

PEREGRINA REBONG, PETITIONER VS. FIDEL IBAÑEZ, JUDGE OF FIRST INSTANCE OF LAGUNA, RESPONDENT.

G.R. No. L-1578. September 30, 1947

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari against the respondent judge of the Court of First Instance of Laguna on the ground that the latter acted in excess of jurisdiction or with grave abuse of discretion in denying the petition for cancellation of the lien or annotation on the certificate of title issued to the petitioner, of a land extra-judicially inherited by him as the only heir of her predecessors in interest to the effect that the property described in the title is subject to the claims of the creditors and other heirs of the deceased Jose Rebong and Maria Rebong within two years from July 9, 1947, in accordance with sections 1 and 4, Rule 74 of the Rules of Court.

The petitioner based her petition on section 112 of Act No. 496 and offered to file a bond of P5,000, the estimated value of the above mentioned property to answer for such contingent claims.

The pertinent part of said section 112 of Act No. 496 provides:

SEC. 112. * * * Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; * * * and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper; * * *."

According to the above quoted provisions, the court "may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate or grant any other relief upon such terms and conditions, requiring security if necessary," upon application of a registered owner on "the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased, or that new interests have arisen or been created which do not appear upon the certificate." Applying these provisions to the present case, it is evident that, since the registered or annotated contingent interest of the creditors or other heirs of the petitioner's predecessors in interest, established by section 4 of Rule 74, has not yet terminated or ceased, for the period of two years from July 9, 1947, have not yet elapsed, the respondent judge had no jurisdiction or power to order the cancellation of said lien or annotation as prayed by the petitioner. Neither section 4, Rule 74, of the Rules of Court, nor section 112 of Act No. 496 authorizes the substitution of a bond for a lien or registered interest of any description, whether vested, expedient, inchoate or contingent, which have not yet terminated or ceased.

In view of the foregoing, it is plain that the respondent judge has not acted in excess of jurisdiction nor with grave abuse of discretion, but in conformity with the law, in denying the petitioner's petition, and the petition for

certiorari is therefore denied.

Moran, C.J., Paras, Pablo, Hilado, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

Although the title of the petition indicates that what is prayed for is a writ of certiorari, in effect, the petition is for a writ of mandamus, because what is sought by petitioner is that the lower court be ordered to exercise its discretion in allowing petitioner to file a bond of P5,000 and to order the cancellation of the Hen appearing at the back of the Torrens title of the property of petitioner.

There being no law under which the lower court is duty bound to exercise its discretion in the sense prayed for by petitioner, in our opinion the petition should be denied.

Petitioner wants that the lien in the title making the property subject to the claims of the creditors and heirs of the deceased original owners, Jose Rebong and Maria Rebong, within two years from July 9, 1947, be cancelled and in lieu thereof that a bond in the sum of P5,000 be authorized to answer for any such claim of the creditors and heirs of said original owners.

While no provision of law is invoked by petitioner in support of her prayer, she alleges as reasons, (a) that the rights of third persons whose claims are cancelled by the lien are merely contingent, expectant and inchoate; (b) that the dominical rights of petitioner would greatly be hampered as she cannot transact or deal with the real estate property with third persons; and (c) that the bond, in the event that there exist claims against it within a period of two years will answer for such eventuality, so much so that no right of third persons will really be prejudiced.

Petitioner alleges that when she filed the petition on July 14, 1947, with the lower court she alleged that she desired to cancel the annotation of the lien "in order to mortgage the property to a bank."

Petitioner's reasons are unconvincing.

If her intention in seeking the cancellation of the annotated lien is to have an opportunity to mortgage the property to a bank so as to obtain a loan, the purpose can be accomplished without the cancellation prayed for. If petitioner can secure sureties willing and able to answer for the amount of P5,000, we do not see any reason why she cannot obtain from a bank a loan with the same sureties. If they can offer a good guarantee for the bond of P5,000, surely they can offer a good guarantee in favor of a bank for a loan that petitioner may apply for.

For all the foregoing, we concur in the dismissal of the petition.

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