

FIRST DIVISION

[G.R. No. 133140, August 10, 1999]

JOSE MA. T. GARCIA, PETITIONER, VS. COURT OF APPEALS, SPS. LUISITO & MA. LUISA MAGPAYO AND PHILIPPINE BANK OF COMMUNICATIONS, RESPONDENTS.

D E C I S I O N

PUNO, J.:

This is a petition for review under Rule 45 of the Rules of Court to set aside the decision rendered by the Court of Appeals in CA-G.R. No. 44707 entitled "Jose Ma. T. Garcia, Plaintiff-Appellee versus Spouses Luisito and Ma. Luisa Magpayo and Sheriff of Makati, Defendants, Philippine Bank of Communications, Defendant-Appellant".^[1]

The facts are as succinctly summarized by the appellate court, *viz*:

"Atty. Pedro V. Garcia, in whose name TCT No. S-31269 covering a parcel of land identified as Lot 17 situated at Bel Air II Village, Makati, was registered, sold with the consent of his wife Remedios T. Garcia, the same to their daughter Ma. Luisa Magpayo and her husband Luisito Magpayo (the Magpayos).

"On March 5, 1981, the Magpayos mortgaged the land to the Philippine Bank of Communications (PBCom) to secure a loan, Five Hundred Sixty Four Thousand (P564,000.00) Pesos according to them, One Million Two Hundred Thousand (P1,200,000.00) Pesos according to PBCom.

"On March 9, 1981, Atty. Garcia's Title was cancelled and in its stead Transfer Certificate of Title No. S-108412/545 was issued in the name of the Magpayos.

"The Deed of Real Estate Mortgage was registered at the Makati Register of Deeds and annotated on the Magpayos title.

"The Magpayos failed to pay their loan upon its maturity, hence, the mortgage was extrajudicially foreclosed and at the public auction sale, PBCom which was the highest bidder bought the land.

"The redemption period of the foreclosed mortgage expired without the Magpayos redeeming the same, hence, title over the land was consolidated in favor of PBCom which cancelled the Magpayo's title and Transfer Certificate of Title No. 138233 was issued in its name.

"On October 4, 1985, the Magpayos filed at the RTC of Makati a complaint seeking the nullification of the extrajudicial foreclosure of

mortgage, public auction sale, and PBCom's title docketed as Civil Case No. 11891. This complaint was dismissed for failure to prosecute.

"On October 15, 1985, PBCom filed at the Regional Trial Court (RTC) of Makati a petition for the issuance of a writ of possession over the land, docketed as LRC Case No. M-731, which Branch 148 thereof granted.

"Upon service of the writ of possession, Mrs. Magpayo's brother, Jose Ma. T. Garcia (Garcia), who was in possession of the land, refused to honor it and filed a motion for Intervention in the above-said PBCom petition, which motion was denied.

"Garcia thereupon filed against PBCom, the Magpayos, and the RTC Sheriff the instant suit for recovery of realty and damages wherein he alleged, *inter alia*, that he inherited the land as one of the heirs of his mother Remedios T. Garcia, and that PBCom acquired no right thereover.

"In its answer, PBCom averred, *inter alia*, that Garcia's claim over the land is belied by the fact that it is not among the properties owned by his mother listed in the Inventory of Real Estate filed at the then CFI of Pasay City, Branch 27, in SP Proc. No. 2917-P, "In the Matter of the Intestate Estate of Remedios T. Garcia Petition for Letters of Administration, Pedro V. Garcia Petitioner-Administrator".

"The Magpayos, on the other hand, asserted that title over the land was transferred to them by Mrs. Magpayo's parents to enable them (Magpayos) to borrow from PBCom.

"Garcia filed a Motion for Summary Judgment praying that judgment be rendered in his favor to which PBCom counter-motined that judgment should be rendered in its favor.

"The court *a quo* denied the motion for summary judgment on the ground that PBCom raised in its answer both factual and legal issues which could only be ventilated in a full-blown trial.

