

FIRST DIVISION

[G.R. No. 109946, February 09, 1996]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
COURT OF APPEALS, MYLO O. QUINTO AND JESUSA CHRISTINE
S. CHUPUICO, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

DEVELOPMENT BANK OF THE PHILIPPINES filed this petition for review on certiorari assailing the decision of the Court of Appeals holding that the mortgages in favor of the bank were void and ineffectual because when constituted the mortgagors, who were merely applicants for free patent of the property mortgaged, were not the owners thereof in fee simple and therefore could not validly encumber the same.^[1]

On 20 April 1978 petitioner granted a loan of P94,000.00 to the spouses Santiago Olidiana and Oliva Olidiana. To secure the loan the Olidiana spouses executed a real estate mortgage on several properties among which was Lot 2029 (Pls-6 1) with Tax Declaration No. 2335/1, situated ib Bo. Bago Capalaran, Molave, Zamboanga del Sur, with an area of 84,108 square meters, more or less. At the time of the mortgage the property was still the subject of a Free Patent application filed by the Olidianas with the Bureau of Lands but registered under their name in the Office of the Municipal Assessor of Molave for taxation purposes.^[2]

On 2 November 1978 the Olidiana spouses filed with the Bureau of Lands a *Request for Amendment* of their Free Patent applications over several parcels of land including Lot No. 2029 (PIs-61). In this request they renounced, relinquished and waived all their rights and interests over Lot No. 2029 (Pls-61) in favor of Jesusa Christine Chupuico and Mylo O. Quinto, respondents herein. On 10 January 1979 Free Patent Nos. IX-5-2223 (covering one-half of Lot No. 2029 [Pls-61] and IX-5-2224 (covering the other half of the same Lot No. 2029 [Pls-61]) were accordingly granted respectively to respondents Jesusa Christine Chupuico and Mylo O. Quinto by the Bureau of Lands District Land Office No. IX-5, Pagadian City. Jesusa Christine Chupuico later obtained Original Certificate of Title No. P-27,361 covering aforementioned property while Mylo O. Quinto was also issued Original Certificate of Title No. P-27,362 in view of the previous free patent.^[3]

On 20 April 1979 an additional loan of P62,000 00 was extended by petitioner to the Olidiana spouses. Thus on 23 April 1979 the Olidianas executed an additional mortgage on the same parcels of land already covered by the first mortgage of 4 April 1978. This second mortgage also included Lot No. 2029 (Pls-61) as security for the Olidiana spouses' financial obligation with petitioner.^[4]

Thereafter, for failure of Santiago and Oliva Olidiana to comply with the terms and

conditions of their promissory notes and mortgage contracts, petitioner extrajudicially foreclosed all their mortgaged properties. Consequently, on 14 April 1983 these properties, including Lot No. 2029 (Pls-61) were sold at public auction for P88,650.00 and awarded to petitioner as the highest bidder. A *Certificate of Sale* was thereafter executed in favor of petitioner and an *Affidavit of Consolidation of Ownership* registered in its name. However, when petitioner tried to register the sale and the affidavit of consolidation and to have the tax declaration transferred in its name it was discovered that Lot No. 2029 (Pls-61) had already been divided into two (2) parcels, one-half (1/2) now known as Lot 2029-A and covered by OCT No. P-27,361 in the name of Jesusa Christine Chupuico, while the other half known as Lot 2029-B was covered by the same OCT No. P-27,361 in the name of Mylo O. Quinto.^[5]

In view of the discovery, petitioner filed an action for *Quieting of Title and Cancellation or Annulment of Certificate of Title* against respondents. After trial the Regional Trial Court of Molave, Zamboanga del Sur, Branch 23, rendered judgment against petitioner.^[6] The court ruled that the contracts of mortgage entered into by petitioner and the subsequent foreclosure of subject property could not have vested valid title to petitioner bank because the mortgagors were not the owners in fee simple of the property mortgaged. The court also found the mortgages over Lot No. 2029 (Pls-61) of no legal consequence because they were executed in violation of Art. 2085, par. 2, of the New Civil Code which requires that the mortgagor be the absolute owner of the thing mortgaged. According to the court *a quo* there was no evidence to prove that the mortgagors of the land in dispute were its absolute owners at the time of the mortgage to petitioner.

The factual findings of the lower court disclose that when the Olidiana spouses mortgaged Lot No. 2029 (Pls-61) to petitioner it was still the subject of a miscellaneous sales application by the spouses with the Bureau of Lands. Since there was no showing that the sales application was approved before the property was mortgaged, the trial court concluded that the Olidiana spouses were not yet its owners in fee simple when they mortgaged the property. The lower court also said that with the subsequent issuance of the Free Patent by the Bureau of Lands in the name of respondents Chupuico and Quinto, it could be gleaned that the property was indeed public land when mortgaged to petitioner. Therefore petitioner could not have acquired a valid title over the subject property by virtue of the foreclosure and subsequent sale at public auction.^[7]

Resultantly, the trial court declared the following as null and void insofar as they related to Lot No. 2029 (Pls-61) being a public land: the real estate mortgage dated 4 April 1978, the second mortgage dated 23 April 1979, the foreclosure sale on 14 April 1983, the certificate of sale registered with the Register of Deeds of Zamboanga del Sur on 1 September 1983, and the affidavit of consolidation of ownership registered with the Register of Deeds on 2 August 1985.

Petitioner then appealed to the Court of Appeals which likewise ruled in favor of respondents, hence the instant petition.^[8]

Petitioner now seeks to overturn the decision of respondent Court of Appeals holding that Lot No. 2029 (Pls-61) could not have been the subject of a valid mortgage and foreclosure proceeding because it was public land at the time of the mortgage, and