

**IN RE: PETITION FOR THE CANCELLATION OF AN ENCUMBRANCE.
WILLIAM LI YAO, PETITIONER AND APPELLEE, VS. NARCISA B. DE
LEON, LUIS DE LEON, EULALIA DE LEON, ENCARNACION DE LEON,
MANU...**

G.R. No. L-14324. April 12, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of the Court of First Instance of Manila, directing the cancellation of the "annotation of encumbrance", under entry No. 5420, 5421 and 5422/T-13432, on Transfer Certificate of Title No. 46619 of the Office of the Register of Deeds of Manila.

This certificate of title covers a parcel of land known as Lot No. 3, Block No. 2130, of the Cadastral Survey of Manila, which is slightly trapezoidal in form and adjoins, on the South, Raon Street, with much more depth than frontage thereon. It is bounded, on the East, by two lots: on the Southern portion, by Lot No. 5 (which likewise adjoins Raon Street), and on the Northern portion, by Lot No. 4-B, both of Block No. 2130. This Lot No. 4-B belongs to appellants herein, Narcisa B. de Leon, Luis de Leon, Eulalia de Leon, Encarnacion de Leon, Manuel de Leon and Amada de Leon, and is bounded on the North by Lot 6-B of the same Block 2130, which is, in turn, bounded on the East by part of Lot 19, as well as by Lots 21 and 23, and part of Lot 25 of the same Block. These Lots 19, 21, 23 and 25 are bounded, on the East, by Rizal Avenue, and like Lots 4-B and 6-B, they all belong to appellants herein.

It appears that said Lots 3, 4-B, 6-B, 19, 21, 23 and 25, used to belong to Mariano Cu Unjieng and Cu Unjieng e Hijos, who, before the year 1930, had leased said Lot No. 3, now owned by petitioner William Li Yao, and Smith Bell & Co., Ltd., which had applied for a permit to make thereon certain constructions, one of which was, seemingly, in the inner portion of Lot No. 3 and did not abut on Raon Street. As a condition for the issuance of the permit, the City Engineer of Manila demanded that a private alley, two (2) meters in width, be opened on the eastern part of Lot No. 3, to connect said construction, in the northern portion of said lot, with Raon Street, pursuant to section 103 of the Revised City Ordinances, reading:

"When the application, plans, and specifications conform to the requirements of this title and of title thirteen hereof, the city engineer shall issue a permit for the erection of the building and shall approve in writing such plans and specifications, one copy of which shall be returned to the owner or his agent and one copy shall be retained by the city engineer: Provided, That the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved; and Provided further, That any private street or alley opened in an interior lot for the purposes of this section, once officially approved, shall be open to the general public, and with its approved width preserved, shall be maintained and kept in good repair by the grantee of the permit, his heirs, executors, and assigns, and shall never be closed by any person so long as there is a building or other structure abutting or facing upon such private street or alley."

In compliance with this demand, the Cu Unjiengs executed on July 25, 1931 a public instrument undertaking to open and maintain said private alley. The instrument was, in September 1931, registered in the office of the Register of Deeds of Manila under entry No. 5420, 5421 and 5422/T-13432 and annotated on Transfer Certificates of Title Nos. 13432, 26017, 26019, 26020 and 26877 of said office. Said entry, as set forth in Transfer Certificate of Title No. 70981, issued in lieu of Transfer Certificate of Title No. 26017, is of the following tenor:

"Mariano Cu Unjieng, por si y como apoderado de la entidad 'Cu Unjieng e Hijos en cumplimiento con las disposiciones de los articulos 103 y 460 de las Ordenanzas Revisadas de la Ciudad de Manila, se obliga, sus herederos, ejecutores, administradores y cesionarios a abrir y mantener un callejon privado de dos metros oficialmente aprobado por el Ingeniero de la Ciudad, dentro de la parcela de terreno descrita en el presente certificado, de las descritas en los certificados de Titulos. Nos. 26019 y 26877, Libros T-63 y T-66 del Registro y de la Primera Parcela de Terrenos descrita en el Certificado de Titulo No. 26020 y 13432 T-63 del Registro, el cual callejon, se describe en cuanto a su situacion, linderos y estension superficial como sigue. A PARCEL OF LAND (As shown on plan II-227, Office of the City Engineer), situated in the District of Sta. Cruz. Bounded on the North by properties of Eustaquia Macalanda and Mariano Cu Unjieng; on the East by properties of Mariano Cu Unjieng and Jose Avila and Rizal Avenue; on the South by property of Mariano Cu Unjieng and Calle Raon; and on the West by properties of Mariano Cu Unjieng and Eustaquia Macalanda; containing an area of Two Hundred Five Square Meters and eighty square decimeters (205.80) more or less.' Son condiciones del contrato las siguientes, que el edificio colindara o dara frente con el citado callejon; que dicho callejon estara en buena condicion y debidamente provista con canales en ambos lados del mismo, como requieren las regulaciones sanitarias; estara abierto al publico y su anchura aprobada de DOS METROS sera mantenida y guardada en buen estado de reparacion por el concesionario, sus herederos, ejecutores y cesionarios y no se cerrara nunca por cualquiera persona mientras haya edificio o construccion, que colinda, de frente o tenga acceso a dicho callejon privado. (Docs. Nos. 61 y 92 pages 16 y 22, Lib. 1, Reg. del Notario Pub. de Manila, Jose C. Zulueta, y Doc. No. 617, pag. 32 Lib. V. Reg. del Not. Publ. de Manila, Nemesio Zamora, Fecha de la inscripcion Sept. 8, 1931 at 3:18 p.m. The foregoing annotation has been copied from TCT No. 70981/T-242."

Transfer Certificate of Title No. 13432, then covering Lot No. 3, was cancelled upon acquisition thereof by petitioner William Li Yao, to whom Transfer Certificate of Title No. 46619 was issued in lieu thereof. Meanwhile, the aforementioned contract of lease in favor of Smith Bell & Co. had expired and its annotation in the corresponding certificate of title was ordered cancelled on April 8, 1952. The annotations of encumbrance on the certificates of title covering Lots 4-A and 6-A of Block No. 2130 were also cancelled, by order of the Court of First Instance of Manila, of the same date. Similarly, the building or buildings of Smith Bell & Co., Ltd., which gave occasion for the undertaking and annotation involved in this case, were destroyed during the liberation of Manila. Upon the other hand, the aforesaid Lots 4-E, 6-B, 19, 21, 23 and 25 of Block 2130 were acquired by appellants herein.

On July 16, 1957, Li Yao, as present owner of Lot No. 3, filed, in this cadastral record, a petition praying, under the provisions of section 112 of Act No. 496, that the annotation of the aforementioned entry on Transfer Certificate of Title No. 46619 be cancelled, because the building to which said entry referred no longer exists, and the legal necessity for the private alley mentioned therein has ceased and terminated.

Appellants herein opposed the petition upon the ground that they have on Lot 6-B a building which is used and operated as a first class theater, known as Dalisay Theater; that the air-conditioning equipment to aircondition the Dalisay Theater is housed in a building erected on Lot 4-B, which adjoins the northern portion of the aforementioned alley, and is accessible only through Raon Street, passing through, said alley; that petitioner Li Yao has in the northern portion of Lot No. 3, a building that has no frontage on Raon Street, but abuts on said alley; that the occupants of said building have no access to Raon Street, except through such alley, the closure of

which would make said building a veritable fire trap; that the existence and continuance of said alley is indispensable to the safety of the employees and patrons of the Dalisay Theater; that, in fact, the Chief of the Fire Department of Manila has advised the management of the Dalisay Theater that said alley is obstructed by piles of lumber, to the prejudice of the patrons of said theater, who would find it very difficult to evacuate the same in case of fire or other emergency, and requested that said alley be cleared of all obstructions within a given period, under threat of recommending the closure of the Dalisay Theater, as fire and life hazards; that one of the conditions of the undertaking to which the entry in question refers is that said alley would be maintained and kept in good condition and would not be closed, as long as there is a building or construction fronting or abutting said alley; and that petitioner Li Yao, through his tenants occupying the buildings erected on Lot No. 3, had made and placed obstructions along said alley, thereby diminishing its usefulness, in violation of the terms and conditions of the aforementioned undertaking. Appellants prayed, therefore, that Li Yao's petition be denied, and that he "be ordered to clean the said alley of any and all obstruction, and to maintain the same clean, and in sanitary condition free of filth and dirt".

