

NICANOR T. SANTOS, PETITIONER, VS. ROSA GANAYO, RESPONDENT.

G.R. No. L-31854. September 09, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Decision of respondent Court of Appeals,[1] dated February 18, 1970, in CA-G.R. No. 35318-R, entitled "In the Matter of the Petition for Cancellation of Adverse Claim, Nicanor T. Santos, Petitioner-appellant vs. Rosa Ganayo, Oppositor-Appellant". Said Decision set aside the appealed judgment of the Court of First Instance of Baguio City, sitting as a Land Registration Court, for lack of jurisdiction.

The antecedents are recited hereunder:

1. Petitioner is the registered owner of Lot 147 (subsequently Lot 147-A-1-A) a residential lot of 10,000 square meters situated at Residential Section "B", Pacdal, Baguio City, covered by TCT No. T-4583 of the City of Baguio in his name, issued on July 15, 1960.
2. Prior to petitioner's ownership, the lot in question formerly belonged to the following co-owners:
"(a) One-half (1/2) to the Heirs of Molintas, namely: Vecina, Albina, Magsia, Pulmano, Pedro Piscong and Sergio, all surnamed Molintas;
(b) One-half (1/2) to Justo Leaño, but after his death, by virtue of a partition executed among his heirs in 1958 to 1959, the same was adjudicated to Magdalena Leaño, (the surviving spouse), and registered in her name under T.C.T. No. T-3789." [2]
3. In January, 1960, the above-mentioned co-owners sold the lot to Pacita Jocson who, in turn, sold the same to petitioner on June 11, 1960. On July 15, 1960, TCT No. T-4583 was issued in petitioner's name.
4. Approximately nineteen years before then, or on March 12, 1941, it appears that Pulmano Molintas executed a "Promise to Transfer and Convey" to Rosa Ganayo by way of absolute sale a portion of 750 square meters of Lot 147 at the price of P1.00 per square meter with the stipulation that, if the promise would not materialize, Pulmano would reimburse the sum of P350.00, which he acknowledged to have received from Rosa Ganayo (Exh. "1").

This was followed on June 27, 1941 by an Agreement between the same parties, duly notarized, the pertinent portions of which are quoted herein-below:

"That I, Pulmano Molintas, of legal age and resident of the City of Baguio, Philippines, for and in consideration of the premises hereinafter embodied and enumerated, do hereby stipulate and agree with Rosa Ganayo, also of legal age and resident of the City of Baguio on the following:

That I am the absolute owner of a parcel of land situated in the City of Baguio, more commonly known as Lot No. 147, Section D, Pacdal, Residential Section.

That I hereby promise to convey and transfer by way of absolute sale a portion of the said Lot to Rosa Ganayo in such size and area as may be permitted by any existing Ordinance of the City of Baguio with respect to the said Residential Section at the rate of P1.00 per square meter but which in no instance will be less than 750 square meters.

That I hereby acknowledge having already received from the said Rosa Ganayo the sum of THREE HUNDRED AND FIFTY PESOS (P350.00) as advanced payment for the said portion of Lot No. 147, which amount will be reimbursed by me in case, for some reason or another, this promise and agreement may not be carried out.

That the said Rosa Ganayo has already constructed a house on the said portion with an estimated value of TWO THOUSAND THREE HUNDRED AND FIFTY-FIVE PESOS (P2,355.00), which improvement will stand and remain as an incumbrance on the said property or Lot No. 147 in favor of the said Rosa Ganayo; and the said Rosa Ganayo may declare the said house for taxation purposes as her own private property.

That I hereby recognize the existing right of Rosa Ganayo on the said portion of Lot No. 147 particularly where the said house is situated as well as her ownership of the said house which value remains an incumbrance on the said lot." (Exh. "1-A")

5. It also appears that on October 31, 1959, Magdalena Leano executed an Affidavit (Exh. "3" or Exh. "D") wherein she states among others that she owned Lot 147 consisting of 10,000 square meters; that long before World War II she sold 750 square meters of the same to Rosa Ganayo; that the area sold is indicated in a proposed subdivision plan surveyed for Rosa Ganayo as Lot 147-A-1-A, Psd-10855; and that she had no objection to the proposed subdivision plan of Rosa Ganayo indicating the purchased portion.

