

IN RE PETITION FOR CANCELLATION OF ENTRIES AT THE BACK OF TRANSFER CERTIFICATE OF TITLE NO. T-5066 IN THE NAME OF LORENZO BELCIÑA, EDELBURGO CHENG AND BONIFACIO CHENG, DECEASED,...

G.R. No. L-27614. June 29, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

These two related cases and the case of Cheng vs. Lim Tian Kee, CA-G. R. No. 40634-R have a common factual background. Their subject matter is Cadastral Lot No. 434, with an area of six hundred eighty-nine (689) square meters, located at Rizal Avenue, Dipolog City, Zamboanga del Norte, registered in the names of Edelburgo Cheng and Bonifacio Cheng, brothers. The record reveals the following facts:

L-27614. - On July 18, 1966 the Cheng brothers purchased for P75, 000 from the heirs of Lorenzo Belciña Lot No. 434 covered by Transfer Certificate of Title No. 5066 in Belciña's name.

When the Cheng brothers examined the original of TCT No. T-5066, they discovered that it contained two annotations: one, a notice of lis pendens dated June 14, 1966 re-garding Case No. 1656, an action for declaratory relief filed by Sergio Belciña Montesclaros regarding his claim for Lot No. 434, and, two, an adverse claim of Lim Tian Kee and Regina Ortega registered on July 20, 1966.

On August 15, 1966 the Cheng brothers filed in the Court of First Instance of Zamboanga del Norte, Dipolog Branch II a petition to cancel the said annotations. Copies of the petition were served on Montesclaros and Lim Tian Kee (Miscellaneous Special Proceeding No. 1446).

The Cheng brothers alleged that the annotation of the notice of lis pendens and the adverse claim was irregular because the owner's duplicate of TCT No. T-5066 was not surrendered to the register of deeds.

Montesclaros opposed the petition. He contended that his notice of lis pendens was registered in conformity with section 79 of Act No. 496 and section 24, Rule 14 of the Rules of Court. He averred that a notice of lis pendens was an involuntary transaction which could be registered without requiring the presentation of the owner's duplicate of the title (Rivera vs. Tirona, 109 Phil. 505, 509).

Lim Tian Kee and Regina Ortega, who were common-law husband and wife, also opposed the petition. They alleged that they were adverse claimants because they were mortgagees of the shares in Lot No. 434 of Ildefonso, Saturnino and Onesima, all surnamed Belciña, three of the seven heirs of Lorenzo Belciña.

The mortgages, which were executed before Lorenzo Belciña's estate was extrajudicially partitioned, were evidenced by three deeds dated April 30, June 29 and October 20, 1964. The mortgages were given as security for the payment of the sums of P3,500, P3,000 and P3,000, which the three heirs, respectively, borrowed from Lim Tian Kee and Regina Ortega. The latter were lessees of the building erected on Lot No. 434. The deeds were not

registered.

The lower court in its order of September 5, 1966 granted the petition. It ordered the cancellation of the adverse claim and the notice of lis pendens. It reasoned out that the annotation of the said entries was in violation of section 55 of Act No. 496 because the owner's duplicate of the title, which duplicate was in the possession of the Cheng brothers, was not surrendered to the register of deeds.

Lim Tian Kee and Regina Ortega filed a motion for reconsideration. The lower court denied it in its order of September 13, 1966. In that order the lower court amplified its prior order by directing the register of deeds "to issue a transfer certificate of title over Lot No. 434" in the names of the Cheng brothers "without prejudice to whatever actions" Lim Tian Kee might file to protect his rights. (Note that the Cheng brothers were able to secure Transfer Certificate of Title No. 9535 in their names on September 5, 1966 apparently pursuant to the aforementioned court's order of that date and not because of the order of September 13, 1966).

Lim Tian Kee and Regina Ortega appealed to this Court. Montesclaros did not appeal. (He filed in the same court a complaint dated November 3, 1966 against the heirs of Lorenzo Belciña and the Cheng brothers to recover possession of the lot and to annul TCT No. 9535, the partition of Lorenzo Belciña's estate, and the sale of Lot No. 434 to the Cheng brothers. The case was docketed as Civil Case No. 1698. Lim Tian Kee and Regina Ortega were allowed to intervene in that case. What happened to that case and the prior case, Civil Case No. 1656, is not shown in the record).