"The court *a quo*, however, later issued a summary judgment."^[2]

In its summary judgment, the lower court held that the mortgage executed by the Magpayo spouses in favor of PBCom was void. It found that:

"x x x [A]t the time that the defendants Magpayo spouses executed the mortgage in favor of the defendant PBCom on March 5, 1981, the said spouses were not yet the owners of the property. This finding is evident from the other undisputed fact that a new Torrens title was issued to the defendants Magpayo spouses only on March 9, 1981 x x x. The Magpayo spouses could not have acquired the said property merely by the execution of the Deed of Sale because the property was in the possession of the plaintiff. The vendor, Pedro V. Garcia, was not in possession and hence could not deliver the property merely by the execution of the document (MANALILI V. CESAR, 39 PHIL. 134). The conclusion is therefore inescapable that the said mortgage is null and void for lack of

one of the essential elements of a mortgage as required by Art. 2085 of our Civil Code x x x."^[3]

Thus, it invalidated the foreclosure sale and nullified TCT No. 138233 issued to PBCom. Dissatisfied, PBCom appealed. In reversing the trial court, the Court of Appeals held:

"(P)laintiff-appellee's assertion that ownership over the disputed property was not transmitted to his sister and her husband-Magpayo spouses at the time of the execution of the Deed of Sale as he was still in actual and adverse possession thereof does not lie.

"For in his complaint, plaintiff-appellee alleged that he entered into possession of the disputed property only upon the demise of his mother, from whom he alleges to have inherited it but who was not the registered owner of the property, that is, on October 31, 1980 (Certificate of Death, p. 17, Records), by which admission he is bound. Since the execution of the deed of sale by Atty. Pedro V. Garcia in favor of the Magpayos took place earlier or on August 1, 1980, then contrary to his claim, plaintiff-appellee was not in possession of the property at the time of the execution of said public instrument.

"Furthermore, it appearing that the vendor Atty. Garcia had control of the property which was registered in his name and that the deed of sale was likewise registered, then the sale was consummated and the Magpayos were free to exercise the attributes of ownership including the right to mortgage the land.

"`When the land is registered in the vendor's name, and the public instrument of sale is also registered, the sale may be considered consummated and the buyer may exercise the actions of an owner (Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1992 Ed., p. 55).'

"That the Magpayos' title, TCT No. S-108412, was issued four (4) days following the execution of the deed of real estate mortgage is of no moment, for registration under the Torrens system does not vest ownership but is intended merely to confirm and register the title which one may already have on the land (Municipality of Victorias v. Court of Appeals, 149 SCRA 32, 44-45 [1987])."

Petitioner Garcia moved for a reconsideration of the above decision which was denied. He now comes before us raising the following errors committed by the Court of Appeals:

I

The respondent Court of Appeals has departed from the accepted and usual course of proceedings when it decided the appeal subject of this case based on issues which were raised neither in the trial court nor in the appellant's brief.

II

The Court of Appeals decided the appeal in a manner not in accord with applicable jurisprudence when it disregarded the admissions of the private respondents and, despite ruling that Summary Judgment was proper, made its own findings of facts which were contrary to the said admissions.

III

The Decision of the respondent Court of Appeals was not in accord with established jurisprudence and even contradicts itself, as far as the issue of the propriety of the Summary Judgment is concerned.

The petition has no merit.

Anent the first assignment of error, petitioner alleged that the Court of Appeals resolved the issues of "ownership" and "possession" though they were not raised by PBCom in its appellant's brief. The allegation is belied by page 17 of PBCom's appellate brief, *viz*:

"Due to the wrong cited case, the trial court opined erroneously that `Magpayo Spouses could not have acquired the property merely by the execution of the deed of sale because the property was in the possession of the plaintiff' (Order, p. 10).

"Again, the trial court could not distinguish ownership from possession. Ownership and possession are two entirely different legal concepts.

"Plaintiff-appellee's possession as found by the trial court, started only `at the time of the filing of the complaint in this present case up to the present.' (page 2, Summary Judgment).

"Assuming that to be true, plaintiff-appellee's possession which started only in 1986 could not ripen into ownership. He has no valid title thereto. His possession in fact was that of an intruder, one done in bad faith (to defeat PBCom's Writ of Possession). His possession is certainly not in the concept of an owner. This is so because as early as 1981, title thereto was registered in the name of the Magpayo Spouses which title was subsequently cancelled when the property was purchased by PBCom in a public auction sale resulting in the issuance of title in favor of the latter in 1985."

Anent the second assignment of error, petitioner contends that the following facts were admitted by the parties in the trial court:

"1. The petitioner is a compulsory heir of the late spouses Atty. Pedro V. Garcia and Remedios Tablan Garcia;

"2. The property subject of this dispute was previously the conjugal property of the said spouses;

"3. The petitioner and his family have been and are continuously to the