

CALIXTO YAP ALIAS YAP SOUY HUAT, COMPLAINANT, VS. BENJAMIN S. SOMERA, RESPONDENT.

Adm. Case No. 2093. June 22, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In a verified complaint, CALIXTO YAP alias Yap Souy Huat accused BENJAMIN S. SOMERA, a member of the Philippine Bar, of "irregular practice of his profession" in connection with the latter's intervention in Civil Case No. Q-5850 of the Court of First Instance of Quezon City entitled, "Yap Souy Huat vs. Amado R. Santos."

The complaint states that the suit was decided in favor of the plaintiff and as a result thereof he obtained an alias writ of execution; that a piece of land belonging to the defendant was levied and sold to the plaintiff; that after the expiration of the period of redemption a final deed of sale was executed in favor of the plaintiff and a transfer certificate of title was issued to him; and that long after the case had been closed the defendant aided by Atty. Benjamin S. Somera filed "a petition with the court trying to re-open the case on the basis of some misleading or erroneous informations or allegations, which the court entertained."

After the respondent had filed his answer to the complaint, the case was referred to the Solicitor General for investigation, report and recommendation. Before Us is the REPORT AND RECOMMENDATION.

The Solicitor General states that the case has become moot and academic because of the death of the respondent. The record shows that Atty. Benjamin S. Somera died on November 24, 1981, as a result of myocardial infarction. Nonetheless, the Solicitor General recommends that the complaint against Atty. Somera be dismissed for lack of merit and this We do by this resolution in order to clear publicly the name of a lawyer although he has crossed the bar.

It appears that the petition which is the object of the complaint was intended to annul the sale of the land to the plaintiff and the issue is whether or not the respondent acted in good faith in filing the petition. The Solicitor General states, and We agree, that there was good faith for the following reasons:

"The sale of the land covered by TCT No. 32932-Rizal on May 15, 1975 was made on the authority of the alias writ of execution issued on November 9, 1966, or almost nine (9) long years before the sale. There is basis then for saying that the writ had already become inefficacious, for under Section 6, Rule 39 of the Rules of Court, a judgment may no longer be enforced after five years from its finality except by action. Also, the sale was allegedly made without the notice by publication required by Section 18, Rule 39 of the Rules of Court, If this is true and there is no showing that it is not, then the sale was vulnerable for this reason. Thus, in filing the motion to annul the sale of the land covered by TCT No. 32932-Rizal on May 15, 1975, respondent did not act without at least prima facie legal basis." (Report, p. 24.)

WHEREFORE, the instant complaint against Atty. Benjamin S. Somera is hereby dismissed for lack of merit.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

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