

**ANDRES ABAN AND DOLORES GALOPE, PETITIONERS, VS.
HONORABLE MANUEL L. ENAGE, AS DISTRICT JUDGE OF THE
COURT OF FIRST INSTANCE OF AGUSAN, BRANCH II, HEIRS OF
ELEUTERIO CUENCA, AND...**

G.R. No. L-30666. February 25, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for certiorari and prohibition with preliminary injunction filed by petitioners against private respondents and Honorable Judge Manuel L. Enage, District Judge of the Court of First Instance of Agusan, to declare null and void the order of the court dated July 29, 1968, issued in Civil Case No. 1005, ordering the cancellation of TCT No. RT-1693 in the names of herein petitioners covering Lot No. 427 C-1 (Subdivision Plan LRC-Psd-40107), on the ground that the same was issued without or in excess of jurisdiction.

The antecedent facts are as follows:

On August 21, 1964, a complaint was filed in the Court of First Instance of Agusan, Branch II, then presided by the late Judge Montano Ortiz, docketed as Civil Case No. 1005, entitled "Maria Balaga, Severo Malvar, Ariston Blanco, Domingo Macuno, plaintiffs, versus Pedro Cuenca, Moises Burdeos, Nestor Burdeos, Deodoro Burdeos, Leonila Burdeos, Remedios Burdeos, Leonardo Campana, Aprodito Campana, Cleofe Campana, Lilia Campana, Alberto Banjao, for himself and on behalf of the Minors—Luzminda, Clemencia, and Isabel, all surnamed Banjao, Felix Arriola Sr., Leonardo Villafuerte, Lope C. Jonco, Butuan City Rural Bank, Register of Deeds of Butuan City, Land Registration Commissioner, Sixto Martinez, Aurora C. Martinez, Celestino Udarbe, and Andres Aban, defendants," for Nullification and Cancellation of Subdivision Plan LRC-Psd 37270 on Lot No. 427 Cad. 84, Butuan City, TCT-RT 1584, TCT-RT 1585 and Various Documents and for Damages with Injunction (pp. 12-17, rec.).

The complaint states that Celestino Udarbe and Andres Aban are sued as parties-defendants "since their consent to have them joined as parties-plaintiffs could not be secured."

Andres Aban, as a defendant in the above-entitled case, through counsel, filed a motion dated September 1, 1964 to drop him from the complaint as a misjoined party and, at the same time, moved for the dismissal of the complaint (pp. 57-58, rec.).

On September 17, 1964, the CFI of Butuan City issued an order (p. 59, rec.) dropping Andres Aban as party-defendant and dismissing the complaint against him.

On May 26, 1965, an amended complaint was filed wherein the names of Severo Malvar as plaintiff and petitioner herein Andres Aban and Celestino Udarbe as defendants in Civil Case No. 1005 were dropped as parties therein.

Meanwhile, the heirs of Eleuterio Cuenca filed a petition for correction, etc. dated November 1, 1965 and

docketed as Civil Case No. 1126, this time before the CFI of Agusan, Branch I, presided by Judge Simeon Ferrer, praying, inter alia, for the cancellation of TCT No. RT-1693 issued to herein petitioner Andres Aban. This case, however, was dismissed at the instance of the heirs in an order of the court dated June 4, 1968 (pp. 68-69, rec.).

On April 15, 1968, defendants-heirs of Eleuterio Cuenca in Civil Case No. 1005, through Atty. Timoteo D. Naldoza, counsel and attorney-in-fact of the Cuenca heirs, filed a motion in the aforesaid case for the cancellation of TCT No. RT-1693 issued in the name of Andres Aban, as well as all the annotations at the back thereof, alleging that herein petitioner Aban's claim over a portion of Lot No. 427, particularly Lot No. 427-C-1 is "now abandoned, waived or relinquished" (pp. 12-17, rec.).

Subsequently, herein petitioner Andres Aban filed an opposition to the motion to cancel TCT No. RT-1693 filed by the heirs of Eleuterio Cuenca.

On July 29, 1968, respondent Judge Manuel L. Enage issued an order hereby quoted as follows:

"ORDER

"RESOLVING: On a pending motion filed by Atty. Timoteo D. Naldoza, counsel for defendants-movants, dated April 15, 1968 (See: pp. 667-672, Records), the manifestation with motion of same counsel dated May 25, 1968 (See: pp. 710-711, Records), all praying that TCT-RT 1693 issued to respondent Andres Aban and all the annotations at the back of said title (See: pp. 687-689, Records), be cancelled based on the grounds therein stated;

