

**FORTUNATA MELGAR, MARRIED TO GREGORIO PARRA,
PETITIONER, VS. SPOUSES LILIA MELGAR AND LORENZO
DEMA-ALA, AND HON. CASTRENSE C. VELOSO AS JUDGE COURT OF
FIRST INSTANCE OF ILOILO, ...**

G.R. No. L-33406. May 30, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal by certiorari from a summary order of the Iloilo court of first instance acting as a land registration court ordering the cancellation of an original certificate of title in the name of the mother of the contending parties and the issuance of a transfer certificate of title in the name of respondents-spouses against petitioner's opposition and conflicting claim of ownership of one-half of the land in question.

The Court in its resolution of August 6, 1971, after noting that the issue raised was jurisdictional, ordered that the petition be considered as a special civil action for certiorari and required respondents to file an answer.

The petition must be granted on the strength of the jurisdictional issue raised by petitioner on the basis of established doctrine and law that when the pleadings show the existence of a real controversion of facts and issues between the parties, the summary proceedings for cancellation of an existing certificate of title and issuance of a new transfer title in place thereof cannot be availed of, nor can summary relief as prayed for be granted by the court as a land registration court. The case becomes a controversial personal action between the opposing parties which should be threshed out in an ordinary action to be duly adjudicated in a decision to be rendered by the Court of First Instance acting as such court of regular general jurisdiction after due trial and reception of evidence.

A cursory reading of the pleadings below will at once show the existence of a genuine controversy between the parties, which bars the summary proceedings sought by respondents spouses under the Land Registration Act, which vests the lower court merely with limited and special jurisdiction as a land registration court and does not empower it to adjudicate therein the controversy.

Thus, the petition recites with documentary exhibits that the 688,040 square-meter land in question is registered under Original Certificate of Title No. 0-763 issued on February 9, 1954 in the name of Silvestra G. de Melgar, widowed mother of both petitioner Fortunata Melgar and respondent Lilia Melgar, wife of her co-respondent Lorenzo Dema-ala.

The Development Bank of the Philippines holds a P27,000-mortgage on the land under a deed of mortgage executed by Silvestra on December 15, 1964 and duly inscribed on the title.

Under a levy in execution issued to satisfy judgment in a civil case against Sivestra,[1] all her right, interest and participation in the land were sold at public auction for P4,405.80 in favor of Ludovico Pagayon, subject to the right of redemption.[2]

Petitioner claims that "long before this parcel of land was mortgaged to the Development Bank of the Philippines, Iloilo City, herein petitioner was in possession of her ½ share in the said parcel of land up to the present, as the same was sold to her and (she) possesses (it) as owner." [3] She caused a notice of adverse claim to this effect to be inscribed on July 20, 1970 on the title. [4] She also submitted a deed of absolute sale executed on July 17, 1970 of one-half of the land executed for P10,000.00 by her mother, Silvestra, in her favor. [5]

The title bears a subsequent entry [6] of redemption certificate dated December 15, 1969 and inscribed on August 24, 1970 on the title in favor of Silvestra. Respondents claim in their answer that this was an error and oversight of an employee of the Register of Deeds of Iloilo and submit with their answer a certificate to this effect issued on December 2, 1970 by the said Register of Deeds [7] and the redemption certificate issued for the provincial sheriff on December 15, 1969 reciting full payment of the redemption price of P6,000.00 by respondents spouses. [8]

Petitioner then complains that upon ex-parte summary petition dated August 28, 1970 filed by her sister Lilia and her husband, respondents spouses, in Cadastral Case No. N-217, G.L.R.O. Record No. N-6742, Jordan, Iloilo before the lower court and without notice to her, purportedly pursuant to Section 78 of Act 496 wherein respondents spouses alleged the issuance of a redemption certificate to the land in their favor by the sheriff, respondent court summarily issued its order dated September 12, 1970 ordering the register of deeds "to cancel Original Certificate of Title No. 0-763 and in lieu thereof issue new transfer certificate of title" in favor of respondents spouses "subject to whatever encumbrances appearing (sic) in the original certificate of title."

Respondents spouses appear to have filed in the same Land Registration Record No. N-6742 a subsequent petition dated September 21, 1970 pursuant to Section 111 of Act 496 for the annulment of the owner's duplicate of Original Certificate of Title No. 0-763 in Silvestra's name and delivered to the Development Bank of the Philippines as mortgagee, alleging that said mortgage "in spite of the said request of the register of deeds of Iloilo failed and refused x x x to surrender Original Certificate of Title No. 0-763 and is not amenable to the processes of the court" and set the same for resolution on October 3, 1970. [9] The pleadings do not show the action taken thereon by respondent court, which in effect had granted the same in advance with its order of September 12, 1970 for cancellation of the title.

Having learned of said order of cancellation, petitioner immediately filed a motion for reconsideration dated September 23, 1970, reciting in essence her foregoing claims to the land, asserting that the order "was secured through fraud and deceit" to deprive her of her one-half share in the land, and praying for the setting aside of the order, "the same being contrary to law, aside from being secured through fraud and this court sitting as a cadastral court has no jurisdiction over the same." [10]

Upon opposition of respondents spouses, respondent court issued its order dated November 6, 1970 denying the motion for reconsideration as "without merit."

Hence, the present petition, wherein petitioner assails respondent court's lack of jurisdiction as a land registration court to issue its challenged orders and to grant respondents' summary petition below for cancellation of title and to adjudicate the controversy between the parties which should be litigated in an ordinary civil action.