6. On December 13, 1961, however, Magdalena Leaño repudiated this Affidavit and executed another one (Exh. "E") denying that she had sold to Rosa Ganayo the portion of 750 square meters claimed by her and stating that if she had executed an Affidavit on October 31, 1959 the contents thereof were not explained to her.

7. In the meantime, on May 18, 1959, respondent Rosa Ganayo, through counsel, was able to secure the annotation of an adverse claim on Transfer Certificate of Title No. 3789 then in the name of Magdalena Leaño. In support of said adverse claim, respondent Ganayo presented to the Register of Deeds her Agreement with Pulmano Molintas, and the first Affidavit of Magdalena Leaño dated October 31, 1959.[3] It was explained in the Affidavit of Adverse Claim (Exh. "B") that the Agreement of Rosa Ganayo with Pulmano Molintas could not be registered because the land was merely described as Lot 147 without any indication as to the number of the title of the vendor. It was therein admitted that the lot was registered in the name of Magdalena Leaño under TCT No. T-3789.

8. And so it was that when petitioner acquired Lot 147 on June 11, 1960 and TCT No. 4583 was issued in his name, said title carried over the adverse claim of respondent Ganayo as Entry No. 10621-2-242 therein,[4] reading:

"Entry No. 10621-2-242-AFFIDAVIT OF ADVERSE CLAIM executed by ATTY. BIENVENIDO L. GARCIA for and in behalf of his client, ROSA GANAYO, affecting a portion consisting of Seven Hundred Fifty (750) Square Meters, on the parcel of land known as Lot No. 147-A-1-A covered by this certificate of title No. T-3789, as per Document subscribed and sworn to before Deputy Clerk of Court, Mr. Gil S. Ferrer, of the C.F.I., of Baguio, 2nd Jud., filed under T-3789 of the Registry of Baguio. Date of document, May 14, 1959. Date of inscription, May 18, 1959. Hour 8:45 a.m."[5]

On June 21, 1962, petitioner filed with the Court of First Instance of Baguio City a Petition for Cancellation of Adverse Claim of respondent Rosa Ganayo in L.R.C. Record No. 12075 pursuant to Sections 110 and 112 of the Land Registration Act (Act No. 496). Petitioner essentially alleged that Pulmano Molintas was never the absolute

owner of said land as one-half of said property belonged to the Estate of Molintas of which Pulmano was just one of the heirs, while the other half was in the name of Justo Leaño, husband of Magdalena Leaño, and in 1958 or 1959, by virtue of the partition among the Leaño heirs, the one-half portion was adjudicated to Magdalena Leaño; that the latter was never the owner of said land before World War II having secured title thereto only in 1958; that Magdalena Leaño repudiated the execution of the Affidavit dated October 31, 1959 (Exh. "3") by the execution of another Affidavit two years later on December 13, 1961;^[6] that the alleged Agreement on June 27, 1941 between Pulmano Molintas and Rosa Ganayo could not be the basis of a valid adverse claim because when the adverse claim was registered on May 18, 1959, whatever right or cause of action Rosa Ganayo had arising from said Agreement was unenforceable as it had already prescribed and/or was barred by laches; that since the inscription of said adverse claim, Rosa Ganayo had not filed any case for its enforcement.

In opposition, respondent Ganayo averred that Pulmano Molintas and Magdalena Leaño were absolute co-owners of the land; that at the time of registration of the adverse claim, Magdalena Leaño and her co-owners never questioned the validity of her claim; that Magdalena Leaño was aware of respondent's actual possession of 750 square meters of said lot; that the Agreement between her and Pulmano was superseded by a subsequent contract of sale; and that she had fully paid the purchase price as shown by her receipts of payment.

