

IN RE: PETITION FOR CANCELLATION OF TCT NO. 651 (44054), PASAY CITY, AND IS-SUANCE OF A NEW CERTIFICATE IN THE NAMES OF PETITIONERS, JUAN N. PECKSON AND EMILIANA MOLO PECKSON, ...*G.R. No. L-26289. September 30, 1982*

Ponente: CONCEPCION JR., J.

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APPEAL from the order issued by the Court of First Instance of Rizal, Pasay City Branch, on November 24, 1965, in Land Reg. Case No. 429, LRC (GLRO) Rec. No. 317, directing the cancellation of TCT No. 651 (44054) of the Register of Deeds of Pasay City, and the issuance of a new certificate of title in the names of Juan N. Peckson and Emiliana Molo Peckson, in lieu thereof.

The record of the case shows that on April 18, 1963, the Sheriff of Pasay City, by virtue of a writ of execution issued by the Pasay City Court in Civil Case No. 4939, entitled: "Juan N. Peckson, et al., plaintiffs, vs. Gabriel F. Anadase, et al., defendants," sold at public auction the property of the defendants described in TCT No. 651 (44054) of the Register of Deeds of Pasay City to the plaintiffs as the highest bidders thereof. The defendants did not redeem the property within the legal period so that on February 26, 1965, the Sheriff of Pasay City executed a final deed of sale of the property in favor of the creditors-vendees. Subsequently, on September 20, 1965, the said vendees filed a petition, pursuant to Section 78 of Act 496, for the issuance, in their favor, upon payment of the corresponding fees, of a certificate of title covering the property sold and adjudicated to them. The defendants opposed the petition upon the ground that the sale at public auction is ineffectual and null and void for the reasons: (1) that they never saw the notice of sale at public auction of the house and lot covered by TCT No. 651 (44054); (2) that the notice of sale was published in the DAILY RECORD, a newspaper which is not of general circulation in Pasay City; and (3) that they have other substantial properties to answer for the payment of the judgment which the sheriff should have levied upon instead of the house and lot covered by TCT No. 651 (44054) which they hold in high esteem, but, the lower court granted the petition in its order of November 24, 1965. Hence, the present recourse.

In their lone assignment of error, the appellants claim that the trial court erred in granting the petition and, in effect, approved the public auction sale of their property. The appellants insist that the said sale at public auction is ineffectual and null and void for the reasons stated by them in their opposition.

We find no merit in the appeal. The record shows that the appellants did not redeem the property within the legal period so that the land registration court had the authority to order the cancellation of TCT No. 651 (44054) and the issuance of another certificate of title in lieu thereof, pursuant to the provisions of Section 78 of the Land Registration Act. While said Section 78 provides that "at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under execution or to enforce liens of any description," the herein appellants have not pursued any lawful remedy to impeach or annul the execution proceedings. Their opposition to the petition for cancellation of the certificate of title cannot be

considered such legal remedy as the Court of First Instance of Rizal, acting as a land registration court, has no authority to annul an execution sale due to some irregularity in the public auction sale since the proceedings provided in the Land Registration Act are summary in nature and are inadequate for the litigation of issues properly pertaining to ordinary civil actions.

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the appellants.

SO ORDERED.

Aquino, Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Barredo, J., (Chairman), no part.

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