Replying to this opposition, Li Yao, alleged, inter alia, that the building now existing on the Northern portion of Lot No. 3. is part and parcel of the building on its Southern portion, abutting on Itaon Street, and that said petitioner has a pending application for the construction, on said lot, of a new building of strong materials, which would not necessitate the use of any private alley.

By an order, dated August 6, 1957, the Court of First Instance of Manila overruled appellants' opposition and granted Li Yao's petition. A reconsideration of said order having been denied, the matter is now before us on record on appeal filed by appellants, who claim that:

- "The lower court erred in ordering the cancellation of the encumbrance in question notwithstanding that it had no jurisdiction to do so as a Land Registration Court.
- "The lower court erred in not holding a trial on the merits, supposing without admitting that it had jurisdiction over the case.
- "The lower court erred in finding that the alley in question, was intended only for the benefit of Smith. Bell & Co., Ltd. although there was no evidence on that point.
- "The lower court erred in giving weight to the opinion of the City Engineer of Manila, that said encumbrance may now be cancelled, and in disregarding the view of the Fire Department of Manila that the alley should be maintained or continue to exist.
- "The lower court erred in holding that the said encumbrance should be cancelled because the oppositors have a direct exit on Rizal Avenue.
- "The lower court erred in not holding that the alley in question is a voluntary legal easement imposed by the former owner of the land and as an easement in favor of the community, which the public has acquired by prescription.
- "The lower court erred in not holding that the encumbrance in question can only be cancelled by means of a municipal ordinance or by the legal modes of extinguishing easements."

- Lack of "unanimity among the parties" is alleged in support of appellants' objection to the jurisdiction of the lower court, under section 112 of Act No. 496, and of their claim that the issue between them should be settled in an ordinary action. This pretense is untenable. The encumbrance in question was created by an undertaking executed by the Cu Unjiengs, whose tenant wanted to construct on Lot No. 3 a building which otherwise would have been inaccessible from any public or private street or alley. The only "parties" to said undertaking were the

Cu Unjiengs and the city of Manila, on whose demand the undertaking was executed. The City of Manila through its City Engineer, who had actually made said demand, now agrees to the cancellation of the encumbrance constituted by said undertaking and of the annotation thereof, in the following language:

"The within copy of petition of William Li Yao seeking cancellation of the encumbrance relating to the opening of the private alley under Section 103 of the Revised Ordinances, appearing on the back of Transfer Certificate of Title No. 46619, was in connection with the construction of a strong material building sometime during pre-war which necessitated that the building should abut or face on said private alley. The building in question which was erected on said Lot 3, Block 2130 and for which the private alley was opened to serve as exit for said building is no longer existing as the same was destroyed or burned during the liberation. In fact, William Li Yao has now applied for building permit to construct a new strong material building on said lot which will not necessitate the use of any private alley.

"In view of the foregoing, and inasmuch as one of the conditions imposed in said application for private alley is that the same shall not be closed so long as there is a building abutting or facing the said alley and inasmuch as the said building was already destroyed, hence, there is no more use for said alley, this Office would interpose no objection to the within application of Mr. William Li Yao for the cancellation of the encumbrance appearing on back of Transfer Certificate of Title No. 26619" (Ist Indorsement, dated July 19, 1957, of City Engineer Alejo Aquino; Annex B of Reply to Opposition filed by Narcisa B. de Leon, et al.,)

Having been made as a condition precedent for the construction of a building in the interior of Lot No. 3, said demand was evidently made for the benefit of the occupants of said building, not those of Lots 4-B or 6-B, now belonging to appellants. Whatever benefits the latter may have derived from the private alley in question was purely incidental to those established in the interest of the occupants of Lot No. 3. Despite the fact that then title was derived from the Cu Unjiengs, appellants are not parties to the undertaking aforementioned. This becomes apparent when we consider that the Cu Unjiengs regarded it only as owners of Lot No. 3, and that they would have had to execute it even if Lots 4-B, 6-B, 19, 21, 23 and 25 had not been theirs at that time. Consequently, appellants have no legal interest in and to said encumbrance enforceable under section 112 of Act No. 498, and no right to object to the exercise of the jurisdiction of the lower court under said provision. In short, there is a unanimity among the parties to said undertaking.