As affirmative defenses, respondent contended that petitioner Santos is not the real party in interest to question the validity of the annotation; that petitioner having had sufficient notice of said claim cannot acquire a better right than his predecessors; that petitioner is now estopped from asking for cancellation of the adverse claim having bought the land subject to said claim; and that the issues are controversial and, therefore, the trial Court, as a Land Registration Court, has no jurisdiction to take cognizance of the same.

Respondent further contended that the purchase price for the 750 square meters of land was paid during the Japanese occupation, thereby, she acquired absolute ownership over the same; that Magdalena Leaño's admission in her Affidavit to the effect that she had no objection to the proposed survey wherein said portion is indicated was binding on petitioner; that respondent had introduced valuable improvements on said land in good faith and petitioner had actual knowledge of the extent of said improvements when he bought the land in question.

Respondent thus prayed that the Petition for Cancellation be dismissed; that petitioner be ordered to reconvey that portion of the land now in possession of respondent, or in the alternative, that petitioner be ordered to pay the reasonable value of the improvements in the event that the Petition is granted.

For his evidence-in-chief, petitioner merely presented his documentary evidence. As rebuttal witness, petitioner presented Magdalena Leaño, who failed to identify the first Affidavit of October 31, 1959 attesting that she had sold the 750 square meters to respondent (Exh. "3"). However, she identified her Affidavit, dated December 13, 1961 (Exh. "E"), repudiating the allegations in Exhibit "3".

For her part, respondent testified in her own behalf and presented as witnesses Atty. Alberto Caoili, the Notary Public who authenticated Exhibit "3"; Sito Backong, her son; and Perfecto Jularbal, private surveyor. For her documentary evidence she submitted a "Promise to Transfer and Convey to Rosa Ganayo a Parcel of Land" executed by Pulmano Molintas (Exh. "1"), their Agreement (Exh. "1-A"), supported by her receipts showing payment by her to Pulmano Molintas (Exhs. "2" and "2-A" and "5"), the Affidavit of Magdalena Leaño, thumbmarked by the latter, dated October 31, 1959 (Exh. "3-A"), and a true copy of TCT No. T-3789 covering Lot 147 in the name of Magdalena Leaño (Exh. "7").

On September 27, 1963, the Court a quo rendered a Decision authorizing cancellation, and decreed:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Register of Deeds of Baguio City is hereby ordered to cancel the Adverse Claim annotated at the back of Transfer Certificate of Title No. T-4583, for

being null and void; that petitioner NICANOR T. SANTOS is hereby ordered to pay the reasonable value of the two (2) houses and other improvements of ROSA GANAYO before she is made to vacate the property; hereby declaring the petitioner as the true and lawful owner of the whole area of Ten Thousand (10,000) Square Meters as covered by said certificate of title; and without pronouncement as to costs."

The lower Court held as untenable respondent's attempt to prove a verbal deed of sale applying Article 1403, paragraph 2(e) of the Civil Code, reasoning that:

"Assuming that Rosa Ganayo, the oppositor herein, had the right based on the Agreement to Convey and Transfer as contained in Exhs. '1' and '1-A', her failure or the abandonment of her right to file an action against Pulmano Molintas when he was still a co-owner of the one-half (1/2) portion of the 10,000 square meters is now barred by laches and/or prescribed by law because she failed to bring such action within ten (10) years from the date of the written agreement in 1941, pursuant to article 1144 of the New Civil Code, so that when she filed the adverse claim through her counsel in 1959 she had absolutely no more right whatsoever on the same, having been barred by laches.

x x x whatever she paid to Pulmano Molintas and to Justo Leaño cannot be made as an account against the petitioner, much less bind the latter on the so-called Adverse Claim.

In view, however, of the knowledge of the petitioner of the existence of such adverse claim appearing at the back of Transfer Certificate of Title No. 3789, he cannot now be considered as a buyer in absolute good faith x x x . As a matter of fact, this adverse claim was carried over in the present Certificate of Title No. T-4583. It is only in consonance with justice and equity that the petitioner should pay the reasonable value of the houses and improve-ments of the oppositor Rosa Ganayo before she vacates the property."

