PETITION FOR CANCELLATION OF ADVERSE CLAIM IN TRANSFER CERTIFICATE OF TITLE NO. T-141921, MARGARITA P. FERNANDEZ AND JOSE NELSON FERNANDEZ, PETITIONERS-APPELLEES, VS. LUZVIMINDA...

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This is an appeal from the Resolution[1] dated June 24, 2005 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 1 granting the petition for cancellation of adverse claim.

The factual antecedents:

On February 29, 2001, spouses Jose Nelson and Margarita Fernandez filed a petition for cancellation of adverse claim (Adm. Case No. 4863) against Luzviminda Carungi and Mildred Carungi. Petitioners alleged that they acquired ownership of a parcel of land located at Pallua Sur, Tuguegarao City, Cagayan with an area of 300 square meters, under a "Deed of Conditional Sale of a Registered Land" executed by Josie Carungi-Alonzo on November 11, 2002. At the time of the execution of said deed, there was no claim, lien or encumbrance annotated on Transfer Certificate of Title No. T-125310 covering the property of the registered owner and vendor, Josie Carungi. After full payment of the stipulated purchase price (P1,290,000.00) as early as February 2003, petitioners entered the premises, took possession and introduced improvements on the property such as fencing the same. Despite their open, public and continuous occupation of the land, no one (1) has interposed any objection nor disturbed them in possession. Petitioners demanded from the vendor to execute an affidavit confirming the sale or a deed of absolute sale as early as February 2003 but she complied with this demand only on May 19, 2003 when she executed the "Deed of Absolute Sale of A Parcel of Land" over the property in favor of petitioners. However, petitioners were surprised when TCT No. T-141921 in their names was issued by the Register of Deeds, there was already an annotation of adverse claim executed by respondent Luzviminda Carungi dated March 31, 2003 and recorded under Entry No. 498280. Said adverse claim is non-registrable under Section 70 of P. D. No. 1529 because it fell short of the requirement that the description of the land in which the right or interest is claimed is not particularly shown as evidenced by the acknowledgment receipt attached to the adverse claim which is purportedly the origin of the rights of the adverse claimant. Granting for the sake of argument that the adverse claim is registrable, the same could be cancelled pursuant to Section 70 of P. D. No. 1529, as amended, after the lapse of thirty (30) days. Since more than one (1) year had already lapsed without any action taken by the adverse claimant to assail the title of petitioners, it is submitted that the continuous annotation of such adverse claim in the certificate of title of petitioners is prejudicial to their substantial rights thereon. [2]

In their Answer With Counterclaim, respondents asserted that petitioners are buyers in bad faith because when they bought the subject property they were already fully aware that respondents have an adverse claim over the same. The annotation of respondents' adverse claim at the back of TCT No. T-125310 was made as early as March 31, 2003 (which was carried over in petitioners' TCT No. T-141921) while they obtained title over the property only on February 9, 2004. Besides, contrary to petitioners' assertion, respondents have instituted Civil

Case No. 6220 for Reconveyance and Damages with Application for Temporary Restraining Order and Preliminary Prohibitory Injunction now pending before the RTC of Tuguegarao City, Cagayan, Branch 2. The filing of the present suit is likewise a violation of the rule against forum shopping considering that petitioners have earlier filed Adm. Case No. 4702 in the RTC of Tuguegarao City, Branch 5 which was dismissed on July 28, 2004 for failure to prosecute. Respondents thus prayed that judgment be rendered by the trial court ordering the dismissal of the instant petition, grant their counterclaims for moral damages (P50,000.00), attorney's fees (P20,000.00 acceptance fee plus P1,000.00 per hearing) and ordering the petitioners to reconvey the land to respondents, to vacate the premises and turnover the peaceful possession of the property to respondents.[3]

