

JESUS GARCHITORENA, ET AL., APPLICANTS AND APPELLANTS, VS. DIRECTOR OF LANDS, ET AL., OPPOSITORS. ZULUAGA & ERQUIAGA, INC., APPELLEE.

G.R. No. L-4011. April 28, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

The applicants-appellants, Jesus Garchitorena et al., are the registered owners of six parcels of land covered by original certificate of title No. 928 of the Register of Deeds of Camarines Sur. In Civil Case No. 6696, Zuluaga and Erquiaga, Inc. vs. Jesus Garchitorena et al., Zuluaga and Erquiaga, Inc. obtained a judgment for a sum of money against Jesus Garchitorena et al. Zuluaga and Erquiaga, Inc., as plaintiffs in said Civil Case No. 6696, caused a notice of lis pendens to be noted on the back of certificate of title No. 928, with respect to parcels Nos. 5 and 6.

On November 7, 1946, the appellants filed in the original registration case, No. 59, G. L. R. O. record No. 41882, a petition alleging that the judgment in favor of Zuluaga and Erquiaga, Inc. had already been satisfied, and praying that, in accordance with section 112 of Act No. 496, the Register of Deeds of Camarines Sur be ordered to cancel the notice of lis pendens noted on the back of certificate of title No. 928. In its order of December 4, 1946, the Court of First Instance of Camarines Sur granted the petition and ordered the Register of Deeds to cancel said notice of lis pendens. On December 18, 1946, Zuluaga and Erquiaga, Inc., thru counsel, filed a motion for reconsideration, alleging that Zuluaga and Erquiaga, Inc. was not furnished with a copy or notice of appellants' petition, in violation of section 112 of Act 496; that the judgment in favor of Zuluaga and Erquiaga, Inc. had not yet been satisfied; that the quitclaim presented by the appellants in support of their petition for the cancellation of the notice of lis pendens signed by Andres Aguilar as attorney for Zuluaga and Erquiaga, Inc., and acknowledging the receipt of the sum of P5,000 in satisfaction of the judgment in Civil Case No. 6696, was signed by Atty. Aguilar without the authority, knowledge or consent of Zuluaga and Erquiaga, Inc.; and accordingly praying that the order of December 4, 1946, be reconsidered and set aside.

The clerk of the Court of First Instance of Camarines Sur was commissioned to receive evidence. On December 10, 1948, the Court issued an order dismissing the petition filed by appellants for the cancellation of the notice of lis pendens without prejudice on the part of any of the parties to file such action as they may deem necessary for the protection of their rights. The court reasoned out that the parties have raised questions of fact and law which cannot be decided collaterally in said proceeding, in addition to the fact that no notice was served by the appellants on Zuluaga and Erquiaga, Inc., in violation of section 112 of Act No. 496.

The important issue raised in the petition and other pleadings in this case has reference to the alleged satisfaction of the judgment in Civil Case No. 6696 in favor of Zuluaga and Erquiaga, Inc., and against the appellants. We concur with the trial court in its opinion that said issue should be ventilated in an ordinary action, because there is a substantial controversy between the parties with respect to the cancellation of the notice of lis pendens prayed

for by the appellants. (Castillo et al., vs. Ramos et al.,[1] 45 Off. Gaz., 183; Fidelity and Surety Company of the Philippines vs. Court of Appeals et al.,[2] 47 O. G. 4084.)

The appealed order is therefore affirmed, with costs against the appellants. So ordered.

Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, and Bautista Angelo, JJ., concur.

[1] 78 Phil., 809.

[2] 85 Phil., 485.

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