

ANGEL S. OLAES, PETITIONER AND APPELLEE, VS. TEODORO TANDA, ET AL., OPPOSITORS AND APPELLANTS.*G.R. Nos. L-21919-20. May 19, 1966*

Ponente: REYES, J.B.L., J.

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Twin and direct appeals by the same appellants: in the first case, L-21919, from an order dated 24 April 1963 of the Court of First Instance of Cavite, sitting as a land registration court, granting a petition for cancellation of encumbrance and a notice of lis pedens on a certificate of title and an order of denial of a petition for relief therefrom dated 14 June 1963; and in the second case, L-21920, from an order dated 24 April 1963 of the above-mentioned court, Kitting as a regular court, authorizing its clerk of court to make a taxation of costs and an order of denial of a petition for relief therefrom, dated 13 June 1963.

These appeals represent the sixth and seventh times that appellant Teodoro Tanda has resorted to this Court in his persistent efforts to nullify the deed of sale a retro executed by him in favor of Narciso Aldaya, after extra-judicial adjudication to himself as sole heir of his parents, Vicente Tanda and Manuela Reyes. The previous history of this protracted litigation is narrated in condensed form in the preceding decision of this Court in Tanda, et al. vs. Aldaya, et al., G. R. No. L-13423, promulgated on 23 November, 1959:

"First.—In G. It. No. L-3278, he (Tanda) appealed from the decision of the Cavite court of first instance (Civil Case No. 4606) upholding" the validity of the pacto de retro sale he had made of such land to Narciso N. Aldaya. Atty. Tanda claimed that fraud vitiated such sale. The Cavite court found no deception upheld the conveyance. This Court in July 1951,. affirmed.

"Second:—Then in G. R. Nos. L-9322 and 8323, he pleaded for revocation of the order of the Cavite court dismissing his action' for alleged declaratory relief. Dismissal rested on his opponent's well-founded objection that the requested relief would nullify the Supremo Court's decision in G. R. L-3278 (above) between the same parties. This Court on January 30, 1956, approved the dismissal (52 Off. Gaz. 5175), pointing to the previous decision in L-3278 as res judicata.

"Third.—Again on November 12, 1950, Atty. Tanda submitted to the Cavite court in the two litigations already mentioned a so-called 'Amended Petition for Relief.' Upon taking up such amended petition, the Cavite court in its order of April 12, 1957, held that the errors, if any, for which relief was prayed, happened hi the Supreme Court (in the two decisions herein referred to) and the lower court possesses no jurisdiction to correct or revoke. Against this order, Atty. Tanda filed here on April 22, 1957, a petition for certiorari (G. R. No. L-12261), which was dismissed by our resolution of May 6, 1957, holding- that his remedy was an appeal at the proper time.

"Fourth.—His legal eyes opened by our resolution, Atty. Tanda attempted to perfect his appeal from the Cavite court's order of April 12, 1957, by filing his notice of appeal and record on appeal on June 30, 1957. However, Judge Gonzales of the Cavite court rejected the appeal on the ground of tardiness. Forthwith, Atty. Tanda recurred to this Court with a petition to compel Judge Gonzales to allow his appeal. The petition was dismissed

for 'lack of merit.' It will be observed that from April 22, 1957 (Tanda received a copy of the order of April 12, 1957 before that day) to June 30, 1957, when he filed his notice of appeal more than 30 days had passed.

"Fifth.—Unwilling to accept defeat, his lawyer's argumentative powers laboring overtime, Tanda again demanded court attention by instituting¹- the present proceedings (Civil Case 6196) -and in the process he joined other parties who in the meantime have successively acquired the land; but these need no specific mention because for the purpose of res judicata it makes no difference: they represent the same contending-interests. * * *" (Tanda vs. Aldaya, L-13423, November 23, 1959)

In view of the five decisions of this Court, the appellee herein, Angel Olaes, who had acquired the land from Tanda's original vendee, a retro, Narciso N. Aldaya, after the latter had consolidated his ownership, petitioned the Court of First Instance of Cavite to order the cancellation of the encumbrance and lis pendens notice annotated on his certificate of title, in the course of the preceding litigations.

The encumbrance asked to be cancelled was annotated on Transfer Certificate of Title No. (T-10100) RT-2757 of the Register of Deeds of Cavite and subjects the land described therein to "the rights of any legal heir or claims of any creditor of the deceased spouses Vicente Tanda and Manuela Reyes, should there be any, within two (2) years as provided by law". The notice lis pendens was annotated on 11 November 1957 as Entry No. 20138 at the instance of the plaintiffs, in Civil Case No. 6196 of the Court of First Instance of Cavite, who are the herein oppositors-appellants.

Since the two-year period had expired without any claim having been filed and the decision against the plaintiffs in the aforesaid Civil Case No. 6196 was affirmed by the Supreme Court, on appeal, in Tanda, et al. vs. Aldaya, et al., L-13423 on 23 November 1959, and has already become final and executory, facts which the appellants have not denied, the court below granted the petition for cancellation; and finding no ground in their petition for relief, the court denied the same. These orders are the subject of the appeal in G. R. No. L-21919.

