

JAIME YUNAM, PETITIONER, VS. HON. EDGAR G. MANILAG, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF BUTUAN CITY, BRANCH 33 AND THE DEVELOPMENT BANK OF THE PHIL...

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SANTOS, J.:^[1]

Assailed in the instant Special Civil Action for Certiorari under Rule 65 of the Rules of Court are: (1) the Order^[2] dated 10 October 2011 of the Regional Trial Court of Libertad, Butuan City, Branch 33 (court a quo), denying the Opposition^[3] filed by Mr. Jaime Yunam (hereafter referred to as the petitioner) to the Petition^[4] for Cancellation of Entry in the Certificate of Title (hereafter DBP's Petition for Cancellation) filed by the Development Bank of the Philippines, San Francisco Branch, Agusan del Sur (DBP), in Special Proceeding No. 4726; and (2) its subsequent Order^[5] dated 12 April 2012 denying petitioner's Motion for Reconsideration.^[6]

The Antecedents

The facts of the case, as culled from the records, are as follows:

The subject matter of DBP's Petition for Cancellation is Entry No. 91720 annotated on Transfer Certificate of Title (TCT) No. RT-38959^[7] (the subject annotation) issued in its name on 11 June 2001 which covers a parcel of land located in Ampayon, Butuan City (the subject property), to wit:

Entry No. 91720

Notice of Attachment/Levy executed by Doroteo P. Cotes, Sheriff IV, in connection with Civil Case No. CEB-23102, Regional Trial Court, 7^[th] Judicial Region, Branch 17, Cebu City entitled Clarita Estrada, plaintiff versus Mario Suson, defendant, for the sum of Money with Preliminary Attachment, levying all the titles, rights, interest and participation of the above-named defendant over the parcels of land described under TCT Nos. RT-33649 and RT-33648, dated July 12, 1999 at Cebu City, filed under no. 469 of JF-118.

Butuan City, July 14, 1999 at 8:00 a.m.^[8] (Emphasis added)

Previously, the subject property covered by DBP's TCT No. RT-38959 was registered in the name of Mario Suson married to Teodora S. Suson (the Spouses Suson) under TCT No. RT-33649.^[9] In 1997, the Spouses Suson mortgaged the subject property to the DBP to secure the loans they obtained from DBP. The mortgages executed by the Spouses Suson in favor of DBP were annotated on TCT RT-33649 under Entry No. 83406 & 30735 and Entry No. 83963 (31301), to wit:

Entry No. 83406 & 30735

Mortgage executed by Spouses Mario R. Suson, Teodor[a] S. Suson, and et. al., in favor of the Development Bank of the Philippines, covering the parcel of land described under TCT No. RT-33649-50, RT-18925 & T-5232, together with all improvements thereon for the sum of FIVE HUNDRED THOUSAND PESOS ONLY (?500,000.00) subject to all terms and conditions stipulated is said mortgage, dated at the City of Butuan on September 15, 1997 and known as Doc. No. 221; Page No. 45; Book No. 104; Series of 1997 of the

notarial register of Atty. Fernand H. Ebarle, notary public, filed under No. 69949 & R-22687.

Butuan City, September 15, 1997 at 4:00 p.m.[10]

Entry No. 83963 (31301)

Amendment of Real Estate Mortgage executed by Sps. Mario Suson and Teodora Suson and et. al., in favor of Development Bank of the Philippines, amending the mortgage under Entry No. 83407 & 30735 for an additional amount of ₱440,000.00 so that the amount of said mortgage shall hereinafter be ₱940,000.00, using as additional collateral some chattels (Agusan Sur & Norte), subject to all terms and conditions stipulated in the original mortgage and in said amendment of mortgage dated at the Municipality of San Francisco on November 10, 1997 and known as Doc. No. 467 & 468; Page No. 94; Book No. 107; Series of 1997 of the Notarial Register of Atty. Ferdinand H. Ebarle, Notary Public, filed under No. 69949 (R-22687)

Butuan City, November 10, 1997 at 2:00 p.m.[11]

