

IN RE ORIGINAL CERTIFICATE OF TITLE NO. 9758 OF THE REGISTER OF DEEDS OF NUEVA ECIJA. ALEJANDRO TANGUNAN AND PELAGIO TANGUNAN, PETITIONERS AND APPELLANTS, VS. REPUBLIC OF THE PH...

G.R. No. L-5545. December 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This concerns a petition filed in the Court of First Instance of Nueva Ecija by Alejandro Tangunan and Pelagio Tangunan in Cadastral Case No. 14 praying that the writ of execution annotated on the original certificate of Title No. 9758 which was issued in favor of the Government of the Philippine Islands on April 28, 1933, be cancelled and the deed of sale executed in favor of petitioners by the heirs of the registered owner be approved and registered in the office of the register of deeds so that a new title may be issued in their favor.

It appears that original certificate of title No. 9758 was issued in the name of the owners, pro-indiviso, as follows: "Alejandro Rebolledo, widower, 3/6 shares; Basilio Rebolledo, married to Dominga Taguam, 1/6 shares; Claudia Rebolledo, single, 1/6 share; and Bartola Rebolledo, the wife of Valeriano Nague, 1/6 share, all of Rizal, Province of Nueva Ecija, P. I."

Alejandro Rebolledo acted as one of the bondsmen in Criminal Cases Nos. 44528 and 44642 of the Court of First Instance of Manila, and having defaulted in his undertaking, the Government asked for the forfeiture of the bond and the writ of execution was annotated on the back of Certificate of Title No. 9758 on April 28, 1933. Since 1933, no further action was taken on the execution by the Government, nor by the Sheriff, and the encumbrance continued annotated on said certificate of title.

Claudia Rebolledo died in 1939 and Bartola Rebolledo in 1943, both without leaving any heir or descendants. Alejandro Rebolledo died in 1948 leaving as heirs his children Basilio, Federico and Francisco. Francisco died in 1940 leaving as heirs his children Lucena, Faustino and Luzviminda, and his widow Tranquilina Ragsac, so that by April, 1950, the land owned by Alejandro Rebolledo passed pro-indiviso to his heirs as follows: Basilio Rebolledo, 8/18 share; Federico Rebolledo, 5/18 share; and Lucena, Faustino and Luzviminda, all surnamed Rebolledo, pro-indiviso 5/18 share, each subject to the usufruct of the widow Tranquilina Ragsac.

On April 13, 1950, Basilio Rebolledo, Federico Rebolledo and Tranquilina Ragsac, the latter in her behalf and in that of her minor children Lucena, Faustino and Luzviminda, entered into a contract to sell the land to petitioners wherein it was agreed that a partial payment of the consideration would be made immediately and the balance after the title of the land is cleared of any encumbrance and is transferred in their names by the Register of Deeds. In order to comply with this part of the agreement, petitioners filed the present petition in Cadastral Case No. 14 wherein they prayed that the above encumbrance be cancelled on the ground that the right of the Government to enforce it has already prescribed.

The provincial fiscal opposed the petition on the ground that prescription does not run against the Government. He averred that, since the writ of execution levied on the land was duly annotated on the back of its torrens title, such annotation is in the nature of a proceeding in rem which does not prescribe until the debt is paid or the writ is discharged in the manner provided by law.

The court, after hearing the parties, ruled that the first part of the petition cannot be entertained because prescription does not run against the Government and there is no showing that the writ has either been carried out or cancelled. And with regard to the second part, it declared itself without jurisdiction, it being its opinion that the interested parties should either institute an action for the settlement of the estate or effect an extra-judicial settlement as authorized by section 1, Rule 74, of the Rules of Court. However, upon a motion for reconsideration, the court modified its ruling, this time holding that, with regard to the first relief, it has no jurisdiction to entertain it because the incident comes under the exclusive jurisdiction of the court that had issued the writ, and with regard to the second, it held that it may grant it under section 112 of Act No. 496 provided the petitioners put up a bond to protect the interest of the Government. From this order petitioners interposed the present appeal.

As may be noted, the main issue raised by the parties is not whether the lower court has jurisdiction to entertain the petition concerning the cancellation of the alleged encumbrance and the approval of the agreement relative to the sale of the land to the herein petitioners but whether said cancellation should be effected upon the ground that the right of the Government to enforce said encumbrance has already prescribed. And the lower court, while at first ruled that it had jurisdiction to act on the petition, it later reconsidered its position and held that it has no such jurisdiction because the petition involves a matter which comes within the exclusive jurisdiction of the Court of First Instance of Manila.

We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act No. 496. While this section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title "upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased", and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection 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. Thus, it was held that "It is not proper to cancel an original certificate of Torrens title issued exclusively in the name of a deceased person, and to issue a new certificate in the name of his heirs, under the provisions of Section 112 of Act No. 496, when the surviving spouse claims right of ownership over the land covered by said certificate." (Jimenez vs. De Castro, 40 Off. Gaz., [No. 3, 1st Sup.] p. 80.) And, in another case, where there was a serious controversy between the parties as to the right of ownership over the properties involved, this court held, "that following the principle laid down in the decision above cited, the issues herein should be ventilated in a regular action, as was done in the case of Montilla vs. Jalandoni (TA-R. G. No. 3133) above mentioned." (Government of the Philippines vs. Jalandoni, 44 Off. Gaz., 1837.)

With regard to the ruling of the lower court which sanctions the transfer of the land to petitioners on condition that they put up a bond to safeguard the interest of the Government, we believe that such requirement is not necessary, provided that the encumbrance be annotated on the back of the new title to be issued to the vendees. Since we said before that this encumbrance cannot now be cancelled because its determination should be made elsewhere, we hold that, subject to the above requirement, the transfer of the land can be given course under section 112 above adverted to because there is no dispute as to the interest involved and the transfer of the land is not objected to.

Wherefore, the order appealed from should be modified in the sense that the agreement submitted by petitioners may be given course and, once the sale is executed, the Register of Deeds may cancel the Original Certificate of Title No. 9758 and issue a new one in the name of the vendees on condition that he should annotate on the back thereof the encumbrance existing in favor of the Government. No pronouncement as to costs.

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

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