Petitioners filed their Reply With Answer to Counterclaim asserted that long before the institution of respondents' case against Josie Alonzo Carungi, petitioners have already been in possession of the subject property in an open, peaceful and continuous manner in the concept of owners. They reiterated that at the time they bought the property on November 11, 2002 as evidenced by the Deed of Conditional Sale, TCT No. 125310 is clear and free from any encumbrance, the very reason why petitioners bought the same. Further, petitioners argued that the filing of the instant case without revealing the previous similar petition which was dismissed by the RTC of Tuguegarao City, Branch 5, does not violate the rule on forum shopping, citing the ruling in Ayala Land, Inc. vs. Valisno (324 SCRA 522) that there can be no violation of the proscription against forum shopping if such dismissal of the prior case was not a judgment on the merits. Petitioners also contended that the allegations of respondents in paragraphs 15 and 16 of their answer are in the nature of permissive counterclaims for it did not arise from the same transaction or series of transaction which is the subject of this suit; hence, their pleading needs to be verified and a certificate of non-forum shopping attached therewith. [4]

Pre-trial was set on June 24, 2005 and the parties submitted their respective pre-trial briefs. At the pre-trial hearing, the parties agreed to submit the case for resolution.[5]

In the Resolution[6] dated June 24, 2005, the trial court granted the petition, as follows:

> "Gleaned from the records, it is clear, that, the petitioner purchased the property from the defendant-respondent. Definitely, respondent benefited from the price consideration given to them by the petitioner. Now, after the execution of the Deed of Absolute Sale between the vendor-respondent and vendee-petitioner and consequently therefrom the vendee secured a TCT registered in their name, the vendor surprisingly caused an adverse claim to be annotated on petitioner's title.
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> "Respondent's action is beyond natural and human comprehension. The cunning, surprise and evident bad faith on their part deserves condemnation in law by the outright cancellation of the adverse claim pursuant to Section 70 of P.D. No. 1529.
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> "Finally, the Court finds merit in the petition.
>
> "WHEREFORE, the adverse claim annotated on petitioner's Transfer Certificate of Title No. 141921 caused by the respondent is hereby cancelled. In this vein, the Register of Deeds of Cagayan is ordered to cancel the same from petitioner's title.
>
> "SO RESOLVED."[7]

Respondents filed a motion for reconsideration contending that they are not the vendors of the subject property but owned the money which was used by Josie Carungi in buying the property from Marcianito Achanzar, as evidenced by the Acknowledgment Receipt executed by Josie Carungi dated March 11, 2003. As alleged in the answer, Josephine Carungi betrayed the respondents and had the subject property registered in her name for which reason the said respondents filed a case against Josephine Carungi on August 12, 2003 for reconveyance before the RTC of Tuguegarao City, Branch 2 (Civil Case No. 6220). On March 31, 2003, respondents caused th7e

annotation of the adverse claim on TCT No. 125310, which was consequently carried over in TCT No. T-141921 issued to petitioners on February 9, 2004. Respondents averred that Josie Carungi without their knowledge was able to sell to petitioners on May 19, 2003 the subject property despite entry of the adverse claim. The trial court in Civil Case No. 6220 allowed the respondents to present their evidence ex parte, which is now pending decision, attaching a copy of the Commissioners' Report.[8]

On August 5, 2005, the trial court denied the motion for reconsideration finding no cogent and justifiable reason to deviate from the decision it rendered in the case.[9]

Respondents appealed to this Court alleging that ---

> "1. The court a quo seriously erred in ruling that respondents-appellants were the vendors of the subject lot in favor of the petitioners-appellees.
>
> "2. The court a quo seriously erred in granting the petition of petitioners-appellees and ordering the cancellation of the adverse claim which was annotated at the back of the TCT No. 141921. "[10]

The appeal lacks merit.

