

IN RE PETITION FOR CANCELLATION OF ENCUMBRANCE ANNOTATED ON TCT NOS. 22120 AND 22121, REGISTRY OF DEEDS OF NUEVA ECIJA, NICANOR T. SANTOS, PETITIONER-APPELLANT.

G.R. No. L-27358. February 20, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This is a summary proceeding under section 112 of Act No. 496 for the cancellation of the encumbrances annotated on the back of certain Torrens titles. The petition was filed in the land registration court Cadastral Case No. 19, LRC Cadastral Record No. 391.

Lots Nos. 1921 and 1956 of the Cuyapo, Nueva Ecija cadastre with areas of fifteen and sixteen hectares, respectively, are covered by Transfer Certificates of Title Nos. 22121 and 22120 in the names of the brothers Nicanor T. Santos and Reynaldo T. Santos as co-owners (Exh. F and G).

On the back of those titles, the following encumbrances appear:

"Entry No. - 2167 T-20935; Kind - Adverse Claim; Executed in Favor of - Nicanor T. Santos & Reynaldo T. Santos; Condition & Date of Instrument - The property described in this title is subject to an adverse claim which has for an object to acquire ownership of said property (D-100, P. 56, B-I-1, S-1946, Jose M. Santos.

"Entry No. - 2177 T-20935; Kind - Lis Pendens; Conditions & Date of Instrument - Feb. 25, 1946. A petition has been filed with the Court of First Instance of Nueva Ecija for the purpose of securing the presentation of owner's duplicate of T.C.T. Nos 20935 and 20936, now pending for action - Feb. 25, 1946.

"Entry No. - 2196 T-20935; Kind - Attachment; Executed in Favor of - Remedios T. Santos; Conditions & Date of Instrument - All rights, interests and participation of Dionisio C. Bautista in this title has been levied upon indication and insistence of Remedios T. Santos, in connection with Civil Case No. 7608 of the Court of First Instance of Rizal - Feb. 26, 1946.

"Entry No. - 2201 T- 20935; Kind - Attachment; Executed in Favor of - Manuel Borja; Conditions & Date of Instrument - All the rights, interest and participation of Dionisio C. Bautista in this title has been levied, upon indication and insistence of Manuel Borja, in connection with Civil Case No. 7607 of the Court of First Instance of Rizal - Feb. 26, 1946.

"Entry No. - 2202 T- 20935; Kind - First Mortgage; Executed in Favor of - Rizal Surety & Insurance Co., Inc.; Conditions & Date of Instrument - For the sum of P3,000.00 together with T.C.T. No. 20935, subject to the terms and conditions stipulated in the contract. D-16, B-I, S' 45, Conrado S. Carlos, Rizal - Dec. 19, 1945.

"Entry No. - 2493; Kind - Acknowledgement of Mortgage; Executed in Favor of - Rizal Surety & Insurance Co., Inc.; Conditions & Date of Instrument Nicanor T. Santos & Reynaldo T. Santos hereby acknowledged and recognized the mortgage referred to above on the parcels of land on this title and on T.C.T. No. 22121, Vol. 89, executed by Dionisio C. Bautista in favor of the Rizal Surety & Insurance Co., Inc., as superior and first lien and encumbrances thereon, subject to the terms, conditions and covenants agreed upon in said mortgage - March 20, 1946." (pp. 8-10, Record on Appeal.)

Mortgagee's copies of the two titles were issued to Rizal Surety & Insurance Co., Inc. (p. 10, Record on Appeal).

On March 2, 1966, Reynaldo sold to his brother Nicanor his pro indiviso one-half share in the two lots which are located at Barrio Patola, Talugtug (Cuyapo), thus making Nicanor the sole owner thereof (pp. 11-16, Record on Appeal).

On September 26, 1966, Nicanor T. Santos filed with the Court of First Instance of Nueva Ecija, Guimba Branch IV, a petition wherein he prayed that Rizal Surety & Insurance Co., Inc. be ordered to surrender the mortgagee's copies of the titles; that, upon failure to do so, the said copies be cancelled or declared void, and that the register of deeds be ordered to cancel the said encumbrances.

Attached to the petition was the conformity of Remedios T. Santos, one of the encumbrancers, certifying that she agreed to the cancellation of Entry No. 2196 regarding the attachment in her favor (p. 8, Record on Appeal).

The petitioner sent by registered mail copies of his petition to the encumbrancers, Manuel Borja and Rizal Surety & Insurance Co., Inc. (p. 8, Record on Appeal). The registry return cards, evidencing the receipt by those encumbrancers of copies of the petition, were presented in evidence (Exh. C and D). The register of deeds at Cabanatuan City was also furnished with a copy of the petition (Exh. E).