Both parties appealed to the Court of Appeals.

Petitioner questioned the Decision in so far as it ordered the payment of the reasonable value of the improvements made by respondent on the land. On the other hand, respondent essentially questioned the lower Court's jurisdiction over the case and contended that it erred in not finding that there was a consummated contract of sale and in concluding that respondent's right was barred by laches.

On February 18, 1970, respondent Court of Appeals promulgated the Decision under review, with its dispositive portion reading:

"WHEREFORE, the judgment appealed from is hereby set aside for lack of jurisdiction on the part of the lower court to take cognizance of the instant petition for cancellation of adverse claim, which petition is hereby dismissed, without pronouncement as to costs."

Respondent Court decided solely on the jurisdictional issue posed and rationalized:

"Perusal of the petition and the opposition filed in the lower court by the parties readily show that the issues raised thereby involve questions of ownership and whether or not the oppositor is entitled to reimbursement of the value of improvements introduced by her on said portion of land in question. Under the above-ruling enunciated by the Supreme Court, the lower court did not acquire jurisdiction to hear and decide the case below. As a land registration court, the lower court has a limited jurisdiction. It does not have the authority to pass upon questions of ownership or to determine whether oppositor is entitled to reimbursement of the value of improvements. The case properly falls within the jurisdiction of the Courts of First Instance and the question involved herein should be properly ventilated in an ordinary civil action, not in a land regis-tration proceeding for cancellation of an adverse claim which is summary in nature."

Petitioner's Motion for Reconsideration having been denied by respondent Court, he availed of the instant recourse.

On July 12, 1971, we considered this case submitted for decision without respondent's Brief.

Petitioner avers that respondent Court gravely erred:

"1) x x x in not certifying the case to this Honorable Court which has exclusive jurisdiction, inasmuch as the Hon. Court of Appeals took the view that the issue of jurisdiction of the lower court is paramount and decided the case solely on said issue;

2) x x x in declaring that the lower court did not acquire jurisdiction to hear and decide the case; in setting aside the judgment of the CFI appealed from, for lack of jurisdiction on the part of the lower court to take cognizance of the petition for cancellation of the adverse claim and in dismissing the said petition. In this regard, the Hon. Court of Appeals erred:

A) In not holding that under section 110 of the Land Registration Act (re: Adverse claim), the Court of First Instance is empowered to pass upon the question of the validity of such claim and to order the cancellation of the corresponding notation on the title; the notation of an adverse claim under sec. 110 like a cautionary notice of 'Anotacion Preventiva' under other system of registration must be rendered without effect if proper action is not promptly instituted to substantiate the claim so noted.

B) In considering that proceedings under sec. 110 as under sec. 112 of the Land Registration Act would be proper only if there is unanimity among the parties, or there is no adverse claim or serious objection by any other party in interest, and that as a land registration court, the CFI has limited jurisdiction, inasmuch as:

a) Sec. 110 of the Land Registration Act is distinct and separate from Sec. 112 of the same: the first deals solely with the annotation of an adverse claim which is a mere notice of a claim or right or interest in the property, temporary or precautionary in character, and grants the Court of First Instance power to pass upon its validity and order its cancellation; the second (Sec. 112) deals with the inscription of the creation and/or termination of a right on the property.

b) Rulings under Sec. 112 of the Land Registration Act do not apply to sec. 110.

c) Even under sec. 112, the argument that proceedings under said sec. 112 would be proper only if there is unanimity among the parties, or there is no adverse claim or serious objection by any other party in interest is unsound and erroneous.

C) In not holding that the ruling that the Court of First Instance in a land registration proceedings has limited jurisdiction finds no legal basis under the present set up of the law and is unsound.

3) x x x in not affirming the judgment of the lower court ordering the cancellation of the notation of the adverse claim on the certificate of title in favor of herein petitioner which notation has continued since 1960 without the adverse claimant or her successors-in-interest having taken or instituted proper action to enforce the right or interest they claim to have on a portion of the land."