"CONSIDERING: That, except for respondent Andres Aban who filed an opposition to the foregoing thru his counsel, Atty. Jose L. Lachica, and plaintiff Domingo Macuno who, thru his counsel, Atty. Lydio J. Cataluña, argued orally in behalf of his aforesaid client, none of the parties filed any formal opposition to the defendants-movants' aforesaid motion despite due notice given them, including the City of Butuan thru the City Fiscal, and neither did anyone of them even cared to appear in Court when defendants-movants' motion was heard for oral argument;

"CONSIDERING: That the land in question known as Lot No. 427 of the Butuan Cadastre was by the Court setting as a Cadastral Court in Cadastral Case No. 321, Cadastre No. 84 decreed to be the absolute property of the late Eleuterio Cuenca, predecessor-in-interest of herein defendants-movants;

"CONSIDERING: That pursuant thereto, Original Certificate of Title No. RO-156(360) was issued in the name of said Eleuterio Cuenca which title was later cancelled by TCT-RT-589 (See: pp. 683 and 783, Records);

"CONSIDERING: That the aforesaid TCT-RT-589 was later cancelled by TCT-RT 1584 and TCT-RT 1589;

"CONSIDERING: That, under the Subdivision plan LRC-Psd 37270 (See: pp. 249, 673 and 796, Records), said Lot No. 427 was subdivided into

Lot No. 427-A
Lot No. 427-B; and
Lot No. 427-C;

and that sometime on November 5, 1964 said Lot No. 427-C was further subdivided into

Lot No. 427-C-1
Lot No. 427-C-2; and
Lot No. 427-C-3

under subdivision plan LRC Psd 40107 (See: p. 674, Records);

"CONSIDERING: That TCT RT-1585 was later cancelled after said Lot No. 427-C was subdivided into three lots as aforestated by

TCT-RT 1693 for Lot No. 427-C-1;
TCT-RT 1694 for Lot No. 427-C-2; and
TCT-RT 1695 for Lot No. 427-C-3;

"CONSIDERING: That defendants-movants are now asking the Court that TCT-RT 1693 above-referred to and issued to respondent Andres Aban and all the annotations at the back thereof be declared as null and void and, as consequence thereof to revive TCT-RT 1585 insofar as Lot No. 427-C-1 is concerned, declaring Entry No. 7125 at the back thereof as cancelled, and that a new transfer certificate of title be issued in the names of herein defendants-movants, after complying with the publication and other requisites for the issuance of title;

"CONSIDERING: That TCT-RT 1693 issued in the name of respondent Andres Aban under Entry No. 7125 at the back of TCT-RT 1585 (See: p. 802, Records) was so issued without any registered document of sale or conformity required as a prerequisite, on the approval of said subdivision plan LRC-Psd 40107 as shown on the face of said plan under the said annotation entry;

"CONSIDERING: That without such registered document of sale or conformity the Register of Deeds cannot validly issue TCT-RT 1693 in the name of respondent Andres Aban without a Court order to that effect and registered with the said plan under Entry No. 7125;

"CONSIDERING: That this case has not been tried yet by the Court, and, therefore, no order or decision has ever been entered yet declaring respondent Andres Aban the true owner of said Lot No. 427-C-1 which is a portion of Lot 427, the entire property in question;

"CONSIDERING: That respondent Andres Aban, upon his own motion thru his counsel, was declared by the Court on September 17, 1964 to be not an indispensable party in this case, thereby binding him to all its legal effects, there being no motion for reconsideration nor appeal having been seasonably brought by said respondent Andres Aban up to the present (See: p. 68, Records);

"CONSIDERING: That the Land Registration Commission admitted in writing that subdivision plan Psd-40107 was approved by said office with a condition that the giving of Lot No. 427-C-1 to respondent Andres Aban under the said plan was subject to the conformity of defendants-movants as owners of the said lot, which conformity is herein found wanting (See: pp. 772-813; 703-740, 736; and 740, Records), so much so that for so issuing respondent Andres Aban TCT-RT 1585 in his name the Register of Deeds was forced to admit his 'clerical mistake' (See: pp. 738-739, Records);

"CONSIDERING: That it is now settled in this jurisdiction that if the co-owners of a property subdivided cannot agree as to how the property is going to be apportioned among themselves, the Court shall, before title shall be issued by the Register of Deeds, duly authorized or, as in the instant case, approve the issuance thereof, which is found wanting again in this instance (See: Section 44, Act 496, as amended by Republic Act 440; Patingo vs. Pelayo, 53 O.G. 4818; and Lagula vs. Casimero, 53 O.G. 196);

"IN VIEW WHEREOF, TCT-RT 1693 issued in the name of respondent Andres Aban and all the annotations at the back thereof is hereby declared, for having been issued without authority of the Court, NULL and VOID ab initio, and as a consequence thereof, TCT-RT 1585 is hereby ordered, insofar as Lot No. 427-C-1 is concerned, REVIVED, Entry No. 7125 being NULL and VOID.