The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof.[11] A person who deals with registered land is bound by the liens and encumbrances including adverse claim annotated therein.[12] A court sitting as a land registration court may determine the validity of an adverse claim, and if found to be invalid, order its cancellation.[13] The cancellation of the adverse claim is still necessary to render it ineffective, otherwise the inscription will remain annotated and shall continue as a lien upon the property.[14] As long as there is yet no petition for its cancellation, the notice of adverse claim remains subsisting.[15]

Section 70 of Presidential Decree No. 1529, as amended, prescribes the formal requisites of an adverse claim for the purpose of registration:

> "SEC. 70. Adverse claim. -- Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.
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> "The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest: Provided, however; That after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.
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> "Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled, If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the

> Register of Deeds a sworn petition to that effect." [underscoring supplied]

In the case at bar, although the appellants stated in their Affidavit of Adverse Claim filed with the Register of Deeds the alleged right or interest they have over the disputed real property, as well as the manner how they acquired such right or interest, there was no description of the parcel of land in which such right or interest is claimed. A claim that is not validly registered is ineffective for the purpose of protecting the claimant's right or interest on the disputed land, and could not prejudice any right that may have arisen thereafter in favor of third parties.[16] It was held that such failure to comply with the formal requirements of an adverse claim rendered it non-registrable and ineffective.[17]

> "In a case where the adverse claim filed for registration did not fully comply with the formal requirements of Section 110 of Act No. 496, or more specifically, there being no description of the land in which right or interest is claimed nor the place to which all notices may be served upon the adverse claimant given, such adverse claim could not be registered. (LRC Consulta No. 144, Register of Deeds of Quezon City, pet., February 18, 1957)"[18] [underscoring supplied]

In such a case, the adverse claim being ineffective, any subsequent purchaser of the land covered by the title in question cannot be charged of bad faith even if he has knowledge of the registrant's claims against the person in whose name the land is registered.[19]

Assuming arguendo that appellants' adverse claim annotated on TCT No.125310, the vendor's title, is valid and registrable, the same cannot affect the rights of appellees who purchased the land under a Deed of Conditional Sale in November 2002 when there was yet no such annotation and the aforesaid vendor's title was clean and free of any liens or encumbrances. The circumstance that the payment of the balance of the purchase price was paid by appellees only in February 2003 and the Deed of Absolute Sale actually executed by the vendor only on May 19, 2003 did not make them buyers in bad faith, in the absence of any showing that they had actual knowledge of facts and circumstances indicating any flaw or defect in the title of their predecessor-in-interest, as in fact they were able to enter the subject premises, took possession of the land and introduced improvements thereon.

So, too, the circumstance that the first deed executed by the vendor Josie Carungi was denominated as a deed of conditional sale, and the deed of absolute sale was executed by the same vendor only after payment of the balance of the purchase price, did not operate to defeat the right of the appellees-vendees over the subject property who acquired ownership thereof by virtue of the Deed of Conditional Sale dated November 11, 2002 and the delivery of the real property to the said vendees by the registered owner. It was held that a contract is one of sale, absent any stipulation therein reserving title over the property to the vendee until full payment of the purchase price nor giving the vendor the right to unilaterally rescind the contract in case of non-payment.[20] Thus, the execution of the Deed of Conditional Sale containing no stipulation that the vendor retains title or ownership until payment of the balance of the purchase price by appellees-vendees, coupled with the fact that the latter took possession of the property upon full payment or sometime in February 2003, there is no doubt that the parties contemplated a contract of absolute sale notwithstanding that the Deed of Absolute was executed by the vendor Josie Carungi only on May 19, 2003.

A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in it, and who pays therefor a full and fair price at the time of the purchase or before receiving such notice.[21] The subject property having been sold to the appellees as early as November 2002 and the payment of purchase completed in February 2003 prior to the annotation of the adverse claim by appellants on March 31, 2003, appellants cannot be considered as purchasers in bad faith. This, notwithstanding the fact that they actually registered the deed of sale and obtained title in their names only on February 9, 2004.

