

**PETITION FOR THE CANCELLATION OF A CERTIFICATE OF TITLE  
AND THE ISSUANCE OF A NEW TRANSFER CERTIFICATE OF TITLE.  
SATURNINO MOLDERO, PETITIONER. LEONOR VOGEL, ALIAS SISTER  
ANGELI...**

*G.R. No. L-4972. September 25, 1953*

Ponente: MONTEMAYOR, J.

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**MONTEMAYOR, J.:**

Pursuant to a decree of August 24, 1917, Franz Vogel was declared the owner of about 865 hectares of land called "Hacienda San Fernando" in the municipality of Tumauni, Isabela, and original certificate of the (O.C.T.) No. A-84 was issued in his name. After his death, Elias Ocampo Navarro was appointed special administrator of his estate in special proceedings No. 87. Pursuant to a court order dated June 13, 1925, authorizing him to sell at public auction the properties of the estate, Navarro on January 4, 1926, sold the hacienda San Fernando to Joh. Lohman, as the highest bidder, for the sum of P35,000. On March 9, 1926, Navarro issued the corresponding certificate of sale (Exhibit C), and by virtue thereof, transfer certificate of Title (T.C.T.) No. 127 was issued to Joh. Lohman on the same date. On June 18, 1948 Joh. Lohman through a deed of absolute sale (Exhibit D) sold the same hacienda or estate to petitioner-appellee Saturnino Moldero for the sum of P85,000.

When appellee Moldero presented his deed of sale at the office of the Register of Deeds of Isabela, the register apparently entertained doubts about the propriety of accepting the deed for record and issuing a new transfer certificate of title, because of the fact that despite the sale of the hacienda in 1926 in favor of Lohman by the special administrator of the estate of Vogel, O.C.T. No. A-84 remained uncanceled; neither was the sale in favor of Lohman noted at the back of said original certificate of title. Furthermore, T.C.T. No. 127 in favor of Lohman was not entered in the book of certificates of title in the office of the Register of Deeds. So, the register of deeds elevated the case to the VIIth branch of the Court of First Instance of Manila in consulta. After a study of the case the judge of said branch rendered an opinion informing the Register of Deeds of Isabela that the deed of sale in favor of Moldero cannot be accepted for record without an order of the Isabela court.

Mr. Moldero then filed a petition in said court entitled: "Peticion sobre la cancelacion de un certificado de titulo y de la expedicion de un nuevo certificado de transferencia de un titulo de un terreno. Saturnino Moldero, solicitante." In said petition he asked the court to order the cancellation of O.C.T. No. A-84, the entry of T.C.T. No. 127 in the book of transfer certificates of title, its cancellation and the issuance of a new transfer certificate of title in his favor. After trial during which Moldero presented evidence in support of his petition, the court of Isabela found that the failure to cancel original certificate of title No. A-84 was a mere oversight on the part of the register of deeds, and that as a matter of fact, the corresponding annotation—

"Cancelado: Vease Certificado No. 127 del Tomo 5 del Libro de Certificados de Transferencia."

in long hand appeared on the left margin of said O.C.T. No. A-84, already initiated by the clerk, only that the register of deeds failed to sign said annotation. The court further found that the failure to annotate the deed of sale

(Exhibit C) at the back of O.C.T. No. A-84 was also an oversight on the part of the Register of Deeds, and finding that Joh. Lohman was the registered owner of the land covered by T.C.T. No. 127, and that he had sold the property to Saturnino Moldero on June 18, 1948 by virtue of a deed of sale (Exhibit D) which in the opinion of the court was registerable, said court ordered the Register of Deeds to cancel O.C.T. No. A-84; to annotate the deed of sale at the back of T.C.T. No. 127, cancel said Transfer Certificate and issue in lieu thereof another Transfer Certificate of Title in the name of Moldero. This order was dated March 30, 1950.

On September 30, 1950, Leonor Vogel alias Sister Angelica of the Sacred Heart, and Angela Vogel alias Sister Marie du Rosarie, filed a petition for relief from the said order of the court, alleging that they were two of the four children of Franz Vogel, the other two being Florencio Vogel and Luisa Vogel; that because of the failure of petitioner Moldero to notify them personally, or to publish notice of this petition and of the hearing thereof in the Official Gazette or in some newspaper of general circulation, they had no knowledge of said petition and of the hearing until after March 30, 1950; that they had a substantial cause of action against the petition of Moldero because O.C.T. No. A-84 in favor of their father Franz Vogel was never cancelled, and that since its issuance their father had no legal transaction with Joh. Lohman warranting the issuance of T.C.T. No. 127, and so they prayed that the order of the Court of March 30, 1950, be set aside. Acting upon said petition, the Isabela court in its order of November 1, 1950, denied it. We are reproducing the pertinent portion of the order which sets forth the views of the lower court.

