

NICOLAS LIZARES & CO., INC., PETITIONER, VS. BIENVENIDO TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL CITY, MARY HAYDEN ARCACHE, ASSISTED BY HER HUSBAND, JOSEPH ARCACHE, RE...

G.R. No. L-2722. December 15, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

Nicolas Lizares & Co., Inc., a corporation duly organized, asks that respondent judge be enjoined from taking cognizance of a motion filed by the other respondents in G.L.R.O. Record No. 320 of the Court of First Instance of Rizal. The facts are these:

- On May 10, 1944, Nicolas Lizares & Co., Inc. sold two lots in Pasay, Rizal, to the respondents Jose Arcache and Mary Hayden de Arcache for the total sum of P621,500, of which P150,000 was paid on March 10, 1944. It was agreed that the remainder of the price would be delivered in two installments: P200,000 within ninety days, beginning April 3, 1944, and P271,000 within twelve months from April 3, 1944. To guarantee payment of these installments a first mortgage was created on the two lots. The document of sale with mortgage is known in the record as Exhibit A;
- The first installment of P200,000 was duly paid, as per receipt Exhibit D, dated August 6, 1944;
- On June 30, 1948, the Arcache spouses filed in the Court of First Instance of Rizal in G.L.R.O. Record No. 320, a motion alleging the execution of the document of sale and mortgage Exhibit A, and the total payment of the amounts due thereunder, and they requested that the Register of Deeds of Rizal be ordered to cancel the transfer certificate of title No. 72435, and to issue a new title in the name of the purchasers—herein respondents—discharging at the same time the mortgage evidenced by the same Exhibit A;
- By order of July 3, 1948, the respondent judge granted the motion; but on December 2, 1948, he revoked that order upon petition of Nicolas Lizares & Company, who alleged it had not been previously advised of the petition. The judge then directed that the motion be again heard on December 18, 1948;
- Nicolas Lizares & Co. thereafter objected in writing to the jurisdiction of the respondent, arguing that as judge acting on a petition filed in a land registration expediente he had no jurisdiction to pass upon the reality and validity of the payment allegedly made of the last installment of P271,000 which the said corporation denied and traversed;
- The respondent judge overruled the opposition and announced his intention to dispose of the motion;
- Hence the petitioner immediately filed this petition for prohibition, and obtained a preliminary injunction.

It is at once apparent from the pleadings that the main contention of the petitioner corporation, is that the respondent judge may not, in the expediente of the cadastral proceedings, pass upon the question it expressly

raised, namely: whether the last installment of P271,000 had been duly paid. It seems that respondents Arcache claim payment by virtue of a deposit of P271,000 supposedly made by them in the Philippine National Bank on January 8, 1945, in the name of "Nicolas Lizares"—not Nicolas Lizares & Company, Inc. The petitioning corporation maintains on the other hand that such deposit was no valid payment and did not operate to discharge the obligation to satisfy the second installment of the purchase price, and therefore did not have the effect of cancelling the mortgage.

In *Castillo vs. Ramos*, L-1031 (45 Off. Gaz., 183),[1] the owners of registered land asked the Tayabas court that the mortgage in favor of the Agricultural Bank recorded on their certificate of title be cancelled inasmuch as the debt had been paid during the last war. The petition was filed in the original expediente of registration of the land. The Bank opposed the petition; and the judge denied it on the ground that he had no power to grant within that registration case the petitioner's motion, inasmuch as the question should be the subject of an ordinary action to compel execution of a release of mortgage. In a petition for mandamus here, we upheld the judge's view saying:

"We are of opinion that the lower court was right. Such a transcendental question as whether payment during the war with Japanese military notes of a pre-war obligation in Philippine genuine money is valid or not, is clearly beyond the special and limited jurisdiction of a Court of First Instance acting as a Court of Land Registration under our laws. The special and limited character of this jurisdiction is apparent from the provision of section 2 of Act No. 496, as amended, as well as those of the Cadastral Act (No. 2259)."

And then after quoting the case of *Bank of the Philippine Islands vs. Ty Cameo Sobrino* (57 Phil., 801), we explained that—

"If the question of the validity of the above-mentioned second mortgage was not within the purview of the jurisdiction of the Court of First Instance acting as a Court of Land Registration, for similar reasons, if not stronger ones, the question of the validity of the payment with Japanese military notes during the war of the pre-war mortgage indebtedness in Philippine genuine money herein involved, should be held, as we hold it, to be without the special and limited jurisdiction of the Court of First Instance acting as a Court of Land Registration.

"x x x x x x x x"

"If there is such a clear separation and distinction between land registration proceedings and ordinary civil actions, what properly pertains to the general jurisdiction of the courts in ordinary civil actions should not be brought to them as courts of land registration with the limited and special jurisdiction characteristic of such courts."

In this proceeding the issue raised by the *Nicolas Lizares & Co., Inc.*, like the question of the validity or cancellation or discharge of a mortgage in the above two decisions, properly pertains to an ordinary civil action and should not fall within the limited jurisdiction of a court of first instance acting as a court of land registration.

There is another point. The certificate of title No. 72435 which the Arcaches desire to cancel is apparently in the names of Lidia L. Lizares and Ofelia L. Lizares. It does not appear that these ladies have been notified or that they joined issue in the cadastral expediente.

Wherefore, the petition for prohibition is granted and the injunction heretofore issued is made permanent.

The petitioner has filed a supplementary petition alleging that in compliance with the order of the respondent judge, dated July 3, 1948 (which was subsequently revoked), the register of deeds of Rizal, Ricardo P. Tensuan, cancelled transfer certificate of title No. 72435 and issued, T. C. T. No. 689 in the name of the respondent spouses that a proper petition was submitted to the respondent judge to require the register of deeds to cancel the new certificate and reinstate the old one; that the respondent judge declined to act on said petition in view of the

preliminary injunction issued by this Supreme Court. Petitioner consequently requests for appropriate orders against the register of deeds, who is impleaded as additional party respondent.

Considering what we have explained, it will be apparent that the new certificate No. 689 in the name of the respondent spouses was invalidly issued, as the cancellation of transfer certificate of title No. 72435 was erroneously done. Hence the respondent register of deeds is directed to cancel the above-mentioned certificate of title No. 689 and to reissue transfer certificate of title No. 72435. This is, of course, without prejudice to the decision that may be subsequently promulgated in another suit, if any, between the respondent spouses and Nicolas Lizares & Co., Inc.

Costs against respondents.

Moran, C.J., Ozaeta, Paras, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] 78 Phil., 809.

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