L-27148. - On September 16, 1966 Lim Tian Kee and Regina Ortega filed in the same court a petition (supplementing their original petition of September 12, 1966) wherein they prayed that the Cheng brothers be ordered to deliver to them or to the register of deeds the owner's duplicate of TCT No. 9535 so that the three mortgage deeds already mentioned may be registered or annotated (Miscellaneous Special Proceeding No. 1461).

The Cheng brothers opposed the petition. They invoked the court's order in the prior case, Miscellaneous Special Proceeding No. 1446 (now L-27614), ordering the cancellation of the adverse claim of Lim Tian Kee and Regina Ortega.

Judge Doroteo de Guzman, the same judge who acted in the prior case, dismissed the petition of Lim Tian Kee and Regina Ortega in his order of September 23, 1966 on the ground that the issues raised in the second case were resolved in the first case.

Lim Tian Kee and Regina Ortega also appealed to this Court the order of September 23, 1966.

Cheng vs. Lim Tian Kee, CA-G. R. No. 40634-R (L-40813). - On October 12, 1966, or after Lim Tian Kee and Regina Ortega had perfected their appeals in the aforementioned two cases, the Cheng brothers filed in the same court, Dipolog Branch II of the Court of First Instance of Zamboanga del Norte, against Lim Tian Kee and Regina Ortega an action to quiet title which was also in the nature of an ejectment suit.

They prayed that they be declared the owners of Lot No. 434 and that Lim Tian Kee and Regina Ortega be ordered to vacate the said lot and the commercial building located thereon (Civil Case No. 1693).

Lim Tian Kee and Regina Ortega pleaded as defenses in their answer the facts that they were lessees of the lot and that they were mortgagees of the shares of three of the seven heirs of the original owner.

Civil Case No. 1693 was also assigned to Judge De Guzman. After trial, Judge De Guzman in his decision dated September 18, 1967 declared the Cheng brothers the owners of the disputed lot, as shown in TCT No. T-9535, and ordered Lim Tian Kee and Regina Ortega to pay rentals and to restore the possession of the lot to the Cheng brothers.

That judgment was affirmed by the Court of Appeals in its decision of February 17, 1975 with the modification that Lim Tian Kee and Regina Ortega need not deliver the possession of the lot because they had vacated it during the pendency of the appeal or after the building thereon was burned on February 21, 1968.

The Court of Appeals further held that the issue as to the validity of the mortgages, like the question of possession, had become moot.

That decision of the Court of Appeals became final and executory after the appeal of Lim Tian Kee was rejected by this Court in its resolution of July 28, 1975 in *Lim Tian Kee vs. Court of Appeals*, L-40813.

Issues and disposition of the appeals in L-27148 and L-27614. - In L-27614 Lim Tian Kee and Regina Ortega contend that the lower court erred (1) in cancelling their adverse claim on the basis of a petition, for cancellation of entries and without passing upon the validity of the adverse claim; (2) in assuming that their adverse claim was a voluntary dealing with registered land under section 55 of Act No. 496 which necessitated the presentation of the owner's duplicate of the title so that it could be properly annotated, and (3) in ordering the issuance of a transfer certificate of title to the Cheng brothers although they did not pray for that relief in their petition.

And in L-27148 appellants Lim Tian Kee and Regina Ortega contend that the lower court erred in holding that the issues raised in Case No. 1461 were involved in the prior Case No. 1446 (L-27614).

The Cheng brothers did not bother to file any appellees' brief in the two cases maybe because in Civil Case No. 1693, which was their action to quiet title and recover possession of Lot No. 434 from Lim Tian Kee and Regina Ortega, they obtained a favorable decision from the lower court.

The Cheng brothers in their consolidated motion of January 31, 1976 prayed for the dismissal of the appeals in the two cases on the ground that the issue raised therein regarding the validity of the mortgages in favor of Lim Tian Kee and Regina Ortega was already decided by the Court of Appeals in *Cheng vs. Lim Tian Kee*, Civil Case No. 1693 or CA-G. R. No. 40634-R.