"The Register of Deeds of the City of Butuan is hereby ordered to issue a new transfer certificate of title over Lot No. 427-C-1 in the names of defendants-movants after complying with the publication and other requisites for the

due issuance of the title above-said.

"SO ORDERED" (pp. 20-25, rec.).

On August 20, 1968, herein petitioner Andres Aban filed a motion for reconsideration, but the same was denied in an order (p. 26, rec.) of the court dated January 11, 1969.

A second motion for reconsideration dated January 22, 1969 was filed but was denied in an order (pp. 27-30, rec.) dated May 10, 1969.

A third motion for reconsideration dated May 15, 1969 was filed but was again denied in an order (p. 31, rec.) dated June 6, 1969.

Hence, the instant appeal.

Acting on the petition for certiorari, this Court, on July 9, 1969, issued a resolution requiring the respondents herein to file an answer to the petition for certiorari and, at the same time, issued a temporary restraining order restraining the enforcement of the Order "cancelling Title TCT-RT-1693 of petitioners herein, and from taking further proceedings or action in Civil Case No. 1005 of the Court of First Instance of Agusan, entitled 'Maria Balaga, et al. vs. Pedro Cuenca, et al.'" (p. 72, rec.).

On August 1, 1969, Atty. Timoteo D. Naldoza filed a telegraphic motion (p. 73, rec.) for extension of time within which to file an answer to the petition for certiorari, which was granted by this Court in a resolution dated August 5, 1969 (p. 79, rec.).

On September 6, 1969, Atty. Timoteo D. Naldoza, as one of the respondents in the instant case, filed an "Answer with Affirmative and Special Defenses" (pp. 85-127, rec.).

In the same answer, Atty. Timoteo D. Naldoza also entered his "special appearance" as counsel for and in behalf of the respondent heirs of Eleuterio Cuenca (pp. 121-122, rec.).

On September 13, 1969, counsel Timoteo D. Naldoza filed a "Supplemental Answer with Additional Affirmative & Special Defenses" (pp. 222-227, rec.).

In a resolution dated September 22, 1969 (p. 229, rec.), this Court set the hearing of the instant case on October 20, 1969.

At the hearing of the instant case on October 20, 1969, Atty. Jose Lachica appeared for the petitioners and were given 30 days to submit a memorandum in lieu of oral argument; the Court likewise granted the respondents 30 days to reply upon receipt of petitioner's memorandum (p. 241, rec.).

On October 30, 1969, Atty. Timoteo D. Naldoza filed an "Urgent Motion and Manifestations" (pp. 242-244, rec.) praying that the petition for certiorari be dismissed on jurisdictional grounds.

In a resolution (p. 253, rec.) dated November 4, 1969, this Court denied the motion and manifestation of the respondents for the dismissal of the petition on jurisdictional grounds.

In a resolution (p. 253, rec.) dated November 4, 1969, this Court denied the motion and manifestation of the respondents for the dismissal of the petition on jurisdictional grounds.

On November 12, 1969, Atty. Timoteo D. Naldoza filed the following: "APPEARANCE FOR RESPONDENT HEIRS OF ELEUTERIO CUENCA WITH URGENT MOTION TO SET ASIDE PROCEEDINGS TAKEN IF ANY AND/OR TO SUSPEND RESOLUTION OF TELEGRAPHIC MOTION AND/OR WRITTEN MANIFESTATION WITH MOTION TO FILE MEMORANDUM IN LIEU OF ORAL ARGUMENT OR OF

THE HEARING SET FOR OCTOBER 20, 1969 TO ENABLE SAID HEIRS FIRST TO FILE THEIR ANSWER OR ADDITIONAL ANSWER TO THE PETITION IN ADDITION TO THE ANSWER AS FILED IN THIS CASE BEFORE SETTING THIS CASE FOR ITS HEARING" (pp. 255-256, rec.).

In a resolution (p. 258, rec.) dated November 17, 1969, this Court resolved to "require Atty. Naldoza to secure respondents Heirs of Eleuterio Cuenca's conformity to his appearance herein, within 10 days from notice hereof."

Thereafter, the heirs of Eleuterio Cuenca filed a certificate of conformity to the appearance of Atty. Timoteo D. Naldoza (p. 285, rec.) as their counsel in the instant case.

On December 5, 1969, the Court issued a resolution (p. 289, rec.) requiring the heirs of Eleuterio Cuenca to comment on the conformity of said heirs to the appearance of Atty. Timoteo D. Naldoza as their counsel in the instant case.

On January 28, 1970, the heirs of Eleuterio Cuenca filed before this Court their comment (p. 312, rec.) reiterating their conformity to the appearance of Atty. Naldoza as their counsel of record.

Meanwhile, petitioners, thru counsel, filed their memorandum (pp. 291-297, rec.) on December 16, 1969, in compliance with the resolution of this Court dated October 20, 1969.

