

**LUCIO C. SANCHEZ, JR., PETITIONER, VS. HON. COURT OF APPEALS
AND RURAL BANK OF ORMOC CITY, INC., RESPONDENTS.***G.R. No. L-40177. February 12, 1976*

Ponente: TEEHANKEE, J.

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The Court reverses respondent appellate court's dismissal of the case on a procedural question and instead applies the settled doctrine that when the right to appeal is not an adequate remedy, certiorari will issue to promptly relieve an aggrieved party from the injurious effects of an order issued with grave abuse of discretion. On the merits, the Court holds that a mere money claim such as a personal loan granted by a bank on promissory notes executed by the borrower and his co-maker is not registrable as an adverse claim to be annotated on their registered real properties.

Respondent Rural Bank of Ormoc City, Inc. had executed certain affidavits of adverse claim to certain registered sugar lands in Tacloban and Ormoc Cities alleged by petitioner to belong to him either as co-owner and/or as redemptioner. The said lands were the subject of mortgage loans obtained from respondent bank which had been fully paid and discharged either by payment or redemption after extra-judicial foreclosure.

Claiming that it still had certain unsecured money claims against the registered owners (i.e. loans extended by it to seven other borrowers covered by promissory notes wherein petitioner had signed as co-maker as well as other unsecured loans wherein the other registered owners [Magno Amora and Ponciano Mangco, represented by petitioner as attorney-in-fact] had likewise signed as co-makers of the promissory notes), respondent bank sought to have its adverse claim annotated on the certificates of title as "a claim or right of (the) bank to the properties of the persons * * * having a contractual obligation with the bank"[1] and refused to surrender the certificates of title to petitioner without such annotation first having been made so that it "will (not) be at the losing end and to protect the rights of the bank." [2]

Upon the refusal of the Tacloban Register of Deeds to register the bank's adverse claim, respondent bank filed with the court of first instance of Leyte as a land registration court three petitions [3] for an order to direct the Tacloban and Ormoc Registers of Deeds to annotate its adverse claim on the said titles, while petitioner in turn opposed the petitions and filed his counter-petition for an order directing respondent bank to return the said titles without such annotations.

In its Order of July 10, 1974, the court of first instance resolved the petitions and counter-petition by ordering the Registers of Deeds to annotate respondent bank's adverse claims and "thereafter * * * to release the aforesaid titles to the corresponding registered owners." The Order was immediately implemented even before it became final and executory and the bank's affidavits of adverse claim were annotated by the Registers of Deeds on the back of the certificates of title.

Petitioner thereafter filed a petition for certiorari with respondent Court of Appeals for the setting aside of the Order and the cancellation of the annotations of adverse claims, pleading the inadequacy of resorting to an

ordinary appeal with its concomitant delay.

Giving due course to the petition, respondent court thus stated the legal issues submitted to it: "(T)he answer of respondent bank did not raise any question of fact. The only issues raised in this petition for certiorari are (1) 'whether a mere money claim may be properly registered as an adverse claim on a Torrens Certificate of Title within the purview of the Land Registration Act,' and (2) 'whether a Judge of the Court of First Instance who orders the annotation of such money claim as an adverse claim on the certificate of title commits grave abuse of discretion amounting to lack or excess of jurisdiction.' "

By-passing the first and principal issue, respondent court in its decision of January 9, 1975 dismissed the petition on the ground that appeal from the lower court's order for the annotation of the bank's money claims, and not certiorari, was "the only remedy" and that "even if, as contended by herein petitioner, respondent Judge erred in ordering the annotation of the adverse claim on the certificates of title, that error, alone and in itself, is not a ground for certiorari, for not every erroneous conclusion of law or fact is abuse of discretion (Villa-Rey Transit vs. Bello, G.R. No. L-18957, April 23, 1963)."

Hence, the present petition, after the failure of petitioner's motion for reconsideration with respondent court.