As indicated above, the petition has merit and the questioned orders must be set aside as having been issued beyond the jurisdiction of respondent court.

Respondents spouses in their answer assert their right to avail of the summary proceedings under the Land Registration Act and traverse petitioner's allegations, assailing inter alia Silvestra's sale of one-half of the land to their sister, petitioner, as "fictitious, simulated and fraudulent."

In the face of the conflicting factual allegations and issues between the parties, respondents spouses could not

avail of Section 78 or any other section of Act 496, such as Sections 111 and 112, for summary cancellation of Silvestra's title and the issuance of a new transfer of title in their names.

Respondents spouses may have paid with their own money the P6,000.00 redemption price (a fact disputed by petitioner) but this does not per se entitle them to avail of Section 78 of Act 496 "for the entry of a new certificate" in their favor, since said section contemplates precisely the expiration of the time for redemption without redemption having been effected - which is not the case here.

Respondents' having advanced the redemption price may have made them creditors of their mother, Silvestra, to the extent thereof, but without more, it would not entitle them to substitute themselves as the registered owners of the redeemed land in place of their mother and to avail of the summary non-contentious proceedings (under Sections 78, 111 or 112 of Act 496) summarily to cancel their mother's title and transfer the same to their names.

Respondents' such contentious claims must be duly alleged and proved in an ordinary action and duly submitted for adjudication to the Court of First Instance as a regular court of general jurisdiction, with the indispensable parties, viz, their mother Silvestra as the registered owner of the land and their sister Fortunata as the alleged vendee of one-half thereof, being duly impleaded and given the opportunity to present their side.

The Court therefore holds that respondent court had no jurisdiction in the summary land registration proceedings below to issue its challenged orders and to order the cancellation of Original Certificate of Title No. 0-763 and the issuance of a new transfer certificate of title in favor of respondents as against the adverse claim of petitioner.

As stressed by the Court in *Vicente vs. de los Santos*[11] "Time and again, this Court has reiterated the well settled doctrine that summary relief under Section 112 of the Land Registration Act 'can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs.'[12]

"In *Enriquez vs. Atienza*,[13] this Court again pointed out that '(T)he proceedings under (Sec. 112 of the Land Registration Act) have been aptly described as summary in nature, and are allowed when a scrutiny of the allegations discloses that the issues presented by the pleadings need not be tried because they are so patently unsubstantial as not to be genuine issues.' This Court, reviewing all its decisions dealing with the application of said Section 112, went on to state clearly that 'by 'unanimity among the parties' is meant the absence of serious controversy between the parties in interest as to the title of the party seeking relief under said section.' A long line of cases was again cited by this Court in its latest decision in 1968, where it again explained that it is in cases when there is no disagreement as to the facts alleged in the pleadings, such as to rule out the existence of a personal action between the parties, that the petition may be considered a mere incidental matter in the land registration case, which is an in rem action operating directly on the land, and may be validly acted upon by the Land Registration Court."[14]

The Court's admonition therein bears repeating that "(P)arties-litigants and their counsels should bear in mind that while the summary proceeding under Section 112 of the Land Registration Act where the Court is vested with limited and special jurisdiction as a land registration court, is certainly more expeditious in appropriate non-controversial matters than an ordinary civil action, to insist on such summary procedures when there exists a genuine controversy between the parties would be productive of the opposite result, as shown in this case and other numerous similar cases heretofore decided by this Court; it would ultimately be to their advantage and benefit to ventilate controversial issues and personal actions in the proper courts of general jurisdiction, where proofs may be duly adduced at a regular trial and damages and attorneys' fees may be awarded, where warranted. Here, while there may be merit in petitioner's assertion of his right as a co-owner to redeem the property in its

totality, and not merely his original share therein, the Court a quo lacked jurisdiction to adjudicate the controversy between him and oppositor in the summary proceeding under Section 112 of the Land Registration Act, as timely and correctly raised by oppositor, and this Court, in the absence of any facts or evidence in the record, likewise lacks jurisdiction in this instance to put an end to the controversy."^[15]

ACCORDINGLY, judgment is hereby rendered as prayed for and the orders of respondent court dated September 12, 1970 and November 6, 1970 are hereby set aside and annulled. Without pronouncement as to costs.

Makalintal, Acting C.J., Zaldivar, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro, J., concurs in the result.

Fernando, J., took no part.

[1] Civil Case No. 4729, entitled "Adoracion Pagayon, et al. vs. Silvestra G. Vda. de Melgar."

[2] Entry No. 160379 on Title 0-763, inscribed on Dec. 19, 1968, Annex H, petition.

[3] Rollo, p. 19; notes in parentheses added.

[4] Entry No. 180709, Annex H, petition.

[5] Annex I, petition.

[6] Entry No. 182240, *idem*.

[7] Annex 1, Answer.

[8] Annex 2, Answer.

[9] Annex E, petition.

[10] Annex C, petition.

[11] 27 SCRA 1 (Feb. 27, 1969) and cases cited; italics added.

[12] *Tangunan vs. Republic of the Philippines*, 94 Phil. 171, 175 and cases cited.

[13] 100 Phil. 1072 (March 29, 1957) and cases cited.

[14] *Mabilin vs. Millar*, L-24146, February 22, 1968.

[15] 27 SCRA at pp. 5-6; italics added.

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