

MARIA GERVACIO BLAS, ET AL., PETITIONERS, VS. HON. CECILIA MUÑOZ-PALMA, ET AL., RESPONDENTS.*G.R. No. L-15689. April 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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This is a petition to set aside an order of respondent judge dated July 14, 1955 directing the cancellation of the notice of lis pendens annotated on Transfer Certificates of Title. Nos. 8401 and 13944 of the land records of Pampanga covering two fishponds included in the inventory of the estate of Maxima Santos Vda. de Blas.

Petitioners are the plaintiffs in Civil Case No. 4S95 of the Court of First Instance of Rizal which they brought against Rosalina Santos in her capacity as executrix of the estate of Maxima Santos Vda. de Bias to recover one-half of all the properties included in the inventory submitted by the latter in the testate proceedings of said deceased. Pursuant to the provisions of the Rules of Court, petitioners, through counsel, caused the annotation of a notice of lis pendens on all the certificates of title covering the properties of the estate, including Certificates of Title Nos. 8401 and 13944.

After trial, judgment was rendered in said Civil Case No. 4395 dismissing plaintiffs' complaint. Plaintiffs reasonably appealed from the adverse decision to the Supreme Court which was orally argued and submitted for decision on May 8, 1959.

While the case, was pending appeal in the Court, the executrix filed a motion to cancel the notice of lis pendens on the lands covered by Certificates of Title Nos. 8401 and 13944 on the ground that she had sold the said lands for P138,438.00 and P142,064.40, respectively, to pay certain estate and inheritance taxes due on the estate of Maxima Santos Vda. de Blas.

Petitioners opposed the motion on the ground that respondent judge had no more jurisdiction over the cases, except to deny the motion, because according to Section 9, Rule 41, of the Rules of Court, "Upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court." Petitioners also contend that the cancellation of the notice of lis pendens, far from preserving the rights of the parties, would destroy and extinguish the rights; that its cancellation would remove the lands from the jurisdiction of the trial court and would render ineffective any judgment that may be rendered in their favor by the appellate court, and that the payment of the estate and inheritance taxes was premature, because petitioners' claim, if sustained would considerably reduce said taxes.

Over petitioners' opposition, respondent judge issued an order on July 14, 1955 directing the cancellation of the notice of lis pendens prayed for by the executrix upon the filing of a bond in favor of petitioners in the amount of P142,000.00 subject to the approval of the Court. Hence the present appeal.

Section 9, Rule 41, of the Rules of Court, provides:

"SEC. 9. When appeal deemed perfected; effect thereof.—Upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court."

In holding that the trial court has jurisdiction to act on the petition for cancellation of *lis pendens* on the two lots in question in spite of the appeal taken by petitioners to the Supreme Court because its purpose is to protect and preserve the rights of the parties which do not involve any matter litigated by the appeal, the trial court made the following observation:

"It is a settled rule that in the absence of a statutory prohibition, the Court has an inherent power to cancel a notice of *lis pendens* even if the action is still pending and undetermined when there are exceptional circumstances which justify such cancellation, (*Mun. Council of Paranaque, Rizal vs. the Court of First Instance of Rizal, et al.*, 70 Phil., 363; *Moran's Vol. 1*, p. 134, 1957 ed.) The situation as given above present exceptional circumstances and this Tribunal believes that there will be no abuse of its discretion were it to grant the herein petition. This Court having jurisdiction over the present Civil Action is duly bound to take judicial notice of the proceedings held in Sp. Proc. 2524, and to assist the Probate Court in giving full force and effect to its Orders. From the records it appears that the two fishponds in question were sold to pay principally the estate and inheritance taxes due to the government which totalled P252,954.61. Non-payment of said taxes rendered the estate liable for surcharge, monthly interest, and other penalties. As a matter of fact, the estate had actually to pay in addition to the assessed estate tax of P159,774.64 the sum of P7,988.48 representing 5% surcharge plus P17,574.66 representing the 1% monthly interest. With respect to the inheritance tax of P93,179.97, the estate has to pay in addition the sum of P4,659.00 as penalty plus another sum of P7,454.40 representing 1% interest per month from the date of the assessment to the date of payment. These facts clearly show that continued non-payment of said obligations to the Government would have caused great prejudice to the estate. Considering, therefore, that the sale of the two fishponds was absolutely necessary for the best interest of the estate, it is incumbent upon this Court to aid there herein defendant in the fulfillment of her commitment that a clear and clean title will be given to the purchasers, especially if we take into account that her account redounds in the long run to the benefit of all those who have claims on said estate including the plaintiffs herein."

Petitioners disagree with the above observation for the reason that the fact that the sale is necessary for the payment of the estate and inheritance taxes which were assessed by the government on all the inventoried properties is not a legal justification to cancel the *lis pendens* because the annotation of the *lis pendens* cannot in any manner prevent the probate court from selling the lands in question if it believes necessary to do so to apply the proceeds of the sale to the payment of said taxes, but by force of law, since the properties are still in litigation, the sale should be subject to the *lis pendens*. Moreover, petitioners contend, it is premature at this stage of the appeal to pay the taxes assessed by the government because in view of the pending litigation it cannot be definitely ascertained what constitutes the assets of the estate that would be subject to said taxes for, if the claim of petitioners is sustained, the taxes would inevitably be reduced to one-half because petitioners claim one-half of the entire estate. In other words, petitioners contend that the appeal involves a prejudicial question whose final resolution should be awaited before any further action can be taken on the claim for estate and inheritance taxes.

We are inclined to uphold petitioners' contention for indeed the pendency of their appeal before this Court which involves their claim of ownership over one-half of the properties of the estate would substantially affect the volume of the estate that would be subject to taxation for if they win the amount of the estate and inheritance taxes would proportionately be reduced which eventually would redound to the benefit of the estate. It is,

therefore, not quite correct to say that the immediate sale of the two fishponds as proposed by the executrix with the sanction of the court would promote the best interest of the estate for, as already stated, it may still result upon the final determination of the appeal that the estate may have to pay much less in taxes which may in effect redound to the benefit of the estate. In this sense, it is our opinion that the action taken by the trial court cannot be said to come within the exemption of Section 9, Rule 41 and as such it cannot be legally justified.

Moreover, as petitioners' claim is over one-half pro-indiviso of all the properties involved in the special proceedings, they may have some good sentimental reasons for opposing the disposition of the two fishponds for which reason they want to maintain pending the annotation of lis pendens on the titles covering them. At any rate, the main purpose of the rule is to keep the subject matter of the litigation within the power of the court until the litigation is over and since the litigation is not yet terminated petitioners are entitled to have their right respected against third persons. The reasons advanced by the trial court are, in our opinion, not sufficient in law to nullify this protection to which petitioners are entitled.

" 'The effect of filing a notice of lis pendens is to charge the stranger with notice of the particular litigation referred to in the notice; and if the notice is effective, a third party who acquires the property affected by the lis pendens takes subject to the eventuality of the litigation.' " ' "

"And its purpose is to hold property within the jurisdiction and control of the court pending determination of the controversy, thereby preventing third persons from acquiring such interests therein as would precluded giving effect to the judgment' " (Roberta Diaz y Cruz vs. Hon. Jesus Y. Perez, 103 Phil., 1023; 55 Off. Gaz. [52] 10878.)

Wherefore, petition is granted, with costs against respondent executrix.

Paras, C. J., Bengzon, Padilla, Labrador, Concepcion, Endencia, and Gutierrez David, JJ., concur.

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