

TENTH DIVISION

[CA-G.R. CV No. 98210, November 14, 2014]

FELICIDAD T. GALLOR, PLAINTIFF-APPELLANT, REYNALDO P. MATAWARAN AND AILEEN MATAWARAN, DEFENDANTS-APPELLEES.

DECISION

VELOSO, J.:

The Case

On appeal by plaintiff *Felicidad T. Gallor* ("**Gallor**") is the **Decision**^[1] dated June 29, 2011 of the Regional Trial Court of Dinalupihan, Bataan^[2] ("RTC") in Civil Case No. DH-1201-09, entitled "*Felicidad T. Gallor, Plaintiff versus Reynaldo P. Matawaran and Aileen Matawaran, Defendants,*" the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court hereby resolves to DENY the instant complaint for lack of merit.

No pronouncement as to costs.

SO ORDERED."^[3]

The Facts

This is an action for **Rescission of Contract, Annulment of Mortgage, Annulment of Certificate of Sheriff's Sale, Damages with Prayer for Writ of Injunction and/or Temporary Restraining Order**^[4] filed by plaintiff Felicidad T. Gallor ("**Gallor**") against defendants Reynaldo P. Matawaran and Aileen Matawaran ("**Spouses Matawaran**") on May 29, 2009, involving a parcel of land located at Purok 5, New San Jose, Dinalupihan, Bataan, covered by **Transfer Certificate of Title No. T-214921** of the Register of Deeds for the province of Bataan. The antecedent facts, as culled from the assailed Decision, are as follows:

"In sum, the Complaint states that plaintiff is the true and registered owner of a **parcel of land** located at **Purok 5, New San Jose, Dinalupihan, Bataan** now covered by **TCT No. T-214921**; after plaintiff's husband died, plaintiff and her six (6) children executed an

extra-judicial settlement and adjudicated in favor of plaintiff alone the subject parcel of land and its improvements described as TCT No. CLOA-740 and following such extra-judicial partition, on February 14, 2001, the subject properties were registered in the name of plaintiff alone; TCT No. T-214921 carries three (3) encumbrances annotated on its face, particularly the provisions of Section 44 of the Property Registration Decree (PD 1529) and Section 4, Rule 74 of the Rules of Court and the condition that it should not be sold, transferred or conveyed except through hereditary succession, or to the Government, or to the Land Bank of the Philippines, or to other qualified beneficiaries for a period of ten (10) years; sometime in **February 2001**, plaintiff obtained a **loan of P100,000.00** from Land Bank of the Philippines (LBP) and to secure payment thereof, plaintiff **mortgaged the subject properties to LBP**; sometime in 2004, defendant Reynaldo Matawaran agreed to buy the subject parcel of land for P800,000.00, knowing that the said properties were mortgaged to LBP; sometime in March 2004, defendant paid the plaintiff **P300,000.00 as initial payment** and promised to pay the balance after a few days; **defendant then paid the loan of P100,000.00 with the LBP**; defendant then asked the plaintiff to sign a document entitled **Real Estate Mortgage (REM)** dated March 23, 2004 but **plaintiff refused to sign** as the document does not reflect their agreement of sale and because it carried a 5% interest which they did not agree upon; defendant deceived the plaintiff and employed fraud and deceitful machinations in convincing the latter to sign the REM; **defendant Reynaldo reneged with his promise to pay the P500,000.00 balance** and instead proposed **to pay in installment at P10,000.00 monthly, to which the plaintiff agreed**; defendant **paid only two (2) monthly installments at P10,000.00 plus P2,000.00**, after which defendant refused to pay; sometime in February 2007, defendant Reynaldo filed with the RTC-Dinalupihan a **petition for extrajudicial foreclosure**, which was **granted**, hence[,] the **Certificate of Sale dated March 23, 2007**; on March 24, 2009, defendant Reynaldo filed a **petition for issuance of writ of possession** docketed as DH-1195-09; **the agreement of sale of the subject parcel of land is a prohibited act under the Comprehensive Agrarian Reform Law and violates Section 44 of PD 1529**; plaintiff did not realize and was unwittingly unaware that the sale agreement that she and defendant Reynaldo entered into was prohibited by law; and plaintiff manifests her good faith and willingness to return to defendant Reynaldo the sum of P322,000.00 that the latter paid to plaintiff. Further, in support of prayer for issuance of preliminary injunction and/or temporary restraining order, the complaint states that **without admitting the validity of the REM, the house built on the subject lot is not included in the said REM and plaintiff continues to be its absolute owner**; the filing of the petition for issuance of writ of possession by the defendant would violate plaintiff's rights to the subject lot as the absolute and registered owner thereof as well as her rights over the house and all improvements found thereon; **plaintiff as owner has the absolute and inalienable right to possession thereof**; to allow defendant Reynaldo to obtain a writ of possession will indubitably violate the rights to possession of plaintiff and will inflict grave and irreparable injury to plaintiff; considering that the rights to the

