA BANKING CORPORATION, PETITIONER, VS. MERCEDES M. OLIVER, RESPONDENT.

RESOLUTION

QUISUMBING, J.:

This petition for review^[1] seeks the reversal of the decision dated June 1, 1998, of the Court of Appeals in CA-G.R. SP No. 43836, dismissing China Banking Corporation's petition for certiorari to annul the two orders of the Regional Trial Court of Muntinlupa City, Branch 276, which earlier denied petitioner's motion to dismiss and then declared the bank in default in Civil Case No. 96-219. The appellate court also denied petitioner's motion for reconsideration in a resolution dated September 30, 1998.

The facts of this case are culled from the records.

In August 1995, Pangan Lim, Jr. and a certain Mercedes M. Oliver opened a joint account in China Banking Corporation (hereinafter Chinabank) at EDSA Balintawak Branch. Lim introduced Oliver to the bank's branch manager as his partner in the rice and *palay* trading business. Thereafter, Lim and Oliver applied for a P17 million loan, offering as collateral a 7,782 square meter lot located in Tunasan, Muntinlupa and covered by TCT No. S-50195 in the name of Oliver. The bank approved the application. On November 17, 1995, Lim and Oliver executed in favor of Chinabank a promissory note for P16,650,000, as well as a Real Estate Mortgage on the property. The mortgage was duly registered and annotated on the original title under the custody of the Registry of Deeds of Makati and on the owner's duplicate copy in the bank's possession. The mortgage document showed Mercedes Oliver's address to be No. 95 Malakas Street, Diliman, Quezon City. For brevity, she is hereafter referred to as "Oliver One."

On November 18, 1996, respondent claiming that she is Mercedes M. Oliver with postal office address at No. 40 J.P. Rizal St., San Pedro, Laguna, filed an action for annulment of mortgage and cancellation of title with damages against Chinabank, Register of Deeds Atty. Mila G. Flores, and Deputy Register of Deeds Atty. Ferdinand P. Ignacio. Respondent, whom we shall call as "Oliver Two," claimed that she was the registered and lawful owner of the land subject of the real estate mortgage; that the owner's duplicate copy of the title had always been in her possession; and that she did not apply for a loan or surrender her title to Chinabank.^[2] She prayed that: (1) the owner's duplicate copy surrendered to Chinabank as well as the original title with the Registry of Deeds be cancelled; (2) the mortgage be declared null and void; and (3) the Registry of Deeds be ordered to issue a new and clean title in her name.

^[3]

On January 31, 1997, Chinabank moved to dismiss the case for lack of cause of action and non-joinder of an indispensable party, the mortgagor.

On March 13, 1997, Judge Norma C. Perello issued an order denying the motion to dismiss, stating that:

A reading of the COMPLAINT which of course is hypothetically admitted, will show that a valid judgment can be rendered against defendant. Plaintiff having sufficiently averred that defendants negligently failed to ascertain the genuineness or not (sic) of the title of the land mortgaged to it upon the claim of ownership by the mortgagors. Furthermore, the matters alleged in the MOTION TO DISMISS are all evidentiary which Defendants may substantiate at the appointed hours.^[4]

On April 7, 1997, Chinabank filed with the Court of Appeals a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or restraining order to enjoin enforcement of the March 13, 1997 order and further action on the case. The Court of Appeals directed respondent Oliver Two to file her comment and deferred action on the prayer for the issuance of the preliminary injunction pending submission of the comment.

On June 30, 1997, respondent Oliver Two moved to declare petitioner Chinabank in default. She pointed out that since petitioner received the order denying the motion to dismiss on March 21, 1997, it had only until April 7, 1997 to file its answer to the complaint. However, until the filing of the motion for default, no answer had been filed yet. The trial court granted the motion and declared petitioner in default in its order dated July 17, 1997, thus:

Acting on the Motion To Declare Defendant Bank in Default, and finding the same to be legally tenable is granted.