For failure of the Spouses Suson to fully pay their loans with DBP, the latter foreclosed on the mortgage and the subject property was sold at public auction with the DBP as the highest bidder. The Sheriff's Certificate of Sale issued in favor of DBP was annotated under Entry No. 91995 & 37000 on 29 July 1999.[12] When the Spouses Suson failed to redeem the subject property within the redemption period, title thereto was consolidated in DBP. The Sheriff's Final Deed of Sale and the Consolidation of Ownership were annotated on TCT No. RT-33649 under Entry No. 10470 & 41439 and Entry No. 10471 and 41440, respectively on 11 June 2001. A new certificate of title was correspondingly issued in the name of DBP under TCT No. RT-38959[13] on 11 June 2001. The subject annotation was, however, carried over in TCT No. RT- 38959 in the name of DBP.

Later, DBP sold the property covered by TCT No. RT-38959 to a certain Emily S. Ebaya (Ms. Ebaya) who noted the encumbrance under Entry No. 91720. Ms. Ebaya then requested DBP to cause the cancellation of said entry in order for her to obtain a clean title in her name free from all liens and encumbrances, which the DBP obliged by filing the Petition for Cancellation on 11 November 2009, docketed as Special Proceeding No. 4726.[14]

The court a quo, after finding the Petition for Cancellation sufficient in form and substance, issued an Order dated 19 November 2009 setting the hearing on 13 January 2010 at 8:30 in the morning.[15]

On 14 January 2010, petitioner filed an Opposition[16] to DBP's Petition for Cancellation substantially alleging that he is the "successor" of Ms. Clarita Estrada (Ms. Estrada), the plaintiff in Civil Case No. CEB-23102 mentioned in the subject annotation. Petitioner's Opposition alleges that the cause of action of DBP has already prescribed pursuant to either Articles 1144 or 1146 of the Civil Code since its Petition for Cancellation was filed only on 11 November 2009 beyond the period provided therein reckoned from the date of annotation of Entry No. 91720 on 14 July 1999. Petitioner's Opposition also alleges that DBP has no more legal standing to file the Petition for Cancellation since it has already sold the subject property to Ms. Ebaya, who is allegedly not a buyer in good faith, and that Section 14 of Executive Order No. 81 (otherwise known as the 1986 Revised Charter of DBP) relied upon by DBP in its Petition for Cancellation is allegedly unconstitutional and not applicable to the case filed by DBP.

In its Comment,[17] DBP contends, in substance, that Article 1146 of the Civil Code is not applicable as averred by petitioner since DBP's Petition for Cancellation is not about injury or negligence. DBP adds that Executive Order No. 81, Section 14 is constitutional and its constitutionality cannot be attacked collaterally by a mere opposition to the Petition for Cancellation. DBP maintains that its mortgage over the subject property was annotated on 15 September 1997 under Entry No. 83406 ahead of the Notice of Attachment/Levy made the Sheriff of RTC, Branch 17, and recorded as Entry No. 91720 dated 14 July 1999.

After evaluating the issues and arguments raised by the parties below, the court a quo issued its assailed Order dated 10 October 2011 denying petitioner's Opposition to DBP's Petition for Cancellation, disposing as follows:

WHEREFORE, in view of the foregoing, the Opposition filed by Jaime Yunam is hereby DENIED for lack of merit.

SO ORDERED.[18]

Dissatisfied with the court a quo's disposition, petitioner sought reconsideration[19] which was opposed[20] by DBP and, eventually denied by the court a quo per its Order dated 12 April 2012. [21]

Aggrieved, petitioner filed the instant Petition.[22]

DBP filed its Comment[23] to the Petition, in response to which, petitioner filed a Reply.[24] After which, the parties were directed to submit their simultaneous memoranda in amplification of their respective positions per Minute Resolution[25] of this Court dated 16 November 2012. However, despite the opportunity afforded to submit said memoranda, only petitioner filed a Memorandum.[26] Thus, DBP was deemed to have waived the filing of its memorandum in view of the JRD verification report dated 15 April 2013 that none had been filed as of said date, per this Court's Minute Resolution dated 17 April 2013.[27]

