

**THE DIRECTOR OF LANDS, PETITIONER, JACINTA ALVAREZ, ET AL.,
CLAIMANTS, DONATO PEREZ, ADMINISTRATOR-MOVANT AND
APPELLEE, VS. GREGORIO ENRIQUEZ, MORTGAGEE-AS-SIGNEE AND
APPELLANT....**

G. R. Nos. L-5791-92. July 31, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

Upon motion of Donato Perez, the administrator of the estate of the late spouses Santiago Ruste Tan Diu and Cecilia Columbres, the Court of First Instance of Zamboanga, acting as land registration court, entered an order in Land Registration Cases Nos. 7880 and 8571, directing the Registrar of Deeds in and for the city of Zamboanga to cancel the mortgages executed in his lifetime by the late Santiago Ruste Tan Dieu on 16 June 1927, 11 April 1928 and 27 September 1932 in favor of the Bank of the Philippine Islands on lots Nos. 56-A, 56-B, 56-C, 58, 59, 66, 112, 128, 359, 399-A, 142-A and 142-B, Land Registration Case No. 8571 and Lots Nos. 31 and 32, Land Registration Case No. 7880, described in Torrens certificates of title Nos. T-5169, T-5170, T-5171, T-5172, T-5173, T-5174, T-5175, T-5176, T-5177, T-5178, T-2149, T-2150 and T-2147, respectively. From this order Gregorio Enriquez has appealed.

It appears that in three instruments of mortgage dated 16 June 1927, 11 April 1928 and 27 September 1932, the late Santiago Ruste Tan Diu in his lifetime conveyed by way of mortgage to the Bank of the Philippine Islands 14 lots described in 13 Torrens certificates of title issued in the name of the spouses Santiago Ruste Tan Diu and Cecilia Columbres. These three mortgages were duly registered in the office of the Register of Deeds in and for the city of Zamboanga and on the corresponding Torrens certificates of title. On 29 June 1948 the Bank of the Philippine Islands assigned the three mortgages to Gregorio Enriquez. On 19 November 1948, the assignee brought suit to foreclose the mortgage (civil case No. 149 of the Court of First Instance of Zamboanga). On 13 January 1949 the suit to foreclose the mortgage was dismissed on the ground that Gregorio Enriquez, the assignee, not having registered the assignment, lacked the capacity to sue and that the action is barred by the statute of limitations, which order was reaffirmed on 2 February 1949 upon motion for reconsideration filed by the assignee; that on 4 February 1949, the latter received a copy of the order of 2 February denying the motion for reconsideration but has not appealed therefrom.

To the motion of mortgage cancellation an opposition was filed. In his objection the assignee Gregorio Enriquez alleges that the mortgages were still valid and subsisting because the last payment amounting to P978.05 on account of the mortgage debt was made on 30 April 1941.

The opposition is clearly without merit because it attempts to set up a new fact, to wit: the last payment on account of the mortgage debt which should have been set up and proved at the trial of the suit for foreclosure of mortgage. When the case was dismissed upon the ground of lack of capacity to sue on the part of the assignee because the assignment of mortgage had not been registered and upon the further ground that the action was

barred by the statute of limitations, the assignee should have amended his complaint to allege the payment made on account of the mortgage debt and the date of such payment, but instead of doing so, filed a motion for reconsideration which was denied. From this denial he has not appealed. The order in the foreclosure suit dismissing the complaint is *res judicata*.^[1]

The order dismissing the suit to foreclose the mortgage in civil case No. 149 being *res judicata*, the defendant therein, the administrator of the estate of the late spouses Santiago Ruste Tan Diu and Cecilia Columbres, now petitioner and appellee, is entitled to ask for the cancellation of the mortgage on the lots of the deceased spouses and the order entered on 8 August 1949 appealed from is a lawful exercise of the jurisdiction of the Court of First Instance of Zamboanga, acting as land registration court, pursuant to section 112, Act No. 496.

The question now raised by the assignee of the mortgage, the appellant herein, to wit: that the mortgage is valid and still subsisting was already passed upon and adjudged in civil case No. 149 in the sense that the opponent and appellant lacked the capacity to sue because the assignment had not been registered and that the suit to foreclose the mortgage was already barred by the statute of limitations. If there had been no previous judicial adjudication, then it would come under the rule laid down in the case invoked by the appellant.^[2] But as the question was already settled and adjudicated in civil case No. 149, the land registration court is authorized to grant the petition for cancellation of the mortgage under and pursuant to said section 112, Act No. 496.

The order appealed from is affirmed, with costs against the appellant, with the understanding that the appellee in his capacity as aforesaid will pay the fees provided by law for the cancellation of the mortgage.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] *Enriquez vs. Perez*, supra, p. 246.

[2] *Bank of the Philippine Islands vs. Ty Cameo Sobrino*, 57 Phil., 801.

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