On December 20, 1969, the respondents, thru counsel, filed their memorandum (pp. 298-310, rec.).

On March 16, 1970, the respondents filed a supplemental memorandum (pp. 319-324, rec.) to their memorandum dated November 30, 1969, which was filed on December 20, 1969.

While the instant case was pending before this Court, a certain Antonio K. Cañon came into the picture by entering his appearance (p. 327, rec.) on May 29, 1973 as counsel for the respondents and, at the same time, filing a motion for resolution (pp. 328-329, rec.).

In his motion for resolution, counsel Antonio K. Cañon stated that he is appearing "in collaboration with the original counsel of record, Atty. Timoteo D. Naldoza."

In a resolution dated June 5, 1973 (p. 333, rec.), this Court "resolved to require the respondents themselves to COMMENT on the said appearance, and if in conformity therewith, to INFORM this Court, who between Attys. Timoteo D. Naldoza and Antonio K. Cañon shall be exclusively served with copies of all pleadings and court processes in this case, both within ten (10) days from notice hereof. This Court resolved further to NOTE the motion of respondents heirs of the late Eleuterio Cuenca praying that this case be resolved and dismissed."

On June 19, 1973, the petitioners, thru counsel, filed a manifestation to motion for resolution (pp. 334-335, rec.) filed by Atty. Antonio K. Cañon in behalf of herein respondents, joining said Atty. Cañon in his prayer for the resolution of the instant case.

On July 6, 1973, the respondent heirs of Eleuterio Cuenca filed their comment in compliance with the resolution of this Court dated June 5, 1973.

In their comment (p. 336, rec.), the respondents heirs of the late Eleuterio Cuenca stated:

.....

"2. That we contracted the services of Atty. Antonio K. Cañon after we lost our faith and confidence on our counsel Atty. Timoteo D. Naldoza, who sold some portions of our property subject matter of this case;

"3. That our counsel of record Atty. Timoteo D. Naldoza neglected us after we stopped him in his acts of disposing some portions of our property under litigation and abused our ignorance which we discovered only

after we contracted the services of our new counsel who informed us that the acts of Atty. Timoteo D. Naldoza in disposing some portions of our property is illegal before the case is finally terminated by this court.

"WHEREFORE, premises considered, co-respondents, Heirs of the late Eleuterio Cuenca through the undersigned representatives respectfully INFORM this Honorable Court that copies of all pleadings and court processes be exclusively served on Atty. Antonio K. Cañon at his address at Sto. Niño, San Agustin, Surigao del Sur, Philippines."

On July 31, 1973, the respondents, thru counsel, Atty. Antonio K. Cañon, filed an answer to manifestation to motion for resolution (pp. 343-345, rec.) filed by herein petitioners.

On August 19, 1974, the respondents, thru Atty. Timoteo D. Naldoza, filed a motion captioned as "MOTION TO GIVE EFFECT TO SECTION 11(1) and (2) OF ART. X OF THE NEW PHILIPPINE CONSTITUTION" (pp. 354-354a).

On September 9, 1974, the petitioners herein filed an opposition to motion to give effect to section 11-1 and 2 of Article X of the New Philippine Constitution (pp. 356-357, rec.), in compliance with the resolution of the Court to comment on said motion of respondents.

On December 23, 1974, the law firm of Zarate, Artes and Vega entered their appearance as counsels of the petitioners in collaboration with Atty. Jose L. Lachica (p. 360, rec.).

Herein petitioner Andres Aban likewise affirmed the appearance of the aforesaid law firm in a letter (p. 362, rec.) sent to the Clerk of Court of this Court.

On December 23, 1974, the petitioners, thru their new counsel, filed a motion to admit supplemental memorandum (pp. 363-364, rec.).

In a resolution dated January 14, 1975, this Court granted the motion of the petitioners to admit supplemental memorandum in support of their petition for certiorari and prohibition and noted the aforesaid memorandum as well as the appearance of the law firm Zarate, Artes and Vega; and the letter of petitioner Andres Aban to the Clerk of this Court confirming the appearance of the aforesaid law firm as his new counsel in collaboration with his original counsel of record (p. 367, rec.).

