

IN RE PETITION FOR THE ISSUANCE OF NEW TITLE.

G.R. No. L-2180. September 01, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of the Court of First Instance of Manila, Branch IV, in cadastral case No. 55, G.L.R.O. record No. 275. The order was issued upon the petitions and under the circumstances to be presently stated, which are quite involved.

The Orden de PP. Benedictinos de Filipinas, hereafter called Benedictine Fathers for short, owned a parcel of land in the District of San Miguel, Manila, covered by certificate of title No. 22560. Adjoining this parcel is one owned by the Philippine Realty Corporation having an area of 8,151 square meters and covered by transfer certificate of title No. 43851.

On April 22, 1944, the Philippine Realty Corporation and the Benedictine Fathers entered into a contract wherein, among other provisions, this clause was inserted:

"And, inasmuch as the specific purpose of the sale of the two (2) parcels of land herein before described is as stated in the third whereas hereof, that said two parcels of land may be incorporated to and made a part of the San Beda Subdivision as shown in Annex A hereof, so as to facilitate the sale of the whole subdivision, as a whole, by the vendees, to a third party or parties, it is further agreed and stipulated by and between the vendor and the vendees that if said vendees shall fail to close a contract for the sale of the whole of the San Beda Subdivision within the term of 60 days from the date of the signing of this deed, then this sale shall become null and void and the title to the property hereby sold shall ipso facto devolve upon the vendor and the vendees shall become divested of all rights to the property hereunder except the right to be reimbursed of the value of the improvement made therein and hereinbefore referred to. But should the vendees find a purchaser or purchasers and close a contract for the sale of said San Beda Subdivision within the time herein specified, their title to the property hereby sold shall become fully vested and uncontestable under the present instrument."

On June 6, 1944, well within the period provided in the stipulation, the Benedictine Fathers closed a contract to sell the entire subdivision embracing parts or the totality of the two tracts to Juan Pellicier and Co., Inc., and on June 30 the same was made definite in another instrument. Both documents were inscribed in the office of the register of deeds.

On August 6, 1944, Pellicier and Co. conveyed to Antonio S. Gabriel two subdivision lots, both of which are included in the Philippine Realty's land, and on July 8, 1946, Gabriel resold them to Rufina Gueco. Both these sales were likewise properly registered in the office of the register of deeds.

Meanwhile, on June 7, 1944, on petition of Attorney A. Opisso in behalf of Pellicier & Co., Judge G. Diaz issued to the register of deeds an order of the following tenor: (1) To cancel Philippine Realty's transfer certificate of title No. 43851 and to issue in lieu thereof in favor of the same registered owner a new one covering not all but certain specified portions of the land described in the title; (2) to cancel the Benedictine Fathers' transfer certificate of

title No. 22560 and to issue in lieu thereof in favor of the same registered owner a new one also covering only certain specified portions of the land described in the title; and (3) to issue a new certificate of title in favor of La Orden de PP. Benedictinos de Filipinas covering certain specified portions of consolidation and subdivision plan pcs-1002.

On November 26, 1946, upon the application of Attorneys Joaquín & Fineza for Pellicer & Co., and with the conformity of the attorneys for the Philippine Realty Corporation, Judge De la Rosa, then presiding over branch IV of the court of first instance, directed the register of deeds to issue a new duplicate certificate of title in substitution for Philippine Realty's No. 43851, which had been destroyed, "con instrucciones de retenerlo en su poder hasta nueva orden de este tribunal."

Matters stood thus when, on November 28, 1946, and on January 17, 1947, Rufina Gueco and Pellicer & Co. filed separate petitions. Rufina Gueco asked (1) for the cancellation of the Philippine Realty's certificate of title No. 43851 and the issuance of another in its stead in the name of the Benedictine Fathers; (2) for the cancellation of the latter certificate and the issuance of a new one to Pellicer & Co.; and (3) for the cancellation of Pellicer & Co.'s certificate and the issuance in its place of another in conformity with consolidation and subdivision plan pcs.-1002. Further, it was requested that upon these cancellations and the registration of the subdivision in the name of Pellicer & Co. the register of deeds be ordered to give course to the deeds Of sale executed successively by Pellicer & Co. in favor of Antonio S. Gabriel and by Gabriel in favor of Rufina Gueco, both of which had been filed with the register of deeds' office. On his part, Pellicer & Co. sought an order to supplement Judge De la Rosa's order of November 20, 1946, so as to cause the register of deeds to issue a certificate of title to the Benedictine Fathers on the whole property embraced in consolidation and subdivision plan pcs-1002 to the end that such title might in turn be transferred to and recorded in the name of Pellicer & Co. by virtue of the deed of absolute sale of June 30, 1944, executed in Pellicer & Co.'s favor by the Benedictine Fathers.