Accordingly, the Defendant Bank is declared in default as summons was served on It as early as December 16, 1996, but until date they have not filed an Answer nor any responsive pleading and instead, It filed a Motion to Dismiss, which was denied by this Court on March 13, 1997.

The filing of a CERTIORARI to question the Orders by this Court did not toll the period for Defendants to answer the complaint.

Therefore, the reglementary period for the filing of responsive pleading has long expired.

Let the case be submitted for Decision based on the complaint.

It is SO ORDERED.^[5]

Consequently, petitioner Chinabank filed a supplemental petition on August 11, 1997, seeking annulment of the July 17, 1997 order. It argued that the special civil action for certiorari filed in the Court of Appeals interrupted the proceedings before the trial court, thereby staying the period for filing the answer.

On June 1, 1998, the Court of Appeals promulgated the assailed decision, finding no grave abuse of discretion committed by the trial judge in ruling that the Rules of Court provided the manner of impleading parties to a case and in suggesting that petitioner file an appropriate action to bring the mortgagor within the court's

jurisdiction. The appellate court said that Rule 6, Section 11 of the Rules of Court allows petitioner to file a third-party complaint against the mortgagor. As to the judgment by default, the Court of Appeals said that an order denying the motion to dismiss is interlocutory and may not be questioned through a special civil action for certiorari. The defendant must proceed with the case and raise the issues in his motion to dismiss when he appeals to a higher court. In this case, petitioner Chinabank should have filed its answer when it received the March 13, 1997 order denying the motion to dismiss. The special civil action for certiorari with the Court of Appeals did not interrupt the period to file an answer, there being no temporary restraining order or writ of preliminary injunction issued.

The Court of Appeals denied petitioner's motion for reconsideration. Hence, this petition anchored on the following grounds:

I

SEC. 11, RULE 3, OF THE 1997 RULES OF CIVIL PROCEDURE DOES NOT APPLY WHERE THE PARTY WHO WAS NOT IMPEADED IS AN INDISPENSABLE PARTY; INSTEAD, SECTION 7, RULE 3 THEREOF, APPLIES.

II

THE MORTGAGOR MERCEDES M. OLIVER IS AN INDISPENSABLE PARTY UNDER SECTION 7, RULE 3, OF THE 1997 RULES OF CIVIL PROCEDURE, AND MUST THEREFORE INDISPENSABLY BE JOINED AS A PARTY-DEFENDANT.

III

RESPONDENT'S CAUSE OF ACTION IS ANCHORED ON HER CLAIM AS THE REGISTERED AND LAWFUL OWNER OF THE PROPERTY IN QUESTION AND THAT HER OWNER'S DUPLICATE COPY OF THE TITLE (ANNEX "A") IS THE TRUE AND GENUINE TITLE. THUS, THE ACTION BEFORE THE HONORABLE COURT-A-QUO IS A LAND DISPUTE BETWEEN TWO (2) PERSONS CLAIMING OWNERSHIP.

IV

THE ANNULMENT OF THE MORTGAGE AND THE CANCELLATION OF ANNEXES "B" AND "C" AS PRAYED FOR IN THE COMPLAINT IN CIVIL CASE NO. 96-219 ARE INEXTRICABLY INTERTWINED WITH THE ISSUE OF OWNERSHIP. HENCE, THE LATTER MUST FIRST BE RESOLVED TO DETERMINE THE FORMER.

V

THE OWNER'S DUPLICATE COPY OF THE TITLE OF MORTGAGOR MERCEDES M. OLIVER OWNER'S DUPLICATE COPY CANNOT, IN HER ABSENCE, BE DECLARED NULL AND VOID. CONSEQUENTLY, INASMUCH AS THE MORTGAGE IN FAVOR OF PETITIONER IS DEPENDENT UPON THE OWNER'S DUPLICATE COPY OF THE MORTGAGOR, THE COMPLAINT IN CIVIL CASE NO. 96-219 CAN NOT RESOLVE THE CONTROVERSY WITH FINALITY.