One of the annexes attached to the supplemental memorandum filed by the new counsel of herein petitioners was an affidavit (Annex 'F', pp. 105-107, Supplemental Memorandum, p. 366, rec.) executed by Atty. Timoteo D. Naldoza which declares the following:

"First, to rectify my legal impression and mistakes committed in the course of various judicial proceedings conducted in the Court of First Instance of Agusan del Norte, as well as one pending before the Supreme Court by way of a certiorari proceedings, and, after a perusal of all points of law involved in these cases, I hereby state, that TRANSFER CERTIFICATE OF TITLE NO. RT-1693 issued in the name of ANDRES ABAN is free from all fatal defects, intrinsic or extrinsic in nature, valid and indefeasible against the whole world, and, his corresponding right as owner thereof is beyond question; consequently, I will undertake to repair all damages and prejudice caused to him directly or impliedly by the proceeding in court, to the extent of my and/or our opposition filed in the Supreme Court under G.R. No. L-30666 filed sometime on or about 1969; and, thus, I acknowledged as erroneous and null and void my acquisition of one half (1/2) of the undivided portion of Lot No. 427-C-1 from the Heirs of Eleuterio Cuenca (Pedro Cuenca et al.) in the document entitled 'Deed of Transfer' ratified before Notary Public Noli G. Cortel of Butuan City, as Doc. No. 1657, Page No. 33, Book No. XIV, Series of 1965 on December 17, 1965;

"Second, to fulfill my undertakings as above narrated, I will work to secure the conformity of my client within the period of two months from the date of this instrument, and, thereafter, as soon as I received the conformity

thereof, then, I will submit the same to Mr. Andres Aban and his counsel, with respect to the opposition filed in the Supreme Court.

"Third, That the undertaking as above described is subject to the concomitant action to be taken by Andres Aban to the withdrawal of the administrative case against me.

"IN TRUTH OF THE FOREGOING, I have hereunto set my hand on this 27th day of September, 1974 at Manila.

(SGD.) TIMOTEO D. NALDOZA"

On May 14, 1975, Atty. Timoteo D. Naldoza filed an opposition to supplemental memorandum filed by the petitioners and denied the truth and genuineness of the affidavit marked as Annex 'F' (pp. 372-380, rec.).

In a letter (p. 398, rec.) dated May 23, 1975, which was addressed to the Clerk of Court of this Court, Atty. Timoteo D. Naldoza stated that by virtue of the written authority given by respondents heirs of Eleuterio Cuenca, duly entered into the records of the instant case, he is the principal counsel herein for all said respondents and that Atty. Antonio K. Cañon is only collaborating with him and requesting that henceforth he be considered as counsel of record for respondents and that all notices and other court processes be sent to him.

On August 20, 1975, the respondents and Atty. Antonio K. Cañon filed their comment (pp. 404-405, rec.) on the letter-request of Atty. Timoteo D. Naldoza in compliance with the resolution of the Court (p. 402, rec.) dated June 5, 1975.

Likewise, the heirs of Eleuterio Cuenca executed a joint affidavit (pp. 406-408, rec.) dated August 2, 1975 relative to the letter-request of Atty. Naldoza.

Attached to the comment filed by Atty. Antonio K. Cañon are Annexes '1', '2', '3', '4', '5' and '6', all xerox copies of alleged Deeds of Sale executed by Atty. Timoteo D. Naldoza in favor of several persons over some portions of the land subject matter of this litigation (pp. 409-416, rec.).

In a resolution dated August 26, 1975, this Court resolved to require Atty. Naldoza to file a reply to the comment of Atty. Cañon (p. 418, rec.).

On October 10, 1975, the respondents, thru Atty. Antonio K. Cañon filed a "MANIFESTATION AND/OR OBJECTIONS TO THE AFFIDAVIT OF ATTY. TIMOTEO NALDOZA" (pp. 424-425, rec.).

In his manifestation and objection, Atty. Antonio K. Cañon stressed:

"1. That the above-mentioned affidavit is unauthorized, unethical, and without any basis in fact and in law and was procured by the petitioner Andres Aban after the petitioners commenced a Disbarment Proceedings with the Office of the Solicitor General, Manila, against Atty. Timoteo Naldoza;

.....

"4. That said statements are unauthorized, baseless, and illegal on the ground that it constitutes conflicting interest prejudicial to his clients during the pendency of the above-entitled case before this Honorable Court, which are contrary to the evidence on the records of this case, showing his ignorance of the law and total disregard of the trust and confidence imposed on him by his clients. The last time Atty. Naldoza had contact with his clients was in the month of September, 1972.

"5. That what he (Atty. Naldoza) stated in said affidavit is binding on him personally and cannot legally bind his clients, said statement was executed without authority from them.

"6. That said statement of the affiant Atty. Naldoza is an act of betrayal of the trust and confidence imposed on

him by his clients and respondents through the undersigned counsel humbly ask this Honorable SUPREME COURT that a disciplinary action be imposed on Atty. Timoteo Naldoza.

"WHEREFORE, premises considered, Respondents through the undersigned counsel respectfully pray the Honorable SUPREME COURT to disregard the above-mentioned affidavit annexed to the Supplemental Memorandum of Petitioners; to impose a disciplinary action on Atty. Timoteo D. Naldoza, and such other remedy which this Honorable Court deem just, equitable and proper on the premises."