possession of the said parcel of land and all improvements thereon are indubitable that need to be protected, said rights being *en esse* in contemplation of law, there is an extreme urgency for the writ of preliminary injunction or TRO to issue in order to (i) preserve and protect the rights of the plaintiff and (ii) avoid and stop infliction of any damage or injury that plaintiff may unnecessarily suffer; plaintiff is willing to post a bond for the issuance of the writ of preliminary injunction or TRO should the Court require; and as a consequence of the unlawful and fraudulent acts of defendant Reynaldo, plaintiff suffered damages for which defendants must be adjudged liable to answer and pay.

Summons was served to the defendants on June 2, 2009. Hence, on June 16, 2009, defendants filed their **Answer** praying in the main that the prayer for writ of preliminary injunction be denied for lack of merit, **the case be dismissed for lack of cause of action**, and for the plaintiff to pay defendant the amount of **P30,000.00 plus P3,000 per court appearance as attorney's fees**.

Issues having been joined by the filing of the Answer, the pre-trial conference was set on September 8, 2009. Meanwhile, on September 1, 2009, defendants filed a **Motion to Dismiss** praying that the complaint be dismissed for **forum shopping**. The pre-trial conference was postponed several times. Meantime, plaintiff filed her Pre-trial Brief on June 10, 2010, but for failure of defendants to file their Pre-trial Brief, the Court upon motion of counsel for the plaintiff allowed the presentation of evidence *ex-parte*.

After hearing on the Motion to Dismiss, the Court resolved to deny the same on the ground that **there is no forum shopping**. Meanwhile, the Court granted defendants' request for substitution of counsel.

At the *ex parte* presentation of evidence, the plaintiff took the witness stand and testified that she is the plaintiff in this case; she executed a **Judicial Affidavit**, marked as Exhibit 'A' in connection with this case; she affirms and confirms the truthfulness, correctness and veracity of the contents of the said affidavit; she is the registered owner of the subject property embraced by TCT No. T-214921 marked as Exhibit 'B'; she identified the CLOA (Exhibit 'C'), copy of REM (Exhibit 'D'), and certified true copy of the Certificate of Sale (Exhibit 'E'); before the execution of the REM, Rey Matawaran paid the P100,000.00 loan to Landbank and after she signed the REM, she was paid additional P200,000.00; she confirmed that Rey Matawaran paid her P100,000.00 and P300,000.00 (sic) as well as two (2) P10,000.00 and one (1) P2,000.00 as partial payments for the P500,000.00 balance; she and Rey Matawaran agreed that the subject lot would be for P800,000.00; the subject land is an acquisition through the Department of Agrarian Reform (DAR); she is not aware that there is a restriction in CLOA-740, copy of which is marked as Exhibit 'C-1'; and for the record, the restriction appearing on Exhibit 'B' is marked as Exhibit 'B-1'. After which, the plaintiff filed her formal offer of evidence.

The Court then issued an Order admitting all the evidence offered by the

plaintiff for whatever purposes they may deem worth and submitted the instant case for decision.”^[5] (emphasis Ours.)