Grounds Raised in the Petition/Issues

The Petition raised the following grounds/issues:

- THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S OPPOSITION DESPITE THE FACT THAT PRIVATE RESPONDENT HAS NO MORE LEGAL STANDING TO FILE THE PETITION FOR CANCELLATION OF ENTRY ON TCT NO. RT-38959 HAVING SOLD THE PROPERTY AT PUBLIC AUCTION ALREADY.
- THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO THE PETITION EVEN IF THE CAUSE OF ACTION FOR CANCELLATION OF SUBJECT ANNOTATION HAS CLEARLY PRESCRIBED.
- THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT CONSIDERING THAT ENTRY NO. 91720 CANNOT BE CANCELLED WITHOUT PREJUDICE TO THE RIGHTS OF PETITIONER IN GROSS VIOLATION OF BASIC TENETS OF JUSTICE AND FAIR PLAY.
- THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN APPLYING SECTION 14 OF EXECUTIVE ORDER NO. 18 EVEN IF THE SUBJECT PROPERTY CAN NO LONGER BE CONSIDERED AS A "SECURITY ON LOANS AND/OR ACCOMMODATIONS GRANTED BY DBP" AND EVEN IF "ALL DEBTS OF THE MORTGAGOR-DEBTOR TO THE DBP HAVE ALREADY BEEN PREVIOUSLY PAID".[28]

This Court's Ruling

The petition is devoid of merit.

The special civil action for certiorari under Rule 65 of the Rules of Court is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. "Grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of

the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[29]

In substance, petitioner contends that the court a quo gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the assailed orders. Although petitioner raised a number of assigned errors in the petition, the pivotal issues to be resolved are: (1) whether the DBP has a legal standing or right to be granted the relief prayed for in its Petition for Cancellation; and (2) whether such action has already prescribed.

As regards the issue of DBP's legal standing

Petitioner contends that DBP has no standing to file the Petition for Cancellation since it has no more interest in the subject property, having admitted in its Petition for Cancellation that it already sold the same to Ms. Ebaya.[30]

DBP counters that under Article 1495[31] of the Civil Code, the vendor is bound to transfer the ownership of and deliver, as well as warrant, the thing which is the object of the sale. Moreover, it argues that under Article 1547[32] of the same Code, the vendor has an implied warranty of eviction in favor of the vendee to ensure the latter's peaceful possession of the property. Accordingly, DBP claims that it has the requisite standing to file the Petition for Cancellation.

The Court agrees with DBP. Notwithstanding the sale in favor of Ms. Ebaya, DBP still has an interest in the subject property.

At the outset, it must be noted that it appears that the title to the subject property is still in the name of DBP and that there is no showing that the same was already transferred to Ms. Ebaya. As such, DBP has yet to comply with its obligation to transfer the title to Ms. Ebaya, and in this case free from the subject annotation.

As the registered owner or person having an interest in the subject property, DBP has the right and interest to seek the removal of subject annotation pursuant to Section 108 of Presidential Decree (PD) No. 1529 (otherwise known as The Property Registration Decree) which provides:

SEC. 108. Amendment and alteration of certificates. – No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interest of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a

certificate for value in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree of registration was entered. (Emphasis added)

In the case of *Philippine National Bank v. International Corporate Bank and Court of Appeals*[33] which involves similar facts as in this case, the Supreme Court held that the purchaser in the foreclosure sale has the right to secure the cancellation of subordinate liens, like the subject annotation in the instant case:

The rule is that upon a proper foreclosure of a prior mortgage, all liens subordinate to the mortgage are likewise foreclosed, and the purchaser at public auction held pursuant thereto acquires title free from the subordinate liens. Ordinarily, thereafter the Register of Deeds is authorized to issue the new titles without carrying over the annotation of subordinate liens. In a case with similar features, we had earlier held that the failure of the subsequent attaching creditor to redeem, within the time allowed by Section 6 of Act 3136, the land which was sold extrajudicially to satisfy the first mortgage, gives the purchaser a perfect right to secure the cancellation of the annotation of said creditor's attachment lien on the certificates of title of said land. (Emphasis supplied)