"It was fully proven during the hearing of Moldero's petition that Elias Ocampo Navarro as administrator of the estate of the deceased Franz Vogel, in special proceeding No. 87, on January 4, 1929, sold the land covered by original certificate of title No. A-84, in favor of Joh. Lohman, who secured transfer certificate of title No. T-127. The Register of Deeds of Isabela, through inadvertence, issued certificate of title No. T-127 in the name of Joh. Lohman. Parenthetically, herein movants Leonor Vogel and Angela Vogel did not object to the sale executed by the judicial administrator of the estate of their deceased father. On June 18, 1948, Joh. Lohman sold the land to Saturnino Moldero, but when the corresponding papers were presented to the Register of Deeds of Isabela for registration and corresponding cancellation of original certificate of title No. A-84 and transfer certificate of title No. T-127 in the name of Joh. Lohman, said official refused to act on the matter because the original certificate was still uncanceled and the original of the transfer certificate was missing.

"The petition of Saturnino Moldero was filed pursuant to an opinion of the executive judge of the Court of First Instance of Manila with whom the Register of Deeds of Isabela made proper consultation. The outcome thereof is stated in the order of this court of March 30, 1950.

"It will be observed, therefore, that the herein petitioners Leonor Vogel and Angela Vogel have never been parties to the present proceeding. They cannot assert their right to notice when they were not parties to the case. As to the lack of publication of the petition of Saturnino Moldero or of the notice of hearing thereof, the contention merits no serious consideration. The order sought to be reconsidered or set aside was issued merely to correct an omission of the office of the Register of Deeds. The publication contemplated is not necessary nor required.

"It may be stated that the claim asserted by Leonor Vogel and Angela Vogel cannot be well substantiated in this case but in a separate action wherein all rights of parties may be fully determined."

From that order of denial of their petition for relief, Leonor Vogel and Angela Vogel appealed to this tribunal. From all that has been stated, based on the record of the case, there is ground to believe and to find that by virtue of an order of the probate court authorizing the sale of the properties of the estate Franz Vogel way back in 1925, the following year the Special Administrator sold the Hacienda San Fernando, the land now involved in this case, the Joh. Lohman as the highest bidder; that T.C.T. No. 127 was issued in the name of Lohman but through oversight on the part of the Register of Deeds, O.C.T. No. A-84 was not cancelled; neither was the certificate of

sale by the special administrator entered at the back thereof; neither was transfer certificate of Title No. 127 entered in the Book of Transfer Certificates of title in the Office of the Register of Deeds. We agree with the Isabela court that these were involuntary omissions of the Register of Deeds which can be corrected by court order without notifying the heirs of Franz Vogel, two of whom are the herein appellants. The order denying the petition for relief of the appellants was therefore warranted.

As far as the record of this case is concerned, there seems to be no ground for doubting the regularity of the sale of the estate in favor of Lohman in 1926. The appellants do not question and they even indirectly admit that since 1926 when the estate was sold to Lohman, the latter had taken possession and had held it until 1948 when he sold it to petitioner-appellee Moldero. It was not shown that the heirs of Franz Vogel ever opposed or objected to the sale of the estate of their father by the special administrator to Lohman. It is not explained why since 1926 up to the present time, a period of about twenty-seven years, appellants had allowed the said hacienda to be occupied and enjoyed by Lohman and later by Moldero. Moreover, the two other children of Franz Vogel named Florencio and Luisa were not included in the petition for relief or in this appeal. On the contrary, Luisa made an affidavit (Exhibit E) saying that as daughter and heir of Franz Vogel she acknowledges the sale of the hacienda to Lohman whom she recognizes as the registered owner, and that she renounces all claim over the estate. These facts and circumstances do not favor the contention of the appellants. However, should they believe that they have a good cause of action and feel that they can prove that the sales made to Lohman and to Moldero were illegal and void, they could file a separate and independent action as suggested by the trial court.

But there is one point raised by appellants, which though not decisive, merits consideration, were it only for the correction of the record and for the guidance of petitioners under section 112 and other sections of the Land Registration Act. Appellants contend that the trial court had no jurisdiction over the petition of appellee Moldero because said petition was not filed and entitled in the original case in which the decree of registration was entered. The contention is correct. The petition should have been filed in the original case in which the decree of registration of August 24, 1917 was entered, and it should bear the same title. The appellee, however, answers that the reason for not filing the petition in the original registration case was that the records of said case have been lost, presumably during the last Pacific War. The explanation is satisfactory, but at least the petition could and should have been entitled in said original case, this to make it clear that the present petition invoking the provisions of the Land Registration Act, particularly section 112 thereof, is not an ordinary civil action. (*Cavan vs. Wislizenus*, 48 Phil., 632.)

In view of the foregoing, and with the understanding that petitioner-appellee Moldero will be directed to entitle his original petition and his motions, in the original registration case where the decree of registration of Hacienda San Fernando was entered, the order appealed from is hereby affirmed. No costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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