In a resolution dated October 14, 1975 (p. 427, rec.), this Court noted the foregoing manifestation and objection of Atty. Antonio K. Cañon to the affidavit marked as Annex 'F' allegedly executed by Atty. Timoteo D. Naldoza and attached to the supplemental memorandum filed by petitioners herein.

On December 12, 1975, Atty. Timoteo D. Naldoza filed a reply (p. 433, rec.) to manifestation and objection filed by Atty. Antonio K. Cañon, asserting that said affidavit attached to petitioners' supplemental memorandum was procured through "deceit and misrepresentation."

On December 24, 1975, Atty. Timoteo D. Naldoza filed a "REPLY TO COMMENT WITH PETITION TO RECORD ATTORNEY'S LIEN" (pp. 436-440, rec.) praying, among others, that his aforesaid contingent claim for attorney's fees "be entered into the records of this case and that the same be duly registered at the back of the certificate of title that may be issued to the heirs of Eleuterio Cuenca in the event of a favorable decision in this case."

On April 27, 1977, the petitioners, thru counsel, filed a motion for early resolution of the instant case (pp. 446-449, rec.).

In a letter dated September 22, 1977, a certain Atty. Cesar T. Palana of Tolosa, Leyte, informed this Court that his legal services were engaged to represent respondents Cuencas in this case by their attorney-in-fact Alvin Domingo and praying that his name be entered in the records of this case and that he be furnished with all notices, pleadings and other court processes (p. 453, rec.).

Attached to the letter of Atty. Cesar T. Palana is a xerox copy of the special power of attorney executed by the respondents heirs of Eleuterio Cuenca in favor of Mr. Alvin Domingo (pp. 454-455, rec.).

In a resolution dated November 10, 1977, this Court resolved to require the respondent Cuencas to comment on said letter (p. 457, rec.).

On January 27, 1978, the respondent heirs of Eleuterio Cuenca filed a manifestation (p. 459, rec.) before this Court affirming the appearance of Atty. Cesar T. Palana as their new counsel of record.

On February 22, 1978, Atty. Timoteo D. Naldoza filed an opposition to appearance of Atty. Cesar T. Palana (p. 464, rec.).

In a resolution dated March 16, 1978, this Court resolved to require the respondent heirs and Atty. Cesar T. Palana to comment on the opposition filed by Atty. Timoteo D. Naldoza (p. 466, rec.).

On May 2, 1978, the respondent Heirs of the late Eleuterio Cuenca filed their comment before this Court reiterating that they have lost their trust and confidence in Atty. Naldoza as their counsel of record (pp. 468-470, rec.).

On May 10, 1978, Atty. Cesar T. Palana filed his comment (p. 476, rec.) on the opposition filed by Atty. Timoteo D. Naldoza.

On June 19, 1978, a letter-appeal (p. 479, rec.) signed by Alvin Domingo, attorney-in-fact of the heirs of Eleuterio

Cuenca, asking for the early resolution of this case, was endorsed to this Court by the Office of the President through a memorandum (p. 478, rec.) dated June 5, 1978 of Senior Presidential Staff Officer Francisco A. Robles.

On August 4, 1978, Atty. Timoteo D. Naldoza filed a motion to strike out comments of Atty. Palana and the heirs of Eleuterio Cuenca (pp. 481-482).

In a resolution dated August 15, 1978, the Court resolved to require Atty. Palana and the respondent heirs to comment on the aforesaid motion of Atty. Naldoza.

On September 25, 1978, Atty. Cesar T. Palana filed his comment (pp. 486-487, rec.) on the motion filed by Atty. Naldoza.

On October 3, 1978, the respondent heirs of Eleuterio Cuenca submitted their comment (pp. 489-490, rec.) to this Court.

On October 6, 1978, Atty. Naldoza filed a reply to the comment of Atty. Palana (pp. 493-495).

On October 20, 1978, Atty. Naldoza filed a supplemental reply to comment of private respondents (pp. 499-501, rec.).

On December 22, 1978, Atty. Cesar T. Palana filed a rejoinder (p. 511, rec.) to the reply of Atty. Naldoza in compliance with the resolution of the Court dated October 19, 1978 (p. 497, rec.).

In a letter dated June 25, 1980, the heirs of Eleuterio Cuenca, represented by Nestor Cuenca Burdeos and Nemecio Cuenca, wrote a letter to the Chief Justice asking for the early resolution of this case (p. 532, rec.).

In a resolution dated August 7, 1980, the Court noted the letter of Nestor Cuenca Butdeos and Nemecio Cuenca, heirs of Eleuterio Cuenca, and henceforth reassign this case to the First Division of this Court (p. 534, rec.).

In a letter (pp. 540-542, rec.) dated January 14, 1982, which was addressed to the Clerk of Court, the heirs of Eleuterio Cuenca pray for the change of their counsel of record Atty. Timoteo D. Naldoza with Atty. Francisco T. Concon.

