

**MIGUEL MABILIN, VICTORIANO MABILIN, AND MARIA DE LA PAZ
MABILIN, PETITIONERS-APPELLEES, VS. EUSEBIO S. MILLAR,
OPPOSITOR--APPELLANT.**

G.R. No. L-24146. February 22, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

This is an appeal from an order of the Court of First Instance of Quezon, G. L. R. O. Cadastral Reg. No. 614, Cad. Case No. 26, dated October 5, 1964, in connection with a petition filed there-with for Cancellation of Liens or Encumbrances on Original Certificates of Title Nos. 22749 and 22918 of the Land Records of Quezon Province. The order reads as follows:

"Acting on the petition filed by the petitioners, through counsel, and the opposition thereto filed by Atty. Luis B. Vilorio, and finding the allegations in the opposition to be without merit, the petition is hereby granted and the Register of Deeds of Quezon is hereby ordered, upon payment of the fees required by law, to cancel the liens and/or encumbrances annotated on the back of Original Certificates of Title Nos. 22749 and 22918 both of the land records of Quezon.

"SO ORDERED.

"City of Lucena, October 5, 1964.

(Sgd) MANOLO L. MADDELA

Judge"

The legality and validity of the said order is directly assailed here by Eusebio S. Millar who had opposed the petition in the court below, alleging that the court below fell into error in issuing the above-quoted order on the basis merely of the pleadings (Second Assignment of Error), thereby sustaining the contention of the petitioners that the obligation secured by the liens or encumbrances mentioned in the order had already prescribed (Third Assignment of Error), without stating or making findings of fact upon which the order is predicated (First Assignment of Error), and in resolving the petition without or in excess of its jurisdiction (Reply Brief).

The environmental facts that gave rise to the controversy are gleaned from the pleadings of the parties in the lower court and the respective briefs they have submitted in this proceeding.

It appears that one Camilo Cabuyao originally owned two(2) parcels of land in barrio Ibabang Palale, municipality of Tayabas, province of Quezon, which are registered in his name under Original Certificates of Title Nos. 22749 and 22918, both of the Land Records of Quezon Province. Annotated on the back of Original Certificate of Title No. 22749 are the following liens or encumbrances, to wit:

"29502 Writ of Attachment in favor of Eusebio S. Millar - of all properties covered by O.C.T. Nos. 22749 and 22918 to secure the payment of the amount claimed for in Civil Case No. 1593 J. P. Court of Tayabas,

Tayabas, entitled 'Eusebio S. Millar, plain-tiff, vs. Cabuyao & Susana Reyes, de-fendants' File No. C-22749 (date of instrument - Sept. 2, 1936.)

"43054 Writ of Execution in favor of Eusebio S. Millar - Issued in Civil Case No. 1593, J. P. Court of Tayabas, Tayabas, entitled 'Eusebio S. Millar, plaintiff, vs. Camilo Ca-buyao, et al., defendants,' by virtue of which all properties in this title is levied for P68.50, plus P20.00 as damages; P13.70 as attorney's fee and P12.36 as cost of suit. File No. C-22749. (date of instrument - July 13, 1940)"

On the back of the other Original Certificate of Title No. 22918 also appears an annotation of a similar lien or encumbrance which reads:

"29502 Writ of Attachment in favor of Eusebio S. Millar - Of all proper-ties covered by O.C.T. Nos. 22749 and 22918 to secure the payment of the amount claimed for in Civil Case No. 1593 J.P. Court of Tayabas, Tayabas, entitled 'Eusebio S. Millar, plaintiff, vs. Camilo Cabuyao & Susana Re-yes, defendants.' File No. C-22749. (date of instrument - Sept. 2, 1936."