The principal issue to be resolved is whether or not respondent Court of Appeals erred in finding that the Court of First Instance of Baguio acting as a Land Registration Court could not take cognizance of the instant Petition for Cancellation of Adverse Claim in view of the question of ownership raised by respondent which made the case controversial and, therefore, properly within the jurisdiction of an ordinary Court.

The applicable law is Section 110 of the Land Registration Act (Act 496), which provides:

"ADVERSE CLAIM

Sec. 110. Whoever claims any right 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 Act for registering the

same, make a statement in writing setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court upon a petition of any party in interest shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall be cancelled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion" (Emphasis ours).

Section 110 is divided into two parts. The first part refers to the procedure to be followed in registering an adverse claim in the Office of the Register of Deeds. The second part provides for the determination by a Court of the validity of an adverse claim upon petition and speedy hearing.[7] Section 110 does not distinguish between a Court sitting as a land registration Court and a Court of general jurisdiction. We are of the considered opinion, therefore, that either Court may determine the validity of an adverse claim and if found to be invalid, order its cancellation. This conclusion found expression in *Paz Ty Sin Tei vs. Jose Lee Dy Piao*, 103 Phil. 858 (1958), which held:

"The action taken by the lower Court in ordering the cancellation of the adverse claim before its validity could be passed upon, is not sanctioned by law. x x x it may be cancelled only in one instance i.e. after the claim is adjudged invalid or unmeritorious by the Court, acting either as a land registration court or one of general jurisdiction while passing upon a case before it where the subject of the litigation is the same interest or right which is being secured by the adverse claim" (Italics supplied).

The conclusion arrived at is not altered by the fact that ownership is involved, and corollarily, the issues of prescription and laches. For in any event, there was, in effect, acquiescence by the parties to the jurisdiction assumed by the Court a quo, notwithstanding initial objections thereto, inasmuch as they had presented their re-spective evidence and were given full opportunity to air their side of the controversy.

"Generally, an issue properly litigable in an ordinary civil action under the general jurisdiction of the Court of First Instance should not be resolved in a land registration proceeding. But since in this jurisdiction the Court of First Instance also functions as a land registration court, if the parties acquiesced in submitting that issue for determination in the land registration proceeding and they were given full opportunity to pre-sent their respective sides and their evidence, the land registration court would have jurisdiction to pass upon that issue." [8]

Again,

"The otherwise rigid rule that the jurisdiction of the Land Registration Court, being special and limited in character and proceedings thereon summary in nature, does not extend to cases involving issues properly litigable in other independent suits or ordinary civil actions, has time and again been relaxed in special and exceptional circumstances. x x x It may be gleaned and gathered that the peculiarity of the exceptions is based not alone on the fact that Land Registration Courts are likewise the same Court of First Instance, but also the following premises: 1) Mutual consent of the parties or their acquiescence in submitting the aforesaid issues for determination by the court in the registration proceedings; 2) full opportunity given to the parties in the presentation of their respective side of the issues and of the evidence in support thereto; 3) consideration by the court that the evidence already of record is sufficient and adequate for rendering a decision upon these issues" [9]

Besides, whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a

jurisdictional question. It is in essence a procedural question involving a mode of practice 'which may be waived'.^[10]

A contrary ruling would only unduly prolong this case which has been pending decision for eleven years and has had a lifespan since its inception of twenty years. Furthermore, our review of the proceedings in the Court a quo indicates that its judgment is supported by the evidence on record, testimonial and documentary, and which were sufficient and adequate for the rendition of a decision. We subscribe fully to the following observations of the Court a quo:

"The issue in this case is whether or not the oppositor Rosa Ganayo had any right at all on the 750 sq. meters she claims, as shown by the Promise to Transfer and Convey, and the Agreement (Exh. '1' and '1-A') supported by her receipts of payments marked as Exh. '2' and '2-A'; and, if in the negative, then the adverse claim should be cancelled as prayed for in the petition.

