

**THE DIRECTOR OF LANDS, APPLICANT, JOSE ABADA ET AL.,
CLAIMANTS; EMILIO GARCIA, APPELLANT, VS. MERCEDES J. DE
BELZUNCE ET AL., APPELLEES.**

G.R. No. L-2413. October 27, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

On June 22, 1942, Jesusa Barrios executed a deed of sale of two lots or parcels of land described in transfer certificates of title Nos. 175 and 176 of the Province of Iloilo, together with the improvements thereon, in favor of Emilio Garcia in consideration of the sum of P10,000 which the vendor acknowledged to have received from the vendee. The deed was signed and acknowledged before three instrumental witnesses but was not authenticated by a notary public, it being stated therein that in view of the then existing war conditions when there was no notary public duly authorized in the town of Barotac Nuevo, Iloilo, the vendor promised to subscribe to any other document that may be necessary as soon as normal conditions returned, to enable the vendee to secure the transfer of the certificates of title in his name, and in case she, the vendor, did not survive, she enjoined her heirs and successors in interest to ratify and confirm the document in due form and have it registered.

The vendor Jesusa Barrios died without having ratified the said deed of sale before a notary public. On October 25, 1945, the vendee Emilio Garcia presented the deed of sale to the Register of Deeds of Iloilo with the request that transfer certificates of title Nos. 175 and 176 be cancelled and new ones issued in his name. That request was denied by the register of deeds on the ground that the deed of sale had not been ratified before a notary public, hereupon the purchaser Emilio Garcia filed a petition in the cadastral case wherein the said certificates of title had been issued, praying that the Register of Deeds of Iloilo be ordered to register the deed of sale Exhibit A on transfer certificates of title Nos. 175 and 176, to cancel said certificates of title and issue new ones in his name.

To that motion Mercedes J. de Belzunce, administratrix of the estate of Jesusa Barrios, and the heirs of the latter filed oppositions on the following grounds: (1) That the Court of First Instance of Iloilo as a cadastral court had no jurisdiction to take cognizance of said petition; (2) that the deed of sale Exhibit A, being a mere private document, cannot transfer real rights; that the proper remedy for the purchaser, had Jesusa Barrios not died, would have been an ordinary action to compel her to execute the deed of sale in due form as required by law and not a mere petition in the cadastral case; and (3) that the execution of said deed of sale by Jesusa Barrios was tainted with fraud, undue influence and false representations, if not force and violence on the person of Jesusa Barrios; and that the supposed transaction was not supported by a valid consideration, Jesusa Barrios not having received the price mentioned in the deed of sale.

The order appealed from denies the petition of Emilio Garcia, "without prejudice to such other proper remedy or remedies as may be available to him under the law with respect to the deed of sale in question."

In view of the opposition to appellant's petition filed in the cadastral proceedings, whereby the intrinsic validity of the private deed of sale sought to be registered is impugned or put in issue, we think the lower court did not err in

denying said petition without prejudice to a proper action wherein the issue can be litigated and determined. The remedy provided in section 112 of Act 496 is summary and not adequate for the litigation of issues pertaining to an ordinary civil action. We have so decided in *Irineo Castillo vs. Hon. Anacleto B. Ramos et al.*, G.R. No. L-1031, promulgated July 31, 1947 (78 Phil., 809)

In that case the petitioners were the registered owners of certain cadastral lots, covered by a certificate of title, which they mortgaged to the Agricultural and Industrial Bank in 1940. During the Japanese occupation they paid the loan secured by said mortgage as shown by a receipt issued by the bank in favor of the petitioners, but due to the condition of things then prevailing the bank could not execute the proper deed of release or cancellation of the mortgage. The petitioners prayed the cadastral court to declare said mortgage cancelled and of no force and effect, and that the bank be ordered to return to the petitioners the owner's duplicate of the original certificate of title of the mortgaged property. The bank opposed the petition alleging that the payment of the mortgage during the war in Japanese military notes was not valid. Judge Anacleto B. Ramos acting as cadastral judge denied the petition on the ground that he had no jurisdiction to order within the cadastral case what was sought by the petitioners "because the question involved in their petition should rather be the subject of an ordinary case to compel the Agricultural and Industrial Bank to execute a deed of release of the above-mentioned mortgage." This Court denied the petition for mandamus to compel Judge Ramos to grant the relief prayed for and sustained the order of the respondent judge denying said Petition. Citing the case of *The Bank of the Philippine Islands vs. Ty Camco*, 57 Phil. 801, wherein this Court said that land registration proceedings are as separate and distinct from ordinary civil actions as are the latter from criminal actions, we held:

"If there is such a clear separation and distinction between land registration proceedings and ordinary civil actions, what properly pertains to the general jurisdiction of the courts in ordinary civil actions should not be brought to them as courts of land registration with the limited and special jurisdiction characteristic of such courts. When our land registration laws were enacted our Courts of First Instance already possessed jurisdiction over cases such as that which has arisen between the parties herein respecting the validity of an alleged payment by a debtor of his debt to his creditor. Specifically, if a case of the nature of the one now existing between the instant litigants had arisen just before the enactment of Act No. 496, there could be no doubt that it would have come under the original jurisdiction of the proper Court of First Instance. And there is absolutely nothing in said Act nor in the subsequent ones amending or supplementing the same to divest such court of that original jurisdiction in order to transfer it to the Court of Land Registration established by said Act No. 496, later to the Court of First Instance acting as such court by virtue of the provisions of section 10 of Act No. 2347.

"We are clearly of opinion that the respondent court rightly refused to grant the aforesaid petition within the cadastral proceeding.

"However, where a petition concerning the cancellation of any encumbrance noted on a Torrens certificate of title is filed within the record of the land registration case in which the basic decree was entered and there is no substantial controversy in regard thereto between the petitioner and any other interested party, such petition may be considered as a mere incidental matter in such land registration case and may therein be acted upon by the proper court."

The order appealed from is affirmed, with costs.

Moran, C.J., Paras, Feria, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

MORAN, C. J.:

Mr. Justice Bengzon voted for affirmance.

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