As a rule, a person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. Where innocent third persons rely upon the correctness of a certificate of title and acquire rights over the property, the court cannot just disregard such rights.[22] The principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[23] There is nothing in the records to show that appellees-vendees were aware of any such right or interest of appellants over the land they bought from Josie Carungi, appellants' close relative (first cousin) and the registered owner of the property. It bears to stress that mere registration of an adverse claim does not make such claim valid nor is it permanent in character. More importantly, such registration does not confer instant title of ownership since judicial determination on the issue of the ownership is still necessary.[24]

This brings us to the question of whether or not appellants' adverse claim annotated in the certificate of title over the disputed property may be cancelled when the invalidity or validity of their claim is still subject of inquiry in a civil case pending resolution by the trial court. In the case of Villaflor vs. Juezan, [25] the Supreme Court declared the annotation of a notice of lis pendens in the transfer certificate of title would sufficiently serve the purpose of the adverse claim, thus:

> "The basis of Civil Case No. 3496 is a deed of absolute sale dated July 7, 1956, allegedly executed by Simon Maghanay in favor of appellant Jose Juezan. This document is also the basis of the Affidavit of Adverse Claim ordered cancelled by the trial court. The purpose of said adverse claim is to protect the interest of the appellant pending this litigation.
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> "Thus, considering that a notice of lis pendens had been annotated on T.C.T. No. T-7601 of petitioner-appellee, the Court finds no basis for maintaining the adverse claim.
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> "The Court sees no reason for disturbing the questioned order of the trial court dated August 25, 1967 directing the cancellation of the oppositor-appellant's adverse claim at the back of transfer certificate of title No. T-7601. The notice of lis pendens filed by the oppositor-appellant affecting the same property in connection with Civil Case No. 3496 is sufficient."[26] [underscoring supplied]

Appellants appended to their appeal brief a photocopy of the supposed decision dated September 20, 2005 of the RTC of Tuguegarao City, Branch 2 in Civil Case No. 6220 for reconveyance and damages with prayer for TRO and preliminary injunction, which was rendered in an ex-parte proceeding. However, there is no showing that said decision had attained finality, and in any case does not bear on the appealed ruling of the court a quo on the propriety of cancellation of the adverse claim while the reconveyance case was still pending, not to mention the fact that appellees as present registered owners have not been impleaded or subsequently included as parties therein (Civil Case No. 6220).

As third-party vendees, herein appellees should have been impleaded as defendants in the reconveyance case (Civil Case No. 6220) filed by appellants against the vendor and registered owner, Josie Carungi. This was not done despite appellants having filed their Answer With Counterclaim in the court a quo on March 18, 2005[27] and were then already aware of the transfer of title in the names of appellees (TCT No. 141921) as of February 9, 2004. In fact, appellants much earlier had knowledge of the transfer of title in the names of appellants considering that they had filed on May 19, 2004 an answer in Adm. Case No. 4702 in the RTC of Tuguegarao City Branch 5, the first petition for cancellation of adverse claim filed by the appellees which was subsequently dismissed for lack of interest to prosecute.[28]

Not being a party to the reconveyance case, appellees as present registered owners consequently cannot be bound

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by an adverse judgment in Civil Case No. 6220. A person not included as a party to a case cannot be bound by the decision made by a court.[29] Owners of property over which reconveyance is asserted are indispensable parties without whom no relief is available and without whom the court can render no valid judgment.[30] Records failed to show that, after filing their Answer With Counterclaim in the present suit for cancellation of adverse claim, and having been aware much earlier of such issuance of TCT No. T-141921 in the names of appellees, appellants caused the inclusion of appellees as party defendants in Civil Case No. 6220.

It may be noted that the Acknowledgment Receipt dated March 11, 2003 wherein Josie Carungi supposedly attested to the money received in trust by her as payment for the land from appellant Mildred P. Carungi, was submitted to the trial court only when appellants filed a motion for reconsideration of the Resolution dated June 24, 2005 granting the petition for cancellation of adverse claim. Likewise, said document was executed only in 2003 notwithstanding that the money supposedly received by Josie Carungi was given by appellants wayback in October 24, 2000.

At any rate, Our ruling herein is confined to the issue of whether or not the trial court committed reversible error in ordering the cancellation of adverse claim on TCT No. T-141921 in the names of appellees who bought the land covered by said title from Josie Carungi, against whom appellants filed the adverse claim in the Register of Deeds and the reconveyance case before the RTC of Tuguegarao City, Cagayan, Branch 2 (Civil Case No. 6220). We hold that the trial court did not err in granting the petition for cancellation of such adverse claim in TCT No. T-141921 in the names of appellees.