Petitioner Santos alleged in his petition that the said six entries should be cancelled because (a) as to the first two entries, he and his brother are tie interested parties; (b) as to the third entry, the interested party, his sister, consented to its cancellation and (c) as to the 1945 and 1946 entries in favor of Borja and the surety company, the same had already prescribed (pp. 4-5, Record on Appeal).

Treating his petition as if it were a motion, the petitioner directed the clerk of court to set it for hearing on any convenient date.

At the hearing on December 6, 1966, Judge Placido C. Ramos denied the petition in open court on the ground that the said encumbrances could not be cancelled by means of a "mere petition" in the land registration case (pp. 16-17, Record on Appeal).

In a letter dated December 19, 1966, the petitioner asked the register of deeds to cancel the annotation of the attachment in favor of Borja and of the mortgage in favor of the surety company on the ground of prescription (Exh. B).

The register of deeds replied that, as an official with ministerial duties, he has no power to cancel those annotations without a court order (Exh. A).

The petitioner appealed Judge Ramos' order to this Court. He reiterates his contention that the encumbrances in favor of Borja and the surety company should be cancelled without the need of "talking to them (as suggested by

the lower court) because the enforcement of those liens had already prescribed and because those lienholders were served by registered mail with copies of his petition and they did not register any opposition.

We hold that the appeal is devoid of merit. Petitioner's remedy is to file an ordinary action against Borja, the surety company as mortgagee and the register of deeds so that they may be duly summoned and the lower court can acquire jurisdiction over them. Service of copies of the petition by registered mail is not the means for acquiring jurisdiction over their persons.

It may be true that due to the long lapse of time the attachment lien held by Borja and the mortgage lien of the surety company might have already prescribed but this is not a justification for resorting to a shortcut in cancelling the liens or for dispensing with the requirements of due process.

An adversary proceeding, even if it would turn out to be a mere formality or simply ceremonial and ritualistic in character, is the proper procedure.

A court, to avoid injustice or interminable litigations, should act with caution and circumspection in cancelling liens on real property or, for that matter, in passing upon property rights.

The remedy provided for in section 112 of Act No. 496 is summary in nature and is not adequate for the litigation of issues pertaining to an ordinary civil action (*Abella vs. Rodriguez*, 116 Phil. 1277; *Cabangcala vs. Domingo*, 96 Phil. 124).

The continuing, special and limited jurisdiction of the Court of First Instance, as a land registration court under section 112, does not empower it to adjudicate issues properly pertaining to ordinary civil actions such as questions relating to the validity or cancellation or discharge of a mortgage. That issue should be ventilated in an ordinary civil action (*Rehabilitation Finance Corporation vs. Alto Surety & Insurance Co., Inc.*, 107 Phil. 386, 390).

In *Gov't. of the Republic of the Phils. vs. Laperal*, 108 Phil. 860, it was held that the issue of whether the annotation on a Torrens title of 1937 mortgages executed by a Japanese subject can be cancelled in 1953 by the Court of First Instance, sitting as a land registration court, on the ground that the mortgage had already prescribed, should be ventilated in an ordinary civil action.

A Court of First Instance, as a land registration court, cannot cancel the annotation of a mortgage on a Torrens title without the mortgagee's consent even if the mortgagor is willing to post a bond in lieu of the mortgage obligation (*Magdalena Estate, Inc. vs. Yuchengco*, 108 Phil. 340).

But where in a prior case, the foreclosure of certain mortgages was adjudged to have already prescribed (*Enriquez vs. Perez*, 93 Phil. 246), the Court of First Instance, acting as a land registration court, has jurisdiction to order the register of deeds to cancel the annotation of the said mortgages on the Torrens titles covering the mortgaged lots (*Director of Lands vs. Enriquez*, 93 Phil. 584).

That ruling implies that the issue of whether the foreclosure of the mortgage has already prescribed should first be determined in a separate action before the annotation of the mortgage encumbrance can be cancelled by the Court of First Instance under section 112 of Act No. 496 (See *Abustan vs. Ferrer and Golez*, 120 Phil. 1281).

In the instant case, the petitioner has not presented any release or cancellation of the mortgage in favor of the surety company and yet he wants that mortgage to be cancelled. He has to sue the surety company in order that the prescription of the mortgage, as claimed by him, might be resolved. The mortgagee should be heard or given a chance to be heard.

WHEREFORE, the lower court's order of dismissal is affirmed. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Abad Santos and De Castro, JJ., concur.

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