

TERESITA M. ESQUIVEL, PETITIONER, VS. HONORABLE JOAQUIN O. ILUSTRE AS JUDGE, COURT OF FIRST INSTANCE OF ALBAY, BRANCH II, DR. CARLOS R. BAYLON AND EULALIA BAYLON, RESPONDENTS.

G.R. No. L-48129. February 27, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari seeking, the nullification of the orders of the respondent Judge dated December 29, 1977 and March 8, 1978 for having been issued in violation of the due process clause and with grave abuse of discretion.

Under date of December 23, 1977, private respondent Dr. Carlos Baylon filed with the then Court of First Instance of Albay (now Regional Trial Court of Albay) Branch II a petition for the cancellation of notice of lis pendens annotated in T.C.T. No. 16126 of Lot No. 1596-A of Subdivision plan Psd-18800. The petition was set for consideration on December 29, 1977 at 8:30 in the morning. Due to the proximity of time and pressure of work, petitioner (then oppositor in the lower court) thru counsel filed on December 27, 1997 a motion for extension of time to file formal opposition and to reset the hearing of the petition to another date.

There being no action taken on the aforesaid motion formal opposition to the petition dated January 4, 1978 was subsequently filed within the twenty (20) day period prayed for in the motion for extension.

On January 19, 1978, respondent Judge issued a notice for the hearing of the petition for cancellation, together with the opposition thereto on February 1, 1978. However, when the incident was called for consideration on February 1, 1978, counsel for the petitioner was informed by the court a quo that there was an order issued dated December 29, 1977 granting the petition filed by private respondent. At this juncture, respondent Judge suggested that counsel for petitioner herein (than for oppositor) should file a motion for reconsideration of the said order, for which reason, petitioner herein was granted a period of five (5) days from February 1, 1978 within which to file the motion as required by the court.

On February 6, 1978, consistent with the order of February 1, 1978, petitioner thru counsel filed a motion for reconsideration and/or setting aside of the order of December 29, 1977. Private respondent filed his opposition to the motion, copy of which was received by the petitioner on February 16, 1978. A reply was filed by counsel for petitioner on February 17, 1978.

On the same date, February 17, 1978, a motion for issuance of a restraining order was filed by counsel for petitioner requesting the court a quo to restrain in the meantime the City Register of Deeds of Legazpi City from cancelling the lis pendens pending resolution of the motion for reconsideration.

On March 8, 1978, respondent Judge issued an order denying the motion for reconsideration and motion for issuance of a restraining order, prompting the petitioner herein to file the instant petition.

As can be gleaned from the records of the case, the issue is whether or not the court a quo acted in violation of

due process clause and with grave abuse of discretion in issuing the questioned orders.

We resolve to grant the petition.

Petitioner claims to have been denied due process when the court a quo issued an order granting the petition of private respondent for the cancellation of *lis pendens* without making mention of the opposition filed by petitioner within the time prayed for in the motion for extension previously filed. The argument was premised on the petitioner's "safe" (p. 28, Rollo): assumption that said motion was decided in her favor when the Court failed to take immediate action thereon. Sad to say, we do not share the same view. Petitioner was too presumptuous to take the court's inaction in her favor to the disadvantage of private respondents. The formal opposition should have been filed on or before the scheduled hearing. Nevertheless, the court a quo committed grave abuse of discretion when it immediately ordered the cancellation of the notice of *lis pendens* in an order dated December 29, 1977 despite the fact that it received on December 27, 1977 a motion for extension of time to file formal opposition and to reset the hearing to a later date, thus, signifying the petitioner's clear intention to oppose the petition. In the absence of an intention to delay the proceedings, as in the case at bar, the formal opposition having been filed within the period prayed for in the motion, the court a quo should have given the oppositor (petitioner herein) an opportunity to ventilate her cause.

To make things worse, a verification of the records of the City Register of Deeds of Legazpi City showed that the *lis pendens* was already cancelled as of January 3, 1978 at the initiative of the private respondents, evidently without waiting for the finality of the questioned order of December 29, 1977. This is a clear violation of a well-settled principle of law.

In this light, the private respondents justified the non-consideration of the motion for extension by pointing to the fact that said motion was filed with the office of the Clerk of Court less than three (3) days before the date of hearing of the petition. Be it remembered, however, that the three (3) day notice rule is not absolute. Thus, in *Azajar v. Court of Appeals*, G.R. 40945, 10 November 1986, this Court held that:

"... under certain circumstances even if the movant failed to comply with the 3-day notice rule, the court may overlook the movant's error, in view of the imminent desirability that cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. The ends of justice would be better served if technicality is brushed aside and the parties given their day in court."

Similarly, the contention of private respondents that the scheduled hearing on February 1, 1978 was just a result of an "oversight on the part of the deputy clerk of court" (p. 56, Rollo) cannot overcome the presumption that official duty has been regularly performed. It is noteworthy that no evidence was presented against this presumption. Thus, presumption remains un rebutted. Furthermore, the best evidence in this regard is the notice of hearing dated January 19, 1978 issued by the Deputy Clerk of Court, copy of which is attached as Annex D of the petition. In effect, the hearing, having been scheduled on February 1, 1978, it may well be concluded that the court a quo did not conduct a hearing on December 29, 1977, yet when on February 1, 1978, the counsel for the petitioner herein appeared in obedience to the notice of hearing, it was found out that there was already an order dated December 29, 1977 although no copy thereof was ever furnished the counsel for the oppositor, now the herein petitioner.

Finally, private respondent Dr. Carlos Baylon should not be heard to complain because records disclose that he knew that his acquisition of the property in question, was conditional and subject to limitations justifying the notice of *lis pendens*, in addition to the civil case for support and change of administration of conjugal properties with preliminary injunction. The sale was without the knowledge of the court. Thus, the property was still in

litigation and must continue in such state until the cases involving them are terminated. Established is the rule that a buyer of property in litigation assumes the risk unless the sale is with the consent of the parties and/or with court approval as provided for by the Civil Code.

WHEREFORE, in view of all the foregoing, the orders issued by the respondent court through Hon. Joaquin O. Ilustre as its Presiding Judge, dated December 29, 1977 and March 8, 1978 are hereby SET ASIDE.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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