Lastly, We find no merit in the argument that appellees violated the rule against forum shopping when they re-filed the petition for cancellation of adverse claim after a similar petition in Adm. Case No. 4702 was dismissed for failure to prosecute by the RTC of Tuguegarao City, Branch 5. It is true that pursuant to Sec. 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, a dismissal on the ground of failure to prosecute shall have the effect of an adjudication upon the merits unless otherwise declared by the court, and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal.[31]

However, it must be stressed that Sec. 4, Rule 1 expressly provides that the Rules of Court shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, except by analogy or in a suppletory character and whenever practicable and convenient. In the same vein, Sec. 34 of P. D. No. 1529 provides that the Rules of Court shall, insofar as not inconsistent with the provisions of said Decree, be applicable to land registration and cadastral cases by analogy, or in a suppletory character and whenever practicable and convenient.

We hold that a strict application of the rule on dismissals based on failure to prosecute would, at least in this case, undermine the essential purpose of petitions involving incidents in land registration. For if, indeed, the appellees herein as the present registered owners of the property are considered as barred from re-filing the petition to cancel adverse claim, it would result in the anomalous situation of such adverse claim remaining in perpetuity as a burden on the land despite non-compliance with the formal requirements and which is probably founded on an invalid claim or interest. Hence, consistent with the provisions of the Property Registration Decree, appellees may not be deemed to have violated the rule against forum shopping in re-filing Adm. Case No. 4863 in the court a quo, notwithstanding the dismissal of a similar petition (Adm. Case No. 4702) earlier dismissed by Branch 5 for failure to prosecute.

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Resolution dated June 24, 2005 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 1, in Adm. Case No. 4863 is hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Bersamin and Librea-Leagogo, JJ., concur.

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[1] Penned by Judge Conrado F. Manauis.

[2] Records, pp. 1-9.

[3] Records, pp. 14-37.

[4] Records, pp. 38-40.

[5] Records, pp. 44-51 and 54.

[6] Records, pp. 52-53.

[7] Ibid., p. 53.

[8] Records, pp. 56-71.

[9] Records, p. 74.

[10] Rollo, p. 10.

[11] Sanchez , Jr. vs. Court of Appeals, 69 SCRA 327

[12] Navotas Industrial Corporation vs. Cruz, 469 SCRA 530.

[13] Government Service Insurance System vs. Court of Appeals, 240 SCRA 737.

[14] Sajonas vs. Court of Appeals, 258 SCRA 79.

[15] Diaz-Duarte vs. Ong, 298 SCRA 388.

[16] L. P. Leviste & Company, Inc. vs. Noblejas, 89 SCRA 520, 529.

[17] Lozano vs. Ballesteros, 195 SCRA 681, 689.

[18] Ibid., p. 689.

[19] NOBLEJAS and NOBLEJAS, Registration of Land Titles and Deeds, 1992 Edition, p. 373, citing Lozano vs. Ballesteros, supra.

[20] Valdez vs. Court of Appeals, 439 SCRA 55; See also Almira vs. Court of Appeals, 399 SCRA 351.

[21] Potenciano vs. Reynoso, 401 SCRA 391.

[22] Payongayong vs. Court of Appeals, 430 SCRA 210.

[23] Occena vs. Esponilla, 431 SCRA 116.

[24] Garbin vs. Court of Appeals, 253 SCRA 187.

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[25] 184 SCRA 315

[26] Ibid., p. 317; cited in NOBLEJAS, supra., p. 375.

[27] Records, p. 14.

[28] Records, pp. 24-27.

[29] Santana-Cruz vs. Court of Appeals, 361 SCRA 520.

[30] Valenzuela vs. Court of Appeals, 363 SCRA 779.

[31] De Knecht vs. Court of Appeals, 290 SCRA 223.

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