In a resolution (p. 544, rec.) dated February 8, 1982, the Court resolved to require Atty. Naldoza to comment on the letter-request of the Cuenca heirs.

On April 15, 1982, Atty. Timoteo D. Naldoza filed an "URGENT/VEHEMENT OPPOSITION" (pp. 550-553, rec.) to the letter-request of the Cuenca heirs, asserting that his services as counsel of said heirs is covered by a "contingent fee agreement" duly executed between him and the said heirs of Eleuterio Cuenca.

In a resolution dated May 31, 1982, the Court resolved to require the petitioners to file a reply to the urgent vehement opposition (p. 564, rec.).

The records of this case do not show any reply filed by herein petitioners to the urgent vehement opposition filed by Atty. Naldoza; however, Atty. Francisco T. Concon, in behalf of the Cuenca heirs, filed a reply to said opposition (pp. 567-569, rec.).

On August 12, 1982, Atty. Naldoza filed his comment on the reply filed by Atty. Francisco T. Concon.

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Going back to the main case, herein petitioners alleged that the order of the court a quo dated July 29, 1968, issued in Civil Case No. 1005, ordering the cancellation of TCT No. RT-1693 issued in the name of herein petitioner Andres Aban over Lot No. 427-C-1 (Subdivision Plan LRC-Psd-40107), was issued with grave abuse of

discretion amounting to lack of jurisdiction and/or without jurisdiction because:

"(a) The motion [Annex 'A'] filed in the lower Court is improperly filed because the Court below had no jurisdiction over the subject matter, the same being a separate, distinct, and independent action by itself;

"(b) Your petitioners are not parties in Civil Case No. 1005 [Annex 'F'] and therefore, the Court below was without jurisdiction over them;

"(c) There is patently no basis for respondent Judge Enage to give due course to a mere motion to cancel the title of petitioners there being no proper proceedings conducted, petitioners not being parties in Civil Case No. 1005 as amended, and therefore respondent judge had no power, jurisdiction or authority to order the cancellation of said title No. RT-1693 of petitioners herein;

"(d) According to records of Civil Case No. 1005 the respondent heirs of Eleuterio Cuenca are represented by their counsel, Atty. Tranquilino O. Calo, Jr., and not respondent Atty. Timoteo Naldoza; said case is still pending before respondent Judge Enage; consequently, respondent, Atty. Naldoza had no authority or power to file the motion to cancel Title No. RT-1693; such act of respondent Atty. Naldoza constitutes malpractice and a ground for disbarment before this Court;

"(e) Respondent Judge Enage acted without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in issuing the order of cancellation of TCT-RT-1693 of Andres Aban by an unlawful and improper motion of respondent Atty. Naldoza, Attorney-in-fact for heirs of Eleuterio Cuenca, filed in Civil Case No. 1005 as amended, wherein, petitioners herein are not parties [attached Annex 'F', amended complaint 1005];

"(f) Petitioners are without any remedy of appeal nor is there any plain, speedy and adequate remedy under the ordinary course of law against the patently unlawful order of the lower court to cancel Title No. RT-1693 of herein petitioners;

"(g) Respondent Judge Enage has set the execution of his order after the lapse of the reglementary period, which order are clearly illegal and unwarranted and will result in irreparable damage and injury to the petitioners herein;

"(h) There is therefore an imperative need for the issuance of an ex parte Writ of Preliminary Injunction restraining and prohibiting the respondents, their agents, attorneys, representatives, deputies, servants, or any other persons acting in their behalf from enforcing the Order of which purposes petitioners are ready and willing to put up the necessary bond in the minimum amount which the Honorable Court will require" (pp. 8-10, rec.).

In fine, herein petitioners assert that the court a quo could not have acquired jurisdiction over the subject matter of the motion to cancel TCT-RT-1693 filed by the heirs of Eleuterio Cuenca, private respondents herein, because the aforesaid motion to cancel partakes of a separate, distinct, and independent action by itself; that since herein petitioners are not parties in Civil Case No. 1005, the Court a quo was without jurisdiction over their persons.

It may be well to state at this point that jurisdiction of the court over the subject or nature of an action, is conferred by law. Jurisdiction over the persons of the parties may be acquired by the voluntary appearance of the plaintiff, and, with respect to the defendant, by the service of summons upon him or by his voluntary appearance in court.

It may be recalled that when the motion to cancel dated April 15, 1968 was filed by the heirs of Eleuterio Cuenca in the Court of First Instance of Agusan in Civil Case No. 1005, the court served summons to the petitioners herein who subsequently filed their opposition thereto (pp. 18-19, rec.). When the motion to cancel was set for hearing (pp. 149-167, rec.) on June 17, 1968, Atty. Jose L. Lachica, counsel of herein petitioners, appeared in

court. During said hearing, the parties were given ample opportunity to argue their respective stand, present evidence and exhibits, after which the court a quo required the parties to submit their respective memoranda, which the parties did.

