

**PACIFICO S. ASICO AND EMMA B. DE ASICO,
PETITIONERS-APPELLANTS, VS. CARMEN VASQUEZ TRINIDAD,
OPPOSITOR-APPELLEE.**

G.R. No. L-7486. May 27, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

On August 6, 1952, Pacifico S. Asico and his wife Emma B. de Asico filed in the court of first instance of Negros Occidental, a verified petition for the reconstitution, under Republic Act No. 26, of the original as well as the owner's duplicate of Transfer Certificate of Title No. 17920 in the name of Hilarion Martir, covering Lot No 990 of the Bago Cadastre, same province.

Publication and notices were duly made. None opposed the petition. Evidence was submitted proving the following facts:

Lot No. 990 of the Bago Cadastre was originally decreed and registered in the name of Gododredo Gison (Original Title No, 4193). Upon the latter's death, it was inherited by Amparo Gison, in whose favor Transfer Certificate of Title No. 179191 was issued upon cancellation of the original title. This Transfer Certificate was subsequently substituted, on July 18, 1936, with another transfer certificate of title No. 17920 in the name of Hilarion Martir, widower, who had purchased the land from Amparo Gison. On August 13, 1938, Hermogenes Martir, as heir of Hilarion Martir, mortgaged the land to Soledad Jalandoni and the deed of mortgage was duly inscribed in the office of the Register of Deeds on November 25, 1938, and was entered on the back of Transfer Certificate of Title No. 17920. In February 1941, Soledad Jalandoni instituted foreclosure proceedings, which in October 1950 culminated in the sale at public auction of Lot No. 990, by the Provincial Sheriff, to the highest bidders, Pacifico Asico and his wife, which sale was in regular course confirmed by the proper court and recorded in the Registry of Deeds.

Now, there being no question that the original as well as the owner's duplicate of Transfer Certificate of Title No. 17920 had been lost during the last war, the court, in view of the evidence hereinabove outlined, ordered the Register of Deeds, "to reconstitute the original as well as the owner's duplicate of Transfer Certificate of Title No. 17920 (in the name of Hilarion Martir, widower, and resident of Bacolod, Negros Occidental), covering Lot No. 990 of Bago Cadastre, on the basis of the cancelled Transfer Certificate of Title No. 17919 in the name of Amparo Gison (Exh. "C"), the Deed of Sale (Exh. "H") executed by said Amparo Gison in favor of Hilarion Martir, and on other available records still existing in his office pertinent to the aforesaid certificate of title, x x x Once the reconstitution herein ordered is duly accomplished, let a 2nd owner's duplicate certificate of title be issued to the petitioners." (Record on Appeal pp. 32-33).

However it inserted the proviso^[1] that "all liens and encumbrances affecting the aforementioned property which appear recorded in the Office of the Register of Deeds to be existing at the time of the loss or destruction of the said certificate of title shall be annotated on the reconstituted title".

Objecting to this proviso, the petitioners filed a motion to reconsider, contending that it amounted to an undue delegation of judicial power to the Register of Deeds, in that the latter was authorized thereby to reconstitute other liens or encumbrances not duly proven before the court. Besides, petitioners' argued, if the proviso is allowed to stand, "a situation may arise where a contract affecting the property and entered in his Day Book, but NOT NOTED ON THE CERTIFICATE OF TITLE, for some reason or another perhaps because the owner's copy was not surrendered at the time of its presentation - may be reconstituted by the Register of Deeds on the Certificate of Title." (Record on Appeal pp. 39-40)

Before the motion could be acted upon, Carmen Vasquez Trinidad entered her appearance, and opposing the motion, she alleged that Kormogenes Martir had sold the same property to her, with pacto de retro on May 23, 1940, the deed of sale having been registered in the office of the Register of Deeds of Negros Occidental on May 24, 1940, as entry No. 1128. In another motion, she alleged that her failure to appear at the hearing of the petition for reconstitution was not due to her fault or negligence (for reasons not necessary to mention here). She therefore petitioned for a chance to prove her allegation of sale with pacto de retro.

The motion of the Asicos, and the motion of Vasquez were both denied. The first appealed in due time; but the second did not. She even failed to submit a reply to appellant's brief in this Court.

We believe the petitioners had good reasons to object to the proviso inserted by the court. For one thing, the purpose should be to reconstitute the title No. 17920 as it was when lost, And the evidence shows the only incumbrance annotated thereon was the mortgage in favor of Soledad Jalandoni. (p. 32 Record on Appeal). Other encumbrances recorded in the Office of the Register of Deeds but not transcribed on said title are naturally beyond the scope of the proceedings.

If it be argued that the proviso was intended to protect other incumbrances annotated on said title but not proven in this expediente, the answer would be: Such encumbrances are either foreclosed by this proceeding because not presently shown, or they are not affected and may afterwards be proven in other subsequent petitions. If the first, the proviso is clearly erroneous; if the second, it is unnecessary.[2]

We may therefore uphold the petitioners' objection, specially because, probably the only encumbrance to be effected is that asserted by Carmen Vasquez Trinidad, which encumbrance practically became meaningless for two reasons: (a) having failed to appeal from the order denying her motion to establish it, she lost all her rights, if any; (b) and said sale having been executed after the registration of the mortgage of Jalandoni, it is subordinate to such mortgage, and to the rights of purchasers at the public auction resulting from the foreclosure, i.e., the Asico spouses.

Another amendment which petitioners desired in their motion to reconsider was the annotation, on the reconstituted title, of the mortgage by Hermogenes Martir in favor of Soledad Jalandoni. It is obvious that inasmuch as said mortgage and annotation had been duly proven the court should have instructed the Register of Deeds to annotate such encumbrance on the duplicate certificate to be issued.

Wherefore, with the elimination of the proviso, and the annotation of Jalandoni's mortgage, the appealed order is affirmed with costs against appellee. So ordered.

Pablo, Montemayor, Reyes, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

[1] This is the main issue before us.

[2] This particular point will be decided if and when other petitions to note such encumbrances are hereafter

made.

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