

## **TWENTY-FIRST DIVISION**

**[ CA-G.R. CV NO. 02497-MIN, February 26, 2015 ]**

**SPOUSES ELENO AND TERESITA GAGNAO, PLAINTIFFS-  
APPELLEES, VS. RURAL BANK OF POLOMOLOK, INC.,  
DEFENDANT-APPELLANT,**

**DOLE PHILIPPINES, INC., DEFENDANT.**

### **DECISION**

**SINGH, J.:[\*]**

This is an appeal under Rule 41 of the Rules of Court filed by defendant-appellant assailing the Decision dated December 28, 2010<sup>[1]</sup> of the Regional Trial Court of Polomolok, South Cotabato, 11<sup>th</sup> Judicial Regional, Branch 39 (RTC), in Civil Case No. 117.

#### **The Facts**

Plaintiffs-Appellees Spouses Eleno and Teresita Gagnao (Sps. Gagnao) are the owners of three (3) parcels of agricultural land covered by Transfer Certificates of Title (TCT) Nos. T-15841 (Lot No. 318),<sup>[2]</sup> No. T-33316 (Lot No. 3229),<sup>[3]</sup> and Original Certificate of Title No. (P-32372) P12667<sup>[4]</sup> (Lot No. 372, by virtue of an Absolute Deed of Sale<sup>[5]</sup>), all located in Brgy. Cebuano, Tupi, South Cotabato.

The three (3) agricultural lands were cultivated under the Farm Management Contract (FMC) with defendant DOLE Philippines, Inc. (DOLE). Despite the FMC, Sps. Gagnao were allowed by DOLE to mortgage the said agricultural lands as long the they were informed of such loan and the terms of the FMC were observed.<sup>[6]</sup>

On March 18, 1985, Sps. Gagnao mortgaged to defendant-appellant Rural Bank of Polomolok, Inc. (Bank of Polomolok) two of the agricultural lands (TCT Nos. T-15841 and T-33316) as security for the John Deere Farm Tractor unit they bought in the amount of P250,000.00.<sup>[7]</sup>

On May 4, 1991, the FMCs<sup>[8]</sup> were renewed with expiry dates of 2000, 2009 and 2010, respectively. With these renewals, Sps. Gagnao received partial consideration or rents.

Later on, when Sps. Gagnao's demands for the payment of the amounts further due them under the renewed FMCs were not heeded by DOLE, they discovered that the Manager of the Bank of Polomolok asked DOLE to halt all payment of rentals to them<sup>[9]</sup> because the mortgage on their properties were foreclosed on April 30, 1990 with the Bank of Polomolok emerging as the highest bidder for the total amount of P677,070.37. The Certificate of Sale was annotated on the Sps. Gagnao's titles on

October 11, 1990.<sup>[10]</sup>

On March 1, 1995, Sps. Gagnao filed a Complaint for Declaration of Nullity of Extra-judicial Foreclosure, Certificate of Sale and Real Estate Mortgage, Recovery of Ownership and Possession and Damages with Prayer for Writ of Preliminary Injunction<sup>[11]</sup> against DOLE and the Bank of Polomolok before the RTC.

In their complaint, Sps. Gagnao claimed:

"3. That on March 24, 1985, the defendant Rural Bank of Polomolok, Inc., through its owner/manager Engr. Jose R. Lansang, sold on credit a certain John Deere Farm tractor for the sum of P250,000.00 unto and in favor of Plaintiff Eleno Gagnao, who upon insinuations of the former, deposited without the consent of ... Teresita Gagnao, their Transfer Certificate of Title No. T-15841 . . . and Transfer Certificate of Title No. T-33316 ... to secure the credit by way of Real Estate Mortgage which he did accomplished (sic) subject to his wife's approval/consent;

x x x

5. That due to the inherent defects and malfunctions of major parts of the John Deere Farm Tractor from the time it was delivered to ... Eleno Gagnao, the later offered to return the same to ... Rural Bank of Polomolok, Inc., but its owner/manager Engr. Jose R. Lansang was again able to convince ... Eleno Gagnao to keep subject tractor on the representations that he will never resort to foreclosure of the collaterals and is willing to accept payment on a "pay when able" scheme provided that the latter execute a Special Power of Attorney in his favor to collect whatever income the encumbered two (2) parcels of land will have with ... DOLE Philippines, Inc., which ... Eleno Gagnao did on October 13, 1988;

x x x

8-A. That ... Rural Bank of Polomolok, Inc., surreptitiously registered the Real Estate Mortgage dated March 24, 1985 with the falsified signature of the Plaintiff Teresita Gagnao;