Against the foregoing backdrop, this Court is not inclined to sustain herein petitioners' contention that the lower court was without jurisdiction or gravely abused its discretion when it acted on the motion to cancel filed by private respondents herein by issuing an order dated July 29, 1968 cancelling TCT-RT-1693 in the name of Andres Aban, petitioner herein.

For even assuming that the motion to cancel filed by private respondents in the court below is a separate, distinct, and independent action by itself, as argued by the petitioners, nevertheless, by the service of summons upon herein petitioners, and by their act of filing an opposition to the motion as well as their voluntary appearance in court when the motion was set for hearing, together with the submission of their memorandum (pp. 168-177, rec.), the petitioners are deemed to have submitted themselves to the jurisdiction of the court, and, consequently, they are bound by the legal implications of the order of the court a quo.

Moreover, the filing of petitioners' three motions for reconsideration is a further submission on their part to the jurisdiction of the court, and the denial of such motions was binding on petitioners herein (*Soriano vs. Palacio, et al.*, 12 SCRA 447, 449).

It cannot be said that the petitioners were denied their day in court. Neither can it be said that the petitioners' substantial rights were prejudiced thereby. The petitioners have had the fullest opportunity to lay before the court the merits of their claim when they, as stated heretofore, voluntarily submitted themselves to the jurisdiction of the court a quo.

To assert that the court had no jurisdiction because petitioner Andres Aban was not a party in Civil Case No. 1005 would appear therefore to be a mere technicality that would not serve the interest of the administration of justice (*Torres vs. Caluag, et al.*, 17 SCRA 808, 811). Besides, petitioner Andres Aban's not being a party in Civil Case No. 1005 was of his own making. By not joining as party-plaintiff in Civil Case No. 1005, and, at the same time, asking the court to drop him as party-defendant (he was sued as one of the parties-defendants when his consent to have him joined as one of the parties-plaintiffs could not be secured) in the same case, which the court a quo granted in an order dated September 17, 1964, petitioner Andres Aban virtually toyed with his right to enforce and protect his claim over a portion of Lot No. 427 of Butuan Cadastre. There is no plausible reason for petitioner Andres Aban to assume that the lot he claims (Lot No. 427-C-1) is not involved in Civil Case No. 1005 because what is precisely under litigation in said case is Lot No. 427 as a whole, of which Lot No. 427-C-1 is part and parcel.

Under the circumstances, petitioner spouses Andres Aban and Dolores Galope are deemed impleaded as party respondents in Civil Case No. 1005.

II

With respect to the petition filed by Atty. Timoteo D. Naldoza to record his attorney's lien and to consider him as the principal counsel of record of herein private respondents, suffice it to state that this Court finds the petition meritorious.

While concededly, private respondents herein have the right to dismiss their attorney with or without cause, however, any change or substitution of attorney must have to follow the procedure prescribed by Rule 138, Section 26 of the Revised Rules of Court.

Unless the formalities required by the Rules of Court on valid substitution of attorneys are complied with, no substitution will be permitted and the attorney who appeared last in the cause before such application for substitution will be regarded as the attorney of record and entitled to be notified of all notices and pleadings and responsible for the conduct of the case (*Olivares vs. Leola*, 97 Phil. 352). Specifically, We have ruled in several cases that "no substitution of attorneys will be allowed unless the following requisites concur: (1) there must be filed a written application for substitution; (2) there must be filed the written consent of the client to the substitution; (3) there must be filed the written consent of the attorney to be substituted, if such consent can be obtained; (4) in case such written consent cannot be procured, there must be filed with the application for substitution, proof of the service of notice of such motion in the manner required by the rules, on the attorney to be substituted."

In the case at bar, it is clear that there was no valid substitution of counsel. The records show that from the time this case was filed in the CFI of Agusan until the same reaches this Court, it was Atty. Timoteo D. Naldoza who appeared and filed all the necessary pleadings and motions in court as counsel of record for private respondents herein. The subsequent appearance of Attys. Antonio K. Cañon, Cesar T. Palana, and Francisco T. Concon bears no significance because there was practically nothing to be done in the case any more as the same was already submitted to this Court for decision.

WHEREFORE, THE PETITION IS HEREBY DISMISSED, THE ORDER OF THE TRIAL COURT DATED JULY 29, 1968 IS HEREBY AFFIRMED, AND THE TEMPORARY RESTRAINING ORDER ISSUED BY THIS COURT ON JULY 9, 1969 IS HEREBY LIFTED AND SET ASIDE. NO PRONOUNCEMENT AS TO COSTS.

SO ORDERED.

Concepcion Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.
Aquino, J., is on leave.

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