On July 31, 2009, the RTC rendered the herein assailed Decision dismissing the instant complaint. It explained, *viz.*:

“Under **Article 2085 of the Civil Code**, the following are the essential requisites to the contract of mortgage:

- (1) That it be constituted to secure the fulfillment of a principal obligation;
- (2) That the mortgagor be the absolute owner of the thing mortgaged; and
- (3) That the person constituting the mortgage has the free disposal of the property, and in the absence thereof, that he be legally authorized for the purpose.

As a further requisite, **Article 2125 of the Civil Code** provides that it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be **registered in the Office of the Registry of Deeds** concerned. It is also of the essence of the contract of mortgage that when the principal obligation becomes due, the property mortgaged cannot be appropriated by the creditor, but must be sold at public auction in accordance with the procedure prescribed by law for the satisfaction of the obligation.

Here, a perusal of the deed of real estate mortgage evidently shows that **herein plaintiff is the registered and absolute owner of the subject property** (TCT No. T-214921); she has the free disposal of the same; and **she mortgaged the said property to secure the fulfillment of an obligation in the amount of P300,000.00** from the defendants. Also, records reveal that **the mortgage was validly constituted being registered with the Registry of Deeds of Bataan**. The essential requisites of a contract of mortgage being present in the instant case, the subject real estate mortgage between the parties is therefore **valid**.

It is an elementary rule that the burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense as required by law. Here, **except for the bare allegations of the plaintiff** that defendant deceived her and employed fraud and machinations in convincing her to sign the REM and that their true agreement was the sale of the subject land, she however **failed to submit additional and sufficient evidence to prove such allegations**. Her testimony besides being self-serving likewise failed to prove that there were deceit and fraud in the execution of REM.

Therefore, the REM being valid, the subsequent foreclosure of the same, when plaintiff failed to pay her obligation within the stipulated period, is

therefore also **valid**. Thus, the foreclosure proceedings conducted on the mortgaged property of the plaintiff as well as the subsequent issuance of the Certificate of Sale being in accordance with the procedure prescribed by law enjoyed the presumption of regularity in the absence of evidence to the contrary.

Moreover, the contention of the plaintiff that the contract of REM does not contain any special power of authority appointing Reynaldo Matawaran to sell the property provided for under Section 1, Act No. 3135 is belied by the fact that the subject contract specifically carries the provision stating that: *X x x OTHERWISE, mortgagor hereby agree that **the said REYNALDO P. MATAWARAN, may enforce his rights herein without judicial proceedings by causing the above described property to be sold at public auction** x x x in accordance with Act. No. 3135 as amended by Act No. 4118.* (Exhibit 'D'), which allowed defendant Matawaran to foreclose the property in accordance with the said Act.

Further, it is of no moment that the subject land title is subject to **three (3) encumbrances** annotated on its face, particularly the provisions of Section 44 of the Property Registration Decree (PD 1529); Section 4, Rule 74 of the Rules of Court and the condition that it shall not be sold, transferred or conveyed except through hereditary succession, or to the Government, or to the Land Bank of the Philippines, or to other qualified beneficiaries for a period of ten (10) years. The first encumbrance was **already cancelled** because the title upon which it was written (TCT No. CLOA-740) was now cancelled by TCT No. T-214921, while the two-year period under Rule 74 of the Rules of Court is **already lapsed**. The last encumbrance referring to the 10-year prohibition while specifically carried over in the new title (TCT No. T-214921) has **already prescribed** considering that the same started to run upon issuance of TCT No. CLOA-740 on December 17, 1990.”^[6] (emphasis Ours)

Aggrieved, plaintiff moved for reconsideration^[7] of the above Decision, but the same was denied by the court *a quo* in its **Order** dated November 24, 2011.^[8]

Hence, this appeal.

Issues:

In her Brief,^[9] plaintiff-appellant Gallor raised the following as issues of the case:

- “I. Whether or not the trial court made a reversible error in failing to appreciate and apply in this case, the second (2nd) exception to the parol evidence rule quoted[.]
- II. The trial court made a reversible error in disregarding the un rebutted evidence that defendants-appellants made three