8-A-1. That the registration ... of the Real Estate Mortgage ... with the falsified signature of Plaintiff Teresita Gagnao was done surreptitiously to circumvent and encompass the aforesaid representations of the owner/manager of the defendant Polomolok Rural Bank, Inc., (sic) that he would not resort to foreclosures and his commitment to "pay when able" terms in favor of the Plaintiff Eleno Gagnao, moreover, knowing fully well that it was unsigned at the time by the Plaintiff Teresita Sanz Gagnao;

x x x

8-B-1. That the Certificate of Sale ... is null and void *ab initio* and can cause no effect at all for the reason that ... the Notice of Extra-Judicial Foreclosure dated March 2, 1990 was never sent to nor received by him

and for a fact, not published nor posted ... [and] was prepared and executed by the Provincial Sheriff who had no jurisdiction over the real properties subject of the foreclosure...;

8-B-2. That ... the "Sheriff's Notice of Public Auction Sale" dated March 2, 1990, was never published as required by law... which posting even if indeed [it] were done would still be contrary to the requirements of the law, because it was all done in General Santos City, *sanz* (sic) publication in any newspaper, while the two (2) parcels of land subject of the foreclosure are all (sic) located in Brgy. Cebuano, Tupi, South Cotabato...;"<sup>[12]</sup> (emphasis supplied)

Sps. Gagnao added that assuming *arguendo* that the Real Estate Mortgage was valid, the same had already been released and cancelled by the payment of DOLE of the rentals due to them in the amount of P664,219.30,<sup>[13]</sup> to the Bank of Polomolok as contained in a Compromise Agreement they entered into and as approved by the Municipal Trial Court of Tupi in Civil Case No. 331.<sup>[14]</sup>

The Bank of Polomolok denied the accusations against it in its Answer<sup>[15]</sup> and claimed, as found by the RTC, that:

"Plaintiffs had an existing loan with defendant Bank amounting to P250,000.00 which they incurred after buying a tractor unit from the latter. The tractor unit was in perfect operating condition. To cover the balance payment (sic) of the unit, they encumbered their property, i.e., Lot 372. Defendant Bank has no way of knowing whether plaintiff Eleno Gagnao's wife did not consent [to] the mortgage as it was plaintiff Eleno Gagnao who submitted the already notarized mortgage document to it. In 1981, plaintiffs again secured additional loan of P15,000.00 from defendant Bank, years thereafter or in 1985 they again secured another P250,000.00 loan from it and put up their titles (Lots 318 and 3229) as collateral therefor. Defendant Bank stresses it is not its business practice to allow clients to "pay as you can" basis neither [to] agree not to foreclose mortgages in its favor."<sup>[16]</sup> (emphasis supplied)

For its part, DOLE alleged,<sup>[17]</sup> as upheld by the RTC, that:

A. xxx it was plaintiff who defrauded defendant DOLEFIL by signing on May 4, 1991 renewal agreements on existing FMC with DOLEFIL covering Lot Nos. 372, 318 and 3229 extending the terms of the FMC xxx and receiving from defendant DOLEFIL the aggregate amount of P280,266.50 representing the three (3) years advance rental xxx.

B. [Plaintiffs] signed the FMC renewal xxx even as they are aware that Lot No. 318 had earlier been foreclosed by the Rural Bank of Polomolok while Lot Nos. 372 and 3229 had already been sold at public auction xxx

C. xxx even as plaintiff Eleno Gagnao executed a Special Power of Attorney in favor of the Rural Bank xxx the same cannot be possibly implemented by DOLEFIL due the fact that plaintiffs already continuously drawn from DOLEFIL series of advances xxx.

G. xxx even as plaintiffs are aware that the redemption period would expire on October 11, 1991, plaintiffs signed with defendant DOLEFIL a renewal of the FMC pocketing P280,266.50 advance rental leaving defendants Bank and DOLEFIL to contest between themselves as to who has the better right of possession over the foreclosed properties.

x x x

I. DOLEFIL was constrained to file xxx for Forcible Entry with Damages against the Bank.

J. DOLEFIL and the Bank finally came to a compromise which was adopted as a decision dated 7 October 1993 xxx.”<sup>[18]</sup> (emphasis supplied)

On September 13, 1996, DOLE filed a Motion for Leave to File Supplemental Answer<sup>[19]</sup> with attached Supplemental Answer with Counterclaim and Cross-Claim<sup>[20]</sup> alleging that what were foreclosed were only TCT Nos. T-15841 (Lot No. 318) and No. T-33316 (Lot No. 3229). OCT No. (P-32372) P12667 (Lot No. 372) was never foreclosed as it was not subject or part of the Real Estate Mortgage. As such, DOLE sought the reimbursement of the amount of P446,919.41 from the P664,219.30 (by virtue of the Compromise Agreement) it paid to the Bank of Polomolok as rentals for the three (3) agricultural lands.

On November 18, 1996, Sps. Gagnao filed an Urgent Motion for Summary Judgment,<sup>[21]</sup> alleging that since the parcel of land covered by OCT No. (P-32372) P12667 (Lot No. 372) was never mortgaged it could therefore never be foreclosed. In addition, a Cancellation and Discharge of Mortgage<sup>[22]</sup> was caused by the Rural Bank to be annotated on the title, so there should be no more question as to the validity of the alleged Real Estate Mortgage over it. Sps. Gagnao ultimately prayed for the release of the owner's duplicate copy of OCT No. (P-32372) P12667, delivery of the possession of the said land, and for the Bank of Polomolok to be ordered to refund the corresponding rental payments made by DOLE for the said Lot No. 372.

