

EIGHTH DIVISION

[CA-G.R. CV NO. 101097, May 30, 2014]

**BPI FAMILY SAVINGS BANK, INC., PLAINTIFF-APPELLANT,
VS. TANAUAN INSTITUTE, INC. AND THE REGISTER OF DEEDS OF
TANAUAN CITY, DEFENDANTS-APPELLEES.**

D E C I S I O N

REYES, JR., J.C., J.:

On appeal is the Order dated March 27, 2013 rendered by the Regional Trial Court (RTC), Branch 6 of Tanauan City, Batangas in Civil Case No. 05-11-2675. The dispositive part of the challenged Order reads:

“WHEREFORE, premises considered, Tanauan Institute Inc.'s Demurrer to Plaintiff's Evidence is GRANTED, hence, the Complaint dated October 25, 2005 of BPI Family Savings Bank Inc. is hereby DISMISSED.

SO ORDERED.” (Rollo, p. 50)

The facts as culled from the evidentiary records:

On November 18, 2005, plaintiff-appellant BPI Family Savings Bank, Inc. (hereinafter BPI Family) filed a complaint for cancellation of TCT No. T-23134 and issuance of new title (Records, pp. 1-11), against defendants-appellees Tanauan Institute, Inc. and the Register of Deeds of Tanauan City. The complaint was later docketed as Civil Case No. 05-11-2675.

In its complaint, BPI Family alleged that on January 29, 1997, defendant-appellee Tanauan Institute and Goldrich Diamond Realty Corporation (hereinafter Goldrich) obtained a loan from BPI Family in the aggregate amount of P35,000,000.00. As security for the payment thereof, a Real Estate Mortgage was executed on the same day. Said mortgage was constituted over parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-13033, T-13035, T-13036, T-13037, T-13038, T-23133 and T-2214. It further alleged that TCT No. T-2214 embraces fifteen (15) parcels of land with improvements thereon. Among those covered therein is the subject parcel of land, Lot 8, Block 10.

Further, it averred that despite repeated demands, Tanauan Institute and Goldrich failed and refused to settle their obligation which prompted its filing of a petition for the extrajudicial foreclosure of the mortgaged properties. Said properties were later sold in public auction conducted on April 22, 1998, with BPI Family as the highest bidder. Hence, a certificate of sale was issued in its favor on June 25, 1998.

Since the properties were not redeemed within the allowed redemption period, BPI Family consolidated its ownership over the foreclosed properties. Accordingly, TCT Nos. T-13033, T-13035, T-13036, T-13037, T-13038, T-23133 and T-2214 were cancelled and in lieu thereof, new titles were issued in BPI Family's name. In

particular, TCT No. T-87583 was issued on August 16, 2002 in lieu of the cancelled TCT No. T-2214.

It furthermore averred that it sold the aforementioned properties, including Lot 8, Block 10, to Christian College of Tanauan, Inc. (hereinafter Christian College), per Deed of Absolute Sale dated March 12, 2003. The sale included those under TCT No. T-87583. Consequently, TCT No. T-87583 was cancelled and TCT No. T-97323 was issued on April 2, 2003, in the name of Christian College. TCT No. T-97323, however, shows that it does not cover Lot 8, Block 10.

Hence, the complaint so as to comply with the warranty with its buyer that it is the owner of all the properties sold under the Deed of Absolute Sale dated March 12, 2003, as well as to erase any doubt on the ownership of BPI Family over Lot 8, Block 10.

After BPI Family formally offered its evidence and rested its case, Tanauan Institute filed on August 3, 2011 a *Demurrer to Plaintiff's Evidence*. (Records, pp. 408-411) It argued that BPI Family failed to prove that it has any right or interest in Lot 8, Block 10 which is covered by TCT No. T-23134. It also claimed that BPI Family failed to present proof to defeat its rights under the Torrens System.

On March 27, 2013, the RTC issued the challenged Order (Rollo, pp. 48-50), granting Tanauan Institute's demurrer and dismissing BPI Family's complaint. It ruled that there is no evidence that Lot 8, Block 10 is part of the properties mortgaged as said subject lot was severed from the mother title TCT No. T-2214 and covered by a new certificate, TCT No. T-23134.

Aggrieved over the dismissal of its appeal, BPI Family filed a notice of appeal (Records, pp. 423-424) on May 27, 2013. Such notice was given due course per Order (Records, p. 426) of the RTC dated July 4, 2013.

Hence, this appeal raising the sole issue-

"WHETHER OR NOT THERE IS SUFFICIENT GROUND TO GRANT
DEFENDANT-APPELLEE TI'S DEMURRER TO EVIDENCE?" (Rollo, p. 36)

BPI Family asserts that it has sufficiently established that Lot 8, Block 10 was among those mortgaged by Tanauan Institute and Goldrich. It argues that as mortgagee, it is not required to go beyond what appears on the face of the title.

The appeal is DENIED.

Section 1, Rule 33 of the 1997 Rules of Civil Procedure provides:

"Section 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."

A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence that his adversary produced, whether true or not, is insufficient in point of law to make out a case or to sustain the issue. (Republic vs.