Further, as held in the case of *Bank of the Philippine Islands v. Antonio Noblejas*,[34] which was prominently cited in the aforesaid case of *Philippine National Bank v. International Corporate Bank and Court of Appeals*[35]:

x x x "[A]ny subsequent lien or encumbrance annotated at the back of the certificates of title cannot in any way prejudice the mortgage previously registered, and the lots subject thereto pass to the purchaser at the public auction sale free from any lien or encumbrance. Otherwise, the value of the mortgage could be easily destroyed by a subsequent record of an adverse claim, for no one would purchase at a foreclosure sale if bound by the posterior claim. . . . This alone is sufficient justification for the dropping of the adverse claim from the new certificates of title to be issued to her, as directed by respondent Commissioner in his opinion subject of this appeal." (Emphasis supplied)

Since DBP, whose lien is superior to the lien covered by the subject annotation, foreclosed the mortgage over the subject property and no redemption was made by the mortgagor (the Spouses Suson), or by the subsequent attaching creditor (Ms. Estrada) and her "successor" (the petitioner), or any interested party, resulting in the consolidation of ownership in DBP over the subject property, DBP thereby acquires the subject property free from the subordinate lien covered by the subject annotation. Accordingly, it has the right to seek the cancellation of the subject annotation being a subordinate lien.

Petitioner cannot claim that his rights as a lienholder will be prejudiced by the Petition for Cancellation considering that his lien is clearly subordinate to that of DBP's lien. As ruled in the case of *Flor Martinez v. Ernesto Garcia and Edilberto M. Brua*[36]:

The levy does not make the judgment creditor the owner of the property levied upon. He merely obtains a lien. Such levy on execution is subject and subordinate to all valid claims and liens existing against the property at the time the execution lien attached, such as real estate mortgages. (Emphasis added)

Petitioner is charged with the knowledge that the rights and interest she acquired from his predecessor, Ms. Estrada, were subordinate to the lien of DBP which were clearly annotated earlier than the subject annotation on the title of the Spouses Suson. Petitioner was, thus, aware that the rights and interest of Ms. Estrada were subject to DBP's superior lien.

On the issue of prescription

DBP filed its Petition for Cancellation below on 11 November 2009.[37]

Petitioner contends that DBP's cause of action for the cancellation of the subject annotation has already prescribed since the same was not enforced within 10 years reckoned from the date of the inscription of the subject annotation on 14 July 1999.[38]

In contrast, DBP contends that its cause of action has not yet prescribed since, under Article 1144 of the Civil Code, such action may be brought within 10 years from the issuance of its title on 11 June 2001 since it was only then that it became the owner of the subject property. Hence, it argues that the filing of the Petition for Cancellation on 11 November 2009 was well within the prescribed period for the enforcement of such cause of action.[39]

The court a quo resolved this issue in favor of DBP, as follows:

On the other hand, it cannot be said that the cause of action of petitioner DBP to cause the cancellation of Entry No. 91720 of the attachment and levy already prescribed considering that the title of the subject property under TCT No. RT-33649 in the name of Mario Suson was only cancelled, and a new TCT NO. RT-38959 was issued in the name of the petitioner DBP, on June 11, 2001. Hence, the alleged ten (10) year prescriptive period did not yet prescribe when the instant petition was filed in court on November 11, 2009.

Further, at the time of the annotation of Entry No. 91720 in TCT No. RT-33649, it cannot be said that DBP had already a cause of action to cancel the said entry on the ground that the title to the said property was still registered in the name of the previous owner, Mario Suson. It was only on June 11, 2001 when the said title was cancelled and a new one was issued under TCT No. RT-38959 in petitioner's name that petitioner has a cause of action to cause the cancellation of Entry No. 91720.

This Court agrees with the ruling of the court a quo.