The cases relied upon by the appellants are not in point. *Lagula vs. Casimiro*, 98 Phil., 102; 52 Off. Gaz., 196 involved an issue between co-owners regarding the manner in which their common property would be partitioned. In *Tanganan vs. Republic* (94 Phil., 171; 50 Off. Gaz., 115) the co-owners of a land sought cancellation, upon the ground of prescription, of an old annotation of a writ of execution in favor of the Government and against one of said co-owners. The Government, which by virtue of said annotation, had a right in rem, contested this claim. *Casillan vs. Espartero* (95 Phil., 799; 50 Off. Gaz. 4183) referred to a land the title to which was, due to an alleged clerical mistake in the corresponding decree, issued to the wrong party. It was held that the latter could not, on motion filed under section 112 of Act No. 496, be ordered to reconvey the land to the party allegedly aggrieved there. Similarly, in *Director of Lands vs. Register of Deeds of Rizal*, (92 Phil., 826; 49 Off. Gaz., 935), a decree was erroneously issued in the name of the Municipality of Malabon, although the decision had been rendered in favor of the Philippine Government. The court had no jurisdiction, we held, to compel the municipality of Malabon, under said section 112, to surrender its certificate of title, in order that another one, in the name of the Philippine Government, could be issued. In *Enriquez vs. De Atienza* (100 Phil., 1072; 53 Off. Gaz., 7231), we declared that said provision may not be availed of to determine whether the title to a registered land should be cancelled, over the objection of the registered owner, because someone else claims to be its true owner. In all these cases, the parties objecting to the application of said section 112 were either registered owners or co-owners or had a right in rem duly registered and annotated on the title to the property in question. Appellants herein have no such right.

It is obviously improper to require the petitioner to sue appellants herein, simply because they object to the petition. If appellants feel that the alley should not be closed, and that the petitioner should "be ordered to .clean the said alley of any and all obstruction, and to maintain the same clean and in sanitary condition, free from filth and dirt"—as prayed in their opposition—they may file therefor an ordinary action, for it is the relief they seek that can not be granted under said section 112 of Act No. 496.

- Contrary to appellants' contention, no evidence was necessary before the issuance of the order appealed from, the fact therein relied upon being uncontroverted. Appellants merely congest the conclusions drawn therefrom.

- The alley in question was opened and maintained in compliance with the provisions of section 103 of the Revised City Ordinances, which deals with the issuance of building construction permits by the City Engineer. Pursuant thereto, no such permit shall be granted unless the building concerned abuts or faces "upon a public street or alley or on a private street or alley which has been officially approved". Consequently, such private street or alley as may have been opened and maintained as a condition for the authority to construct said building is intended only for its benefit.

- The communication of the fire department relied upon by appellants merely indicates the necessity for them, if they wish to continue operating the Dalisay Theater, to have a corridor that would give their patrons and employees an exit to Raon Street. Such communication does not conflict with the stand of the City Engineer to the effect that petitioner Li Yao is no longer bound to maintain the alley in question.

- The fifth assignment of error need not be passed upon, in view of what has been said about the propriety of a separate action by the appellants, if they wish to compel petitioner herein to maintain the alley in question.

- The sixth assignment of error involves a contradiction. Acquisition by prescription implies adverse possession or enjoyment, which is inconsistent with the voluntary nature of the undertaking involved in this case. Moreover, as above stated, the private alley in question was opened to give access, from Raon Street, to the interior portion of Lot No. 3, not to any other property.

- The last assignment of error is devoid of merit. No legal provision or authority has been cited in support of the alleged need of a municipal ordinance to extinguish the obligation to maintain the alley in question. Moreover, the same was opened upon demand of the City of Manila, as a condition for the construction of a given building. This has already been destroyed and the City of Manila has agreed to the cancellation of the encumbrance. Hence, there is no reason for the continuance of its annotation.

Wherefore, without prejudice to such separate action as appellants herein may deem fit to bring, the order appealed from is hereby affirmed, with costs against said appellants. It is so ordered.

Bengzon, Acting C.J., Padilla, Labrador, Reyes, J.B.L., and Dizon, JJ., concur.

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