The oppositors-appellants claim that the, title or interest in the land of the petitioner-appellee, Angel S. Olaes, is ill-gotten and tainted with fraud and bad faith that disqualifies him from asking a cancellation of the encumbrance and the notice lis pendens. The raising of this issue is an attempt by Tanda to revive a similar issue already decided against him in a case (L-3278, July, 1957) involving the same land, and which decision is already res judicata. This Court, therefore, declines, as it had declined in previous cases, to consider the issue again.

It is also claimed that the lower court had no jurisdiction to issue the order of cancellation of the encumbrance and the notice lis pendens because the court, sitting as a land registration court, can only have jurisdiction to entertain the petition under Section 112 of Act 496 if there, is consent of the parties, or unanimity among the heirs, or there is no adverse claim or serious objection on the part of any party in interest. The cases of Magdalena Estate, Inc. vs. Yuchengco, 58 Off. Gaz., (No. 8) 1503-1506 and De Balanga vs. Court of Appeals, 59 Off. Gaz. (No. 20) 3164-3167, are cited to support the above theory, but these cases are completely different from the present case. Moreover, even if the theory were valid, the opposition herein presented is not a serious objection. Eighteen (18) years having elapsed since Tanda adjudicated the property to himself as sole heir of his parents, without any claim or administration proceeding being instituted, there is no reason why the two-year reservation should be still maintained.

Counsel Teodoro Tanda, in his behalf and in behalf of his co-oppositors-appellants, asserts that it is quite obvious that the court a quo erred in denying the, petition for relief, on his theory that the two-year period does not apply to a pretermitted heir. On the contrary, the two-year period was provided in the Rules for the protection of pretermitted heirs and creditors. Teodoro Tanda has not denied that he adjudicated the land unto himself alone to the exclusion of other heirs and then sold the same thru pacto de retro. His alleged co-heirs (now co-appellants)

are barred from questioning such sale and its derivations, because they have not sought in due time to set aside Teodoro Tanda's self-adjudication of the property in question.

The appealed orders authorizing the clerk of court of the Court of First Instance of Cavite to make a taxation of costs and denying appellants' petition for relief in the second-captioned case, L-21920, were issued by the court a quo on a bill of costs for P150.00 filed by the Olaes and Abarro spouses, defendants in Civil Case No. 6196 of the said court. The amount represents the treble costs imposed

by this Supreme Court against lawyer Teodoro Tanda personally in *Tanda, et al. vs. Aklaya, et al.*, L-13420, *supra*. These orders are in turn challenged on the following assignment of errors:

"1. The decision of this Honorable Supreme Court in G.R. No. L-13423, November 23, 1959, is not final, but is only provisional or interlocutory in character.

"2. The trial court erred in accepting the testimony of defendant Narciso N. Aldaya on direct examination that he had advanced to plaintiff Teodoro Tanda the sum of P6,500 in Japanese war notes.

"3. The trial court erred in rejecting the testimony of plaintiff Teodoro Tanda, corroborated by his wife on the stand, that only the sum of P15,000 in Japanese war notes were given to them by defendant Narciso N. Alclaya, instead of P20,000 in Japanese war notes as the consideration of the contract.

"4. The trial court erred in holding that the contract of pacto de retro was valid and that there was no fraud nor deceit perpetrated by Aldaya in the execution of this contract.

"5. The lower court erred in authorizing its clerk of court to make a taxation and assessment of the bill of costs.

"6. The lower court erred in taking cognizance of Attorney Santillan's 'motion to dismiss appeal'."

Again, this Court declines to consider the first four assignments of error since they are impertinent to the question of taxation of costs and they merely attempt to revive issues in the previous cases enumerated in *Tanda, et al. vs. Aldaya, et al.*, *supra*, wherein the decisions are already final and executory.

In the fifth assignment of error, Tanda's theory is that the clerk of court of the court a quo cannot be authorized to make the taxation of costs, but the clerk of court of the Supreme Court, on the ground that it was the Supreme Court that imposed the treble costs.

No rule has been violated in the appealed orders, as, in fact, they conform to Section 8, Rule 142; of Court. It is well to note that the Clerk of this Court did not tax the treble costs because when the winning party submitted its bill the records had already been remanded to the Court a quo. But the clerk of the latter court could and did tax the costs in conformity with the rules, and the amount taxed is not disputed.

The sixth and last assignment of error is impertinent to the subject-matter of the appeal under consideration. The lower court, therefore, committed no reversible error.

These twin appeals, the sixth and seventh times that Teodoro Tanda has come to tax the indulgence of this Court, are not only as flimsy and preposterous as the previous ones, but are already vexatious. It is apparent that the sole purpose of these, appeals was to enable Tanda to reargue the merits of the case decided since 1951.

In view of the foregoing, the appealed orders in L-21919 and L-21920 are hereby affirmed. Treble costs against Teodoro Tanda personally in each one of these two cases.

Bengzon, C.J.. Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Orders affirmed.

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