

CONCEPCION MONTELIBANO, ASSISTED BY HER HUSBAND MATIAS HOJILLA, AND ALFREDO L. MONTELIBANO, PETITIONERS, VS. HON. JOSE S. DE LA CRUZ, JUDGE OF THE COURT OF FIRST INSTANCE OF NEG...*G.R. No. L-19759. April 30, 1964*

Ponente: CONCEPCION, J.

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This is an original action for certiorari to set aside certain orders of respondent Judge, Hon. Jose de la Cruz, dated October 22, 1958 and April 11, 1962, in Civil Case No. 4274 of the Court of First Instance of Negros Occidental, entitled "Concepcion Montelibano and Alfredo L. Montelibano vs. Alfredo M. Montelibano."

The record shows that the spouses Alejandro Montelibano and his wife Gliceria, who died, respectively, on August 14, 1927 and September 19, 1914, were survived by their children, Jose M., Alfredo M., Concepcion and Alejandro M., all surnamed Montelibano. On September 6, 1927, Jose M. Montelibano applied in Civil Case No. 4281 of the aforementioned court for letters of Administration of his deceased father Alejandro Montelibano. A similar petition was filed on November 12, 1927, with the same court and docketed therein as Case No. 4428, as regards the estate of Gliceria M. Montelibano. In due course, the inventories of the properties constituting the estates of the aforementioned deceased spouses was submitted on October 2, 1930. Subsequently, or on June 11, 1931, the corresponding petition for declaration of heirs of said spouses and project of partition of their respective estates was filed. Said petition and project of partition were approved by the court on July 21, 1931. Nothing appears to have been done in said cases until September 11, 1940, when the attention of the court was called to the payment of the corresponding inheritance taxes, where- upon both cases were declared closed on September 14, 1940.

Jose M. Montelibano died on January 1, 1944, leaving a son, Alfredo L. Montelibano, one of the plaintiffs in case No. 4274, which he, together with his aunt, Concepcion Montelibano, instituted on March 12, 1957, against his uncle and brother of the latter, Alfredo M. Montelibano, hereinafter referred to as respondent in the complaint in that case it is prayed that the aforementioned project of partition of the estates of the deceased Alejandro Montelibano and Gliceria Montelibano and the judicial order approving the same be annulled, and another partition of said estates be made, or, in the alternative, that respondent be ordered to transfer to Concepcion Montelibano one-fourth (1/4) of the urban lots' he received under said project of partition, and to Alfredo L. Montelibano certain properties specified in the complaint, in addition to the payment of damages and attorney's fees. On the same date, said Concepcion Montelibano and Alfredo L. Montelibano—hereinafter referred to as petitioners—caused a notice of lis pendens to be annotated on the certificates of title covering each and everyone of the properties adjudicated to respondent in said project of partition.

On October 9, 1958, respondent moved to cancel the notice of lis pendens as regards certain specified certificates of title (Nos. 8276, 8277, 8523, 8536 to 8540, 8567, 8572, 8573, 8575, 8578, 8688, 8726, 8316, 8277, 2899,

8469, 8077, 8078 and 8574 of the Register of Deeds of Negros Occidental), covering what is known as "Hacienda Binitin", in the municipality of Murcia, Negros Occidental, which had been adjudicated in said project of partition to him and his brother Alejandro M. Montelibano—(Alejandro's) share therein is not contested by the petitioners—or, in the alternative, that the latter be required to post a bond to guarantee such damages as respondent may suffer in consequence of the notice of lis pendens. After due hearing, said motion, to which petitioners objected, was granted by respondent judge in an order dated October 22, 1958, which cancelled the notice of lis pendens annotated on the aforementioned certificates of title. Petitioners sought a reconsideration, which was denied in another order dated April 11, 1962. Soon thereafter, or on May 12, 1962, petitioners commenced this action, to set aside said orders of October 22, 1958 and April 11, 1962, alleging that in issuing the same respondent Judge had committed a grave abuse of discretion.

The order of October 22, 1958, directed the cancellation of the notice of lis pendens insofar as the "Hacienda Binitin" is concerned, upon the ground that said Hacienda "is only one of the many real properties involved" in case No. 4274; that "at least the one-half share in 'Hacienda Binitin' of Alejandro M. Montelibano is not * * * litigated" in said case; that "there are sufficient properties" of the respondent "other than 'Hacienda Binitin', from which the * * * shares" of the petitioners "may be taken", that "the notice of lis pendens affects only the properties adjudicated" to respondent, "leaving" the petitioners "in the free enjoyment and disposition of the properties adjudicated to them"; and that although the complaint in case No. 4274 was filed on March 12, 1957, the trial had not even begun (on October 22, 1958) and that "the chances are slim for an early termination of the litigation" in the lower court, apart from the possibility of an appeal to a higher court.

Petitioners assail the accuracy or validity of these grounds, but a review of the record does not show that they have succeeded in their endeavor. What is more, during the period intervening from the issuance of the order of October 22, 1958, to that of April 11, 1962, petitioners had begun to introduce their evidence. Apparently, the nature thereof was not such, as to impart to respondent Judge the impression that petitioners' cause of action was sufficiently meritorious to warrant a reconsideration of the first order. At any rate, the issue hinges on whether or not the other properties of respondent herein which are subject to the notice of lis pendens suffice to protect petitioners' alleged rights, should the same be eventually upheld judicially. Upon the records before us, we are not prepared to conclude that respondent Judge had abused his discretion, much less gravely, in resolving this question in the affirmative.

WHEREFORE, the writ prayed for is denied and the petition herein dismissed, with costs against petitioners Conception Montelibano and Alfredo L. Montelibano.

IT IS SO ORDERED.

Bengzon, C.J., Padilla, Labrador, Reyes, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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