Lim Tian Kee and Regina Ortega opposed that consolidated motion. Their contention is that the issues in these two cases are different from the issues decided in Civil Case No. 1693 which was appealed to the Court of Appeals.

In our view, it is not necessary to resolve appellants' assignments of error and appellees' motion to dismiss the appeals because these cases may be adjudicated by revolving the issue of whether the lower court, as a land registration court, had jurisdiction to entertain the contested petition of the cancellation of the adverse claim and notice of lis pendens annotated on TCT No. 5066.

It should be clarified that Cases Nos. 1446 and 1461 were erroneously denominated and docketed as "miscellaneous special proceedings". The special proceedings are enumerated in section 1, Rule 72 of the Rules of Court. Those two cases are not the special proceedings enumerated therein. They cannot be denominated special proceedings.

The petitions herein for the cancellation of the annotations on a Torrens title and for the annotation of an adverse claim on the owner's duplicate of the title are incidents involving registered land. Those petitions should carry the number of the land registration record of the lot affected thereby which in these two cases is L. R. C. Cadastral Record No. 77. Section 112 of Act No. 496 provides that a petition filed thereunder "shall be filed and entitled in the original case in which the decree of registration was entered".

In the instant two cases, what was invoked was the special and limited jurisdiction of the Court of First Instance as a land registration court. The proceedings initiated in the petitions are summary in character.

The petition of the Cheng brothers for the cancellation of the annotations on TCT No. T-5066 was filed under section 112. It is settled that relief under section 112 can only be granted if there is no adverse claim or serious opposition on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs (*Tanganan vs. Republic*, 94 Phil. 171).

In other words, relief under section 112 can only be granted if there is unanimity among the parties, which means the absence of any serious controversy as to the title of the party seeking relief under that section (*Abella vs. Hon. Rodriguez*, 116 Phil. 1277; *Enriquez vs. Atienza*, 100 Phil. 1072).

In Case No. 1446, now L-27614, the oppositions inter-posed by Montesclaros, Lim Tian Kee and Regina Ortega rendered highly controversial the petition of the Cheng brothers for the cancellation of the notice of lis pendens and adverse claim. Consequently, the cancellation of those annotations could not be disposed of in the summary proceeding under section 112.

Because the Cheng brothers were aware that the controversy could not be set at rest by means of their petition under section 112, they filed Civil Case No. 1693 which was an ordinary action to quiet title and to eject Lim Tian Kee and Regina Ortega from Lot No. 434.

And Montesclaros, being cognizant that Case No. 1446 was not the proper forum for the ventilation of his claim for Lot No. 434, sued the Belciña heirs and the Cheng brothers in Civil Case No. 1698 which was an ordinary action to annul the extrajudicial adjudication of that lot to the Belciña heirs and the sale thereof to the Cheng brothers.

With respect to the petition of Lim Tian Kee and Regina Ortega in Case No. 1461 to compel the Cheng brothers to surrender the owner's duplicate of TCT No. 9535, that matter was also highly controversial because of the Cheng brothers' opposition. That petition was interwoven with the petition in Case No. 1446. The annotation on TCT No. 9535 of the adverse claim of Lim Tian Kee and Regina Ortega or the mortgages in their favor could be litigated in Civil Case No. 1693 (as in fact it was resolved by the trial court in that case) and even in Civil Case No. 1698 where their intervention was allowed. Hence, the dismissal of the petition in Case No. 1461 was proper.

The lower court's orders of September 5 and 13, 1966 in Miscellaneous Special Proceeding No. 1446 (L-27614) should be reversed and its order of dismissal dated September 23, 1966 in Miscellaneous Special Proceeding No. 1461 (L-27148) should be affirmed.

However, this ruling does not in anyway affect the final and executory judgment in Civil Case No. 1693, as modified by the Court of Appeals in *Cheng vs. Lim Tian Kee*, CA-G. R. No. 40634-R, a decision which this Court refused to review in *Lim Tian Kee vs. Court of Appeals*, L-40813.

WHEREFORE, in L-27614, the orders of the lower court dated September 5 and 13, 1966 are reversed and set aside and in L-27148, the order of September 23, 1966 is affirmed. Costs against the appellees in L-27614. No costs in L- 27148.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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