Let it be noted that the Agreement in question is not a deed of absolute sale, consequently, the receipts of payment (Exhs. '2' and '2-A') were by virtue of the agreement of promise to convey and transfer. When Rosa Ganayo was questioned by the Court why she did not request Pulmano Molintas to make a deed of sale she answered that she made such request but that Pulmano Molintas told her to wait. It is evident, therefore, that there was no final conveyance and transfer of the area consisting of 750 square meters as claimed by the oppositor, out of the 10,000 square meters covered by Transfer Certificate of Title No. 4583 of the Register of Deeds of Baguio City. It is striking to note that when Rosa Ganayo allegedly paid for the 750 square meters from Pulmano Molintas, the one-half (1/2) portion of the 10,000 square meters was still in the co-ownership of the Molintas brothers and sisters and that at the time there was no fixed portion allocated to Pulmano Molintas. The four (4) lawyers whom she engaged to protect her rights did not choose to prepare any deed of sale, believing no doubt that Pulmano Molintas was not in a position to sell the specific area of 750 square meters. Since the agreement marked as Exh. '1-A' was only executed by Pulmano Molintas, there is no question that Justo Leaño did not agree to said agreement because he did not affix his signature therein. If at all, the oppositor Rosa Ganayo was buying only an undivided interest of Pulmano Molintas. The survey plan which she caused to be undertaken to separate her interest was not even approved by the Director of Lands.

On the other hand, Magdalena Leaño confirmed that her late husband Justo Leaño never sold a portion of the 10,000 square meters to Rosa Ganayo before, during, and after the last war; that she never appeared before Notary Public Albert Caoili and she never executed Exh. '3-A', but that she and her daughter Isabel Leaño executed the affidavit Exh. 'E' which was prepared by Notary Public Benjamin Cardenas.

The attempt of the oppositor to prove a verbal deed of sale of the portion of 750 square meters in her favor is not tenable pursuant to Sec. 121 of Rule 123 of the Rules of Court. Said provision states that 'an agreement for the leasing for a longer period than one year or for the sale of real property or of interest therein must be evidenced by writing.' This provision of is also re-stated under Art. 1403 of the New Civil Code. Assuming that Rosa Ganayo, the oppositor herein, had the right based on the Agreement to Convey and Transfer as contained in Exhs. '1' and '1-A', her failure or the abandonment of her right to file an action against Pulmano Molintas when he was still a co-owner of the one-half (1/2) portion of the 10,000 square meters is now barred by laches and/or prescribed by law because she failed to bring such action within ten (10) years from the date of the written agreement in 1941, pursuant to Art. 1144 of the New Civil Code, so that when she filed the adverse claim thru her counsel in 1959 she had absolutely no more right whatsoever on the same, having been barred by laches."^[11]

WHEREFORE, the Decision of respondent Court of Appeals is hereby set aside and the judgment of the Court of First Instance of Baguio, in LRC Record No. 12075, hereby affirmed.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur. Makasiar, J., on official leave.

[1] Special Division of Five composed of Presiding Justice Salvador V. Esguerra, Justices Ruperto G. Martin, Cecilia Muñoz Palma, and Andres Reyes, who penned the Decision, with Justice Hermogenes Concepcion, Jr., dissenting.

[2] p. 6, Petitioner's Brief.

[3] Exhibit "3", p. 10, Folio of Exhibits.

[4] p. 13, *ibid*.

[5] p. 2, *ibid*.

[6] Exhibit "E", p. 11, *ibid*.

[7] *Gabriel vs. Register of Deeds of Rizal*, 118 Phil. 980 (1963).

[8] *Manalo vs. Mariano*, 69 SCRA 81 (1976).

[9] *Florentino, et al vs. Encarnacion, et al*, 79 SCRA 192 (1977).

[10] *Manalo vs. Mariano*, 69 SCRA 80 (1976) citing *Cunanan vs. Amparo*, 80 Phil. 227, 232; *Reyes vs. Diaz*, 73 Phil. 484.

[11] pp. 44-47, Joint Record on Appeal.

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