Upon receipt of respondent bank's comment on the petition as required, the Court resolved, by way of expediting the disposition of the simple issues of the case, to treat the petition as a special civil action and declared the case submitted for decision without briefs.

Respondent court clearly erred in dismissing the petition on the ground that appeal from the questioned Order was petitioner's "only remedy". It is settled doctrine that the prerogative writ of certiorari may be applied for by proper petition notwithstanding the existence of the regular remedy of an appeal in due course when, among other reasons, the broader interests of justice so require or an ordinary appeal is not an adequate remedy.[4]

Here, petitioner had correctly pleaded that an appeal would be ineffectual to redress the lower court's error since lien-free titles to the sugar lands in question were required by the banks as collaterals before they would grant him badly needed crop loans to finance their operation and the delay in securing a reversal by ordinary appeal would work injustice to him while certiorari could promptly relieve him from injurious and prejudicial effects of the questioned order.

Now, to resolve the issues of the case on the merits.

A mere money claim may not be registered as an adverse claim on a torrens certificate of title and a judge who orders the annotation on the certificate of title of such money claim as an adverse claim acts without any authority in law and commits a grave abuse of discretion amounting to lack of jurisdiction that calls for the issuance of the corrective writ of certiorari.

Section 110 of the Land Registration Act (Act 496) manifestly provides that a person or entity who wishes to register an adverse claim in registered land must claim a "part or interest in (the) registered land adverse to the registered owner".[5]

Thus, purely money claims such as those of respondent bank by virtue of unsecured personal loans granted by it on promissory notes executed in its favor signed by the borrowers and co-signed by petitioner as co-maker are not registrable as adverse claims against the petitioner's registered lands.[6] The claim asserted must affect the title or be adverse to the title of the registered owner in order to be duly annotated as an adverse claim to the land against the registered owner. As pointed out by the Court, the annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not

otherwise provided for by the Land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof.[7]

If respondent bank wanted the additional security of petitioner's real properties besides his personal signature assuming liability for the payment of the personal loans, then it should not have extended the loans without requiring furthermore the execution of a covering real estate mortgage. If the loans were due and it feared that there would be fraudulent removal or disposition of the debtor's properties, then its proper course was to file the proper collection suit and seek a court order for attachment under bond - but certainly not to execute and submit for registration a mere baseless adverse claim, simply because it happened to be in possession of petitioner's certificates of title as a mortgagee whose mortgage lien had been fully discharged.

The writ of certiorari sought in vain by petitioner from respondent court should therefore be issued.

Accordingly, respondent court's decision of January 9, 1975 is set aside and in lieu thereof judgment is hereby rendered declaring null and void the lower court's Order of July 10, 1974 for annotation of respondent bank's affidavits of adverse claims on the certificates of title in question. Private respondent is ordered to deliver forthwith to the Tacloban and Ormoc Cities Registers of Deeds the owner's copies of said certificates of title and pay the required fees for the cancellation of said annotations and for the return of said certificates thereafter to petitioner and the corresponding registered owners. With costs in all instances against private respondent. So Ordered.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

[1] Rollo, page 29.

[2] Rollo, page 26.

[3] In Cadastral Case No. 35, GLRO Record No. 1795.

[4] Cf. 3 Moran's Rules of Court 1970 Ed., pp. 162-165 and cases cited.

[5] The text of the cited section reads: "(W)hoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed. *** *** ***." (first paragraph).

[6] Narciso Peña in Registration of Land Titles and Deeds, 1966, Rev. Ed., p. 407, stresses that "purely personal claims such as commission from the sale of land, fees for legal services rendered, expenses advanced, or money loaned, cannot be annotated on a certificate of title as adverse claims. But where the court shall have ordered the cancellation of the registration of such claims, it has no power to order their payment by the party in whose name the certificate of title was issued."

[7] Ty Sin Tei vs. Lee Dy Piao, 103 Phil. 858 (1958).

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