In accordance with the ruling in the aforecited case of *Philippine National Bank v. International Corporate Bank and Court of Appeals*,[40] the cause of action of DBP to cancel the subject annotation accrued following its foreclosure of the mortgage and the failure to redeem the subject property resulting in the consolidation of its ownership in the subject property as evidenced by the issuance of a title in its name:

The rule is that upon a proper foreclosure of a prior mortgage, all liens subordinate to the mortgage are likewise foreclosed, and the purchaser at public auction held pursuant thereto acquires title free from the subordinate liens. Ordinarily, thereafter the Register of Deeds is authorized to issue the new titles without carrying over the annotation of subordinate liens. In a case with similar features, we had earlier held that the failure of the subsequent attaching creditor to redeem, within the time allowed by Section 6 of Act 3136, the land which was sold extrajudicially to satisfy the first mortgage, gives the purchaser a perfect right to secure the cancellation of the annotation of said creditor's attachment lien on the certificates of title of said land. (Emphasis supplied)

As shown by annotations on TCT No. RT-33649 of the Spouses Suson, the Sheriff's Final Certificate of Sale and the Consolidation of Ownership were annotated on 21 June 2001. On that date, DBP's TCT No. RT-38959 was also issued. Thus, the 10-year prescribed period must be reckoned from 11 June 2001 and not from the date of inscription of the subject annotation on 14 July 1999. Since DBP's Petition for Cancellation was filed on 11 November 2009,[41] clearly, the filing was well within the prescriptive period.

Consequently, the court a quo did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Orders.

WHEREFORE, the instant petition is DISMISSED for lack of merit. The assailed Orders of the court a quo stand.

SO ORDERED.

Lloren, J., Ch., and Santos, JJ., concur.

[1] The case was unloaded to the undersigned ponente pursuant to Office Order No. 03-14-JMBP dated 01 April 2014 as part of his initial caseload.

[2] Rollo, pp. 38-39.

[3] Rollo, pp. 29-32.

[4] Rollo, pp. 15-19.

[5] Rollo, pp. 47.

[6] Rollo, pp. 40-43.

[7] Rollo, p. 24.

[8] Rollo p. 22, 24 dorsal portion (p. 25).

[9] Rollo, pp. 20-23.

[10] Rollo, p. 20, dorsal portion (p. 21).

[11] Rollo p. 22.

[12] Rollo, p. 23.

[13] Rollo, p. 24.

[14] As averred in DBP's Petition for Cancellation of Entry in the Certificate of Title, rollo, p. 17, as well as in the instant Petition for filed by petitioner Yunam before this Court, rollo, p. 6.

[15] Rollo, pp. 27-28.

[16] Rollo, pp. 29-32.

[17] Rollo, pp. 33-35.

[18] Rollo, p. 39.

[19] Rollo, pp. 40-43.

[20] Rollo, pp. 44-46.

[21] Rollo, p. 47.

[22] Rollo, pp. 61-75 in compliance with this Court's Minute Resolution dated 31 May 2012 (rollo, p. 49), directing petitioner Yunam to rectify the defect noted in the Petition (rollo, pp. 4-14) filed before this Court on 14 May 2012 by indicating therein his actual address and that of DBP which were not then indicated.

[23] Rollo, pp. Rollo, pp.-56.

[24] Rollo, pp. 101-105.

[25] Rollo, p. 100.

[26] Rollo, pp. 107-115.

[27] Rollo, p. 116.

[28] Rollo, p. 8.

[29] Julie's Franchise Corporation v. Judge Ruiz, G.R. No. 180988, August 28, 2008.

[30] Rollo, p. 9, 111-112.

[31] Article 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.

[32] Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledge, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest. (n).

[33] G.R. No. 86679, July 23, 1991.

[34] G.R. No. L-12128, March 31, 1959.

[35] Supra.

[36] G.R. No. 166536, February 4, 2010.

[37] Rollo, pp. 15-19.

[38] Rollo, pp. 9-10, 112.

[39] Rollo, pp. 44-45.

[40] Supra.

[41] Rollo, pp. 15-19.

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