In an Order dated February 26, 1997,<sup>[23]</sup> the RTC granted Sps. Gagnao's Urgent Motion for Summary Judgment. The dispositive portion reads:

“WHEREFORE, judgment is hereby rendered adjudicating ownership in favor of the plaintiff[s] over Lot No. 372, Pls-246-D and ordering defendant Rural Bank of Polomolok, Inc. to release the owner's duplicate copy of OCT No. (P-32372) P-12667 to the plaintiff.” (emphasis supplied)

The aforesaid order became final and executory prompting the RTC to issue the June 11, 1997 Order directing the Bank of Polomolok to deliver the corresponding amount of rentals it received from DOLE for the land covered by OCT No. (P-32372) P12667 to the RTC.<sup>[24]</sup> In compliance thereto, the Bank of Polomolok deposited P200,000.00 with the trial court,<sup>[25]</sup> and the balance of P69,701.27<sup>[26]</sup> was later deposited on May 17, 1999. These deposits and subsequent rental deposits corresponding to OCT No. (P-32372) P12667 by DOLE with the RTC were later on withdrawn and given to the Sps. Gagnao upon motion.

In a twist of events, a Motion for Leave to Intervene was filed on November 25, 1997<sup>[27]</sup> by one Elenita Landicho, the registered owner of OCT No. (P-32372)

P12667, claiming that the purported Deed of Absolute Sale in favor of Sps. Gagnao is simulated and she prayed that as the rightful owner, all rentals corresponding to the said land should be given to her. The RTC initially granted her intervention in an Order dated March 3, 1998,<sup>[28]</sup> but the same was withdrawn in its April 20, 1999 Order.<sup>[29]</sup>

In a Manifestation filed on May 27, 1999,<sup>[30]</sup> the Bank of Polomolok manifested its inability to comply with the RTC directive to surrender the owner's duplicate copy of OCT No. (P-32372) P12667 considering that it was allegedly encumbered to it by Elenita Landicho on December 23, 1996 in the amount of ₱1,200,000.00 and duly registered on February 7, 1997.<sup>[31]</sup>

With such non-compliance, the RTC, upon motion of Sps. Gagnao,<sup>[32]</sup> issued an Order dated January 29, 2001<sup>[33]</sup> canceling said title and the encumbrances inscribed thereon and directing the Register of Deeds to issue another owner's duplicate to the Sps. Gagnao.

On April 17, 2006, the RTC issued a Resolution<sup>[34]</sup> denying, among others, the admission of the belatedly filed Formal Offer of Exhibits of Sps. Gagnao.<sup>[35]</sup>

In a Notice of *Lis Pendens*<sup>[36]</sup> furnished by Sps. Gagnao to the RTC, they stated that TCT No. T-15841 registered under the name of Eleno Gagnao has been cancelled and TCT No. T-63348 was issued under the name of the Bank of Polomolok until it was subdivided into TCT Nos. T-83953,<sup>[37]</sup> TCT No. T-83954,<sup>[38]</sup> TCT No. T-83955,<sup>[39]</sup> and T-83956.<sup>[40]</sup> As to TCT No. T-33316, the same has been cancelled in favor of the Bank of Polomolok and a new title, TCT No. T-63347 in the name of the latter was likewise subdivided into TCT Nos. T-83950,<sup>[41]</sup> T-83951,<sup>[42]</sup> and T-83952.<sup>[43]</sup>

In an Order dated February 10, 2010,<sup>[44]</sup> the RTC directed Sps. Gagnao to submit their memorandum<sup>[45]</sup> after the Bank of Polomolok manifested that it will "forego the submission of the exhibits since the exhibits are almost the same" with the Sps. Gagnao.

In order to expedite the resolution of the case, the RTC, upon manifestation of Sps. Gagnao<sup>[46]</sup> and motion of DOLE,<sup>[47]</sup> issued an Order dated November 30, 2010,<sup>[48]</sup> granting the waiver of both parties' counterclaims against each other.

### **The RTC Ruling**

After a protracted trial, the RTC issued on December 28, 2010, a Decision<sup>[49]</sup> declaring, among others, the Real Estate Mortgage void and the consequent foreclosure sale void as the General Santos City court which conducted the auction had no jurisdiction over the properties of Sps. Gagnao located in the Municipality of Tupi, South Cotabato. The dispositive portion of the Decision reads:

"IN LIGHT OF THE FOREGOING, the Court hereby GIVES DUE COURSE [to] plaintiffs' complaint and ORDERS the following:

- i) The Real Estate Mortgage dated 24 March 1985 and registered on