

FIRST DIVISION

[G.R. No. 171628, June 13, 2011]

ARMANDO V. ALANO [DECEASED], SUBSTITUTED BY ELENA ALANO-TORRES,* PETITIONER, VS. PLANTER'S DEVELOPMENT BANK, AS SUCCESSOR-IN-INTEREST OF MAUNLAD SAVINGS AND LOAN ASSOCIATION, INC.,* RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

"No one can give what he does not have" (Nemo dat quod non habet).

This Amended Petition for Review on *Certiorari* [1] under Rule 45 of the Rules of Court assails the June 9, 2005 Decision [2] and the February 21, 2006 Resolution [3] of the Court of Appeals (CA) in CA G.R. CV No. 58554.

Factual Antecedents

Petitioner Armando V. Alano and his brother, the late Agapito V. Alano, Jr., inherited from their father a parcel of land located at Gov. Forbes St., Sampaloc, Manila. [4]

On June 30, 1988, petitioner executed a Special Power of Attorney [5] authorizing his brother to sell their property in Manila. From the proceeds of the sale, the brothers purchased on September 22, 1988 a residential house located at No. 60 Encarnacion St., BF Homes, Quezon City. [6] The title of the Quezon City property, however, was not immediately transferred to them because the duplicate and original copies of the title were destroyed by a fire that gutted the Quezon City Hall Building. [7]

On June 27, 1990, Agapito V. Alano, Jr. died leaving behind his wife, Lydia J. Alano (Lydia), and four legitimate children, who adjudicated to themselves the property in Quezon City. [8] Consequently, title to the said property was reconstituted as Transfer Certificate of Title (TCT) No. 18990 and registered solely in the names of Lydia and her four children. [9] This prompted petitioner to execute an Affidavit of Adverse Claim [10] which was annotated on TCT No. 18990. [11] But because of the assurance of his nieces that they would put things right, petitioner agreed to delay the filing of a case in court. [12]

Meanwhile, Lydia filed with the Register of Deeds of Quezon City an Affidavit of Cancellation of Adverse Claim, [13] which caused the cancellation of the adverse claim annotated on TCT No. 18990. [14] Thereafter, by virtue of a Deed of Absolute Sale [15] allegedly executed by her children in her favor, TCT No. 18990 was

cancelled and a new one, TCT No. 90388, was issued solely in her name. [16]

On February 8, 1994, Slumberworld, Inc., represented by its President, Melecio A. Javier, and Treasurer, Lydia, obtained from Maunlad Savings and Loan Association, Inc. a loan of P2.3 million, secured by a Real Estate Mortgage [17] over the property covered by TCT No. 90388. [18]

On April 20, 1994, petitioner filed a Complaint [19] against Lydia, Melecio A. Javier, Maunlad Savings and Loan Association, Inc. and the Register of Deeds of Quezon City before the Regional Trial Court (RTC) of Quezon City, which was raffled to Branch 92. Petitioner sought the cancellation of TCT No. 90388, the issuance of a new title in his name for his one-half share of the Quezon City property, and the nullification of real estate mortgage insofar as his one-half share is concerned. [20]

Defendants Maunlad Savings and Loan Association, Inc. and the Register of Deeds of Quezon City filed their respective Answers. [21] Defendants Lydia and Melecio A. Javier, however, failed to file their respective Answers. Thus, the RTC in an Order [22] dated August 29, 1994 declared them in default.

Ruling of the Regional Trial Court

On September 12, 1996, the RTC rendered its Decision [23] declaring petitioner the owner of one-half of the subject property since an implied trust exists between him and the heirs of his brother. [24] The RTC, however, sustained the validity of the real estate mortgage. [25] According to the RTC, Maunlad Savings and Loan Association, Inc. had the right to rely on the Torrens title as there was no reason for it to doubt the mortgagor's ownership over the subject property. [26] Accordingly, the *fallo* of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring plaintiff Armando Alano the owner of one-half of the property in question;
2. Ordering the Register of Deeds of Quezon City to cancel TCT No. 90388 issued in the name of Lydia J. Alano and the corresponding owner's duplicate certificate and to issue a new one in the names of Armando V. Alano, single[,] ½ share pro indiviso and Lydia Alano, widow, ½ share pro indiviso with the corresponding mortgage lien annotation in favor of the Maunlad Savings and Loan [Association,] Inc. upon finality of this decision;
3. Ordering the defendant Maunlad Savings and Loan [Association,] Inc. to surrender [the] owner's duplicate copy of TCT No. 90388 to the Register of Deeds of Quezon City for cancellation upon finality of this decision;
4. Ordering defendants Lydia J. Alano and Melecio Javier to jointly and

severally pay the plaintiff the sum of P20,000.00 as attorney's fees and to pay the costs of suit.

