

## SECOND DIVISION

**[ G.R. No. 152332, November 15, 2002 ]**

**DR. ROBERTO DE LEON, PETITIONER, VS. EDUARDO CALALO,  
REPRESENTED BY HIS ATTORNEY-IN-FACT LUZ A. MEDINA,  
RESPONDENT.**

### **D E C I S I O N**

**MENDOZA, J.:**

This is a petition for review on certiorari of the decision,<sup>[1]</sup> dated May 29, 2000, of the Court of Appeals, vacating and setting aside the decision of the Regional Trial Court, Branch 74, Olongapo City, and remanding the case to the court of origin for further proceedings, as well as the appellate court's resolution, dated February 19, 2002, denying reconsideration.

This case was brought below by respondent Eduardo Calalo for the annulment of the mortgage executed by his brother, Augorio Calalo, in favor of petitioner Roberto de Leon covering a piece of land and the improvements thereon, consisting of a residential house and a commercial building located at 45/4th Street, East Tapinac, Olongapo City. Respondent Eduardo alleged that he was the owner of the property mortgaged, having bought it for P306,000.00 from the spouses Federico and Marietta Malit on September 13, 1984. He claimed that, as he was then a member of the merchant marines and stayed abroad, the Deed of Absolute Sale covering the land was made in favor of his brother, Augorio Calalo; that on April 8, 1985, Augorio executed a Deed of Donation in favor of the minor Julsunthie Calalo, herein respondent's son, who, from the time the property was purchased until the filing of the complaint, had been receiving the fruits of the property; that on September 14, 1988, Augorio mortgaged the said property to petitioner Roberto de Leon without his [respondent's] knowledge and consent; that the mortgage was amended on September 30, 1988; that Augorio did not have any right to mortgage the property because he was not the owner thereof; and that he (respondent Eduardo) learned only in June 1992 that the property was the subject of an extrajudicial foreclosure. Named defendants in the action were petitioner Roberto de Leon, Augorio Calalo and Benjamin Gonzales, the sheriff conducting the foreclosure proceeding.

In due time, petitioner De Leon filed an answer in which he claimed to be a mortgagee in good faith, having previously ascertained the ownership of Augorio who occupied and possessed the land in question and in whose name the land was registered in the Register of Deeds and in various other documents. He pointed out that even the deed of sale attached to respondent's complaint showed that the land was in Augorio's name, clearly proving that the latter owned the property. Petitioner De Leon averred that the mortgage in his favor was registered with the Register of Deeds and that it had been amended four times.

Petitioner claimed that respondent Eduardo offered to settle the loan secured by the mortgage, but the negotiations fell through. He contended that respondent Eduardo

was precluded from denying Augorio's title inasmuch as, during their negotiations for the settlement of the loan, respondent Eduardo never mentioned his alleged purchase or ownership of the property.

Petitioner De Leon pointed out that the Deed of Donation allegedly executed by Augorio in favor of respondent's son Julsunthie was not registered and questioned its sudden appearance during the course of the trial. He argued that between a validly executed and registered real estate mortgage and a suspiciously executed deed of donation, the former must be given greater weight.

Lastly, petitioner contended that respondent Eduardo was an American citizen. Hence, under existing laws and the relevant provision of the Constitution, his alleged purchase of the property was illegal, even if he was actually the one who bought the property from its owners.

On the basis of the parties' evidence, the trial court declared the mortgage valid and petitioner De Leon to be a mortgagee in good faith and for value, and, therefore, he is entitled to the full protection of the law. It held that respondent Eduardo had no right to question the validity of the mortgage and that, between respondent's son Julsunthie and petitioner De Leon, the latter had a better right to the property considering that the Deed of Donation in favor of Julsunthie had not been registered. The pertinent portions of the trial court's decision read:

The evidence in the record shows that before the defendant Dr. Roberto de Leon mortgaged the property in question, he required the mortgagor Augorio Calalo to submit proofs to him that he is the owner of the property. Augorio Calalo submitted to him certificates and clearances from the Register of Deeds, the Assessor's Office, Treasurer's office, the barangay captain and also from the Municipal Trial Court of Olongapo City to prove that he is in fact the real owner of said property and that no person will object to the mortgage of the said property to him. He identified said documents which were marked as Exhibits "I" to "II" with sub-markings. That to protect their interest, they also made personal inquiries from the different government agencies as to who is the actual owner of said property and they found out that Augorio Calalo is the real owner of the property in question. Defendant and his witness Dr. Rementilla likewise inspected the property in question more or less two to three times and found out that the property is owned by Augorio Calalo who is living and occupying the said property. That when they found out that the real owner of the property in question is Augorio Calalo it is only then that Dr. de Leon entered into a contract of mortgage with Augorio Calalo. . . . .

Plaintiff, by his own declaration in the witness stand, admitted that he is an American citizen. While he was formerly a Filipino by birth, after his service in the United States Navy, ultimately he became an American citizen

. . . . .

Even Eduardo Calalo's son Julsunthie Calalo is not also eligible to contest or question the validity of the mortgage although Augorio Calalo executed a Deed of Donation in his favor duly accepted by him and his father, the plaintiff, because the Deed of Donation was never registered