On March 12, 1947, Judge De Leon, presiding over branch IV, made the following order:

"Por las consideraciones expuestas y declarando este Tribunal con jurisdicción para conocer de las citadas peticiones, se deniega la oposición y previa presentación de la copia de la orden de fecha 7 de Junio de 1944, Exhibit C juntamente con el Exh. A y el plano Pcs-1002, Exh. D y sus descripciones técnicas, Exhs. D-1 al D-82 y de los mencionados Exhs. B, E, P y G, y con el duplicado del certificado de transferencia de título No. 43851, expedido de acuerdo con la orden de este juzgado de fecha 20 de Noviembre de 1946, proceda a la inscripción de los documentos objeto de los Asientos de Presentación Nos. 19404, 19414 y 21812, así como de la escritura de venta de fecha 30 de Agosto de 1946, otorgada por Juan P. Pellicer Co., Inc., a favor de Antonio S. Gabriel y de la escritura de venta otorgada por este a favor de Rufina Gueco, expidiendo los títulos correspondientes y haciendo constar la parte pertinente de los Directivos del Secretario de Justicia, previo el pago de todos los honorarios legales."

Judge De Leon found from the evidence and ruled that the consummation of the sale to the Benedictine Fathers was made to depend exclusively on the fulfillment of the condition set forth in the contract of sale and that this condition had been complied with.

The Philippine Realty Corporation opposed Rufina Gueco's and Pellicer & Co.'s petitions, the chief objection being that the Benedictine Fathers had failed to pay the purchase price for the opponent's land by reason of which, according to Philippine Realty, the contract of sale had not been consummated and title had not been conveyed. And it was contended in the court below, and it is contended on appeal, that this objection by its nature was outside the jurisdiction of the land registration court to decide in a land registration proceeding.

This contention is probably right. But it is unnecessary to discuss whether Judge De Leon committed a mistake in passing, over the objection of Philippine Realty, upon the construction of the contract between the Philippine

Realty and the Benedictine Fathers, upon the question whether the terms thereof had been fulfilled, and other matters going to the relative rights of the parties to the property. We say unnecessary because, if for nothing else, these very rights are being litigated in a regular action at law in another branch of the same court.

It appears that Philippine Realty on February 24, 1947, after Judge De Leon's order was issued, commenced a suit against the Benedictine Fathers and Pellicer & Co. for annulment and resolution of the sale contract, an action which is now pending trial, and that proper notice of *lis pendens* was entered in the register of deeds' office. Rufina Gueco, it is evident, is a necessary party to that action, and if she has not done so, she should be compelled to join therein.

With the pending suit and entry of *lis pendens*, the cancellation of the Philippine Realty's title and the issuance of new titles to Pellicer & Co. and to Rufina Gueco, as well as any subsequent transactions affecting the Philippine Realty's land, would have to be subject to the outcome of the current litigation. In other words, until that litigation is terminated and unless the Philippine Realty's action fails, Pellicer and Gueco and those who may derive title from them could not make valid use of their certificates. Concomitant with the inhibition on Pellicer and Gueco to alienate or encumber the land is the guarantee that the Philippine Realty will not run any risk of losing its property or any part of it as a result of any conveyance of the land or any encumbrance that may be made thereon posterior to the filing of the notice of *lis pendens*.

If no other factors entered into the case, we might dismiss the appeal or hold it in abeyance interim the pendency of the suit over the validity and effectiveness of the sale by the Philippine Realty to the Benedictine Fathers. But the Philippine Realty's land is not the only tract affected by the challenged order. The order comprises the Benedictine Fathers' land as well as Philippine Realty's and, as has been seen, both parcels have been combined in one plan and form the present San Beda subdivision. Unless then the instant appeal is decided and the order of Judge De Leon allowed to stand, the development and sales of the Benedictine Fathers' land, the title to which is not in controversy, would be held up. From this point of view we believe that the appealed order should be maintained with a modification. We believe that affirmance of this order with adequate safeguards will best serve the interest of all concerned, in that while a qualified affirmance will not prejudice the rights and interests of the Philippine Realty, the issuance of a new certificate of title to the entire subdivision would lift the impediment to transactions on that portion of the subdivision with which the Philippine Realty is not concerned.

If it be contended that the consolidation and subdivision plan should be unmade and the original titles to the parcels that have been merged restored to their status quo ante, the answer is that, granting the feasibility of this step, it is to be seriously doubted whether in the present state of uncertainty as to the final outcome of the pending action, such course would be advisable in view of the fact that by Judge Diaz's order of June 7, 1944, the original certificates of title of both parties have been cancelled and a new title covering both parcels or portions of them has been issued or recorded. Under these circumstances a return to the status quo ante would prove a waste of time, effort and money in the event the sale of the Philippine Realty's land to the Benedictine Fathers should be found to have been consummated or perfected. In addition to these observations, there appears a sincere desire, and efforts are being exerted by the parties—especially the Archbishop of Manila, who owns a controlling stock in the Philippine Realty Corporation, and the Benedictine Fathers—to come to an amicable settlement.

For all the foregoing reasons, the order complained of will be affirmed, with the distinct understanding that the findings of law and fact in that order relative to the nature of the contract of sale between Philippine Realty and La Orden de PP. Benedictinos de Filipinas and the question of due compliance with its terms will be disregarded and, specifically, will not prejudice those questions and other issues that may be raised in the law suit now pending hearing in another branch of the Manila Court of First Instance.

There will be no special findings as to costs of this appeal.

Ozaeta, Paras, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

Order affirmed.

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