SO ORDERED. [27]

Dissatisfied, petitioner moved for partial reconsideration [28] but the RTC denied the same in its Order [29] dated February 24, 1997.

Ruling of the Court of Appeals

Petitioner appealed [30] to the CA but to no avail. The CA found Maunlad Savings and Loan Association, Inc. to be a mortgagee in good faith since it took the necessary precautions to ascertain the status of the property sought to be mortgaged as well as the identity of the mortgagor by conducting an ocular inspection of the property and requiring the submission of documents, such as the latest tax receipts and tax clearance. [31] The CA thus disposed of the appeal as follows:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED** for lack of merit. The September 12, 1996 Decision of the Regional Trial Court of Quezon City, Branch 92, is hereby **AFFIRMED**.

SO ORDERED. [32]

Petitioner sought reconsideration [33] but the CA denied the same in its Resolution [34] dated February 21, 2006.

Issues

Hence, the present recourse, petitioner raising the following issues:

- I. WHETHER THE REAL ESTATE MORTGAGE EXECUTED BY DEFENDANT LYDIA J. ALANO WAS VALID AND BINDING WITH RESPECT TO PETITIONER'S CO-OWNER'S SHARE IN THE SUBJECT PROPERTY.
- II. WHETHER DEFENDANT MAUNLAD SAVINGS AND LOAN ASSOCIATION, INC. WAS AN INNOCENT MORTGAGEE IN GOOD FAITH.
- III. WHETHER PETITIONER MAY RIGHTFULLY BE MADE TO SUFFER THE CONSEQUENCES OF DEFENDANT LYDIA J. ALANO'S WRONGFUL ACT OF MORTGAGING THE SUBJECT PROPERTY. [35]

Petitioner's Arguments

Petitioner insists that Maunlad Savings and Loan Association, Inc. is not a

mortgagee in good faith as it failed to exercise due diligence in inspecting and ascertaining the status of the mortgaged property. Petitioner calls attention to the testimony of Credit Investigator Carlos S. Mañosca, who admitted that when he inspected the mortgaged property, he only checked the finishing of the house and the number of rooms. [36] Hence, he failed to see petitioner's apartment at the back portion of the property. [37] Moreover, the fact that there was an adverse claim annotated on the previous title of the property should have alerted Maunlad Savings and Loan Association, Inc. to conduct further investigation to verify the ownership of the mortgaged property. [38] All these prove that Maunlad Savings and Loan Association, Inc. was not a mortgagee in good faith. Corollarily, pursuant to Articles 2085 [39] and 493 [40] of the Civil Code, the real estate mortgage executed by Lydia is void insofar as petitioner's share in the mortgaged property is concerned. [41]

Respondent's Arguments

Respondent contends that the issue of whether Maunlad Savings and Loan Association, Inc. is a mortgagee in good faith is a question of fact, which is beyond the jurisdiction of this Court. [42] As to petitioner's allegation that there was a separate apartment at the back portion of the property, respondent claims that this was never raised during the trial or on appeal. [43] Hence, it is barred by estoppel. [44]

Respondent further claims that Maunlad Savings and Loan Association, Inc. has no obligation to look beyond the title considering that there was no adverse claim annotated on TCT No. 90388 covering the mortgaged property. [45] And since the mortgaged property was occupied by the mortgagor Lydia, there was also no need for Maunlad Savings and Loan Association, Inc. to verify the extent of her possessory rights. [46]

Our Ruling

The petition has merit.

The instant case is an exception to the rule that factual issues may not be raised in a petition under Rule 45 of the Rules of Court.

The rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court is not without exception. A review of factual issues is allowed when there is a misapprehension of facts or when the inference drawn from the facts is manifestly mistaken. [47] This case falls under exception.

Maunlad Savings and Loan Association, Inc. is not a mortgagee in good faith.

The general rule that a mortgagee need not look beyond the title does not apply to banks and other financial institutions as greater care and due diligence is required of them. [48] Imbued with public interest, they "are expected to be more cautious than