Under date of August 27, 1964, Miguel Mabilin, Victoriano Mabilin and Maria de la Paz Mabilin filed with the Court of First Instance of Quezon a petition for cancellation of the liens or encumbrances above-quoted wherein they alleged, among others, that they are the grandchildren of Camilo Cabuyao, the registered owner of the parcels of land covered by Original Certificates of Title Nos. 22749 and 22918 of the Land Records of Quezon Province; that said Camilo Cabuyao had died in 1946, leaving them as his only heirs to succeed him in the ownership of the land; that although there still exist annotations of writs of attachment and execution on the back of the Torrens certificates of title to the said parcels of land, it does not appear that the land had ever been sold at public auction to implement the said writs in favor of Eusebio S. Millar; and that the said writs of attachment and execution having been entered as early as 1936 and 1940, respectively, the obligations secured thereby had prescribed. Petitioners then concluded by praying that an order issue directing the Register of Deeds of Quezon Province to cancel the said liens or encumbrances annotated on the certificate of title referred to in the petition.

On September 15, 1964, the encumbrancer, Eusebio S. Millar, filed through counsel, an opposition to the petition wherein he admitted Camilo Cabuyao's ownership of the land. He also affirmed the allegation in the petition that since the annotations of the writs of attachment and execution in his favor in the years 1936 and 1940 on the back of the certificates of title referred to in the petition, the land subject of his lien had not actually been sold at public auction by the sheriff of the province to satisfy the judgment. He denied, however, for lack of sufficient information thereof, petitioners' allegation that they have succeed-ed to the rights and interest of the registered owner over the encumbered property. He likewise denied the allegation in the petition that the obligation secured by the liens or encumbrances sought to be cancelled had prescribed, alleging that the running of the pe-riod of prescription was suspended by the levy and exe-cution made on the properties of his judgment debtor and his right to payment had thus been preserved by the lien on the land created by the annotation of the attachment and levy on execution in the corresponding certificates of title of the property in question. He therefore prayed for the dismissal of the petition.

Under date of September 15, 1964, the petitioners filed a reply to the opposition alleging, that the original registered owner of the land, Camilo Cabuyao, was married to Susana Reyes; that they begot Dolores Cabuyao as their only child; that Dolores Cabuyao, in turn, married a certain Pantaleon Mabilin, and were born to them the petitioners, namely Miguel L. Victoriano and Maria de La Paz, all surnamed Mabilin; that Dolores Cabuyao died sometime in 1933, while her mother, Susana Reyes died after, but before the last world war; and that Camilo Cabuyao, died sometime in the year 1946. In support of these allegations, certain annexes were attached to the reply namely: Annex "A" which is a certificate of the local civil registrar of Tayabas, Quezon to the effect that the records or the Civil Registry of Tayabas Quezon were burned during the last world war, hence, the

non-production of the corresponding certification of marriages, births, and deaths of the persons referred to in the allegations; and Annexes "B" and "C" which are affidavits of Maria de la Paz Mabilin and Victoriano Mabilin, respectively, tending to sustain the allegation in the petition that petitioners are the grandchildren of Camilo Cabuyao, and their claim that they have succeeded to the ownership of the land, the cancellation of the liens or encumbrances of which is the subject of the petition.

The record further shows that without setting the petition for hearing, and without receiving any evidence on the matter, the lower court, based on the pleadings of the parties granted the petition in its order of October 5, 1964 which, as earlier quoted in the first paragraph of this opinion, ordered the Register of Deeds of Quezon to cancel the liens or encumbrances as annotated in the certificates of title to the land in favor of the oppositor. Not satisfied with the said order, the oppositor in the court below interposed this appeal.

There are several grounds relied upon by herein, appellant in support of his claim that the order of the lower court directing the Register of Deeds of Quezon to cancel the liens or encumbrances under consideration was illegally and irregularly issued, the most important of which is that which strikes at the jurisdiction of the said court to resolve the petition. The resolution of this question alone, We believe, would justify the setting aside of the order complained of.

An examination of the petition filed in the court below would readily show that the same was based upon the provisions of section 112 of the Land Registration Act which provides, as follows:

"Sec. 112. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the clerk or any register of deeds, except by order of the court. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate, or that any error, omission, or mistake was made in entering a certificate, or any memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married; or, if registered as married, that the marriage has been terminated; or that a coloration which owned registered land aid has been dissolved has not conveyed the same within three years after its dissolution; or upon any reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: Provided, however, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heir or assigns, without his or their written consent.

"Any petition filed under this section and all petitions and motions filed under the provisions of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered."

But it is well to remember, in this connection, that proceedings under the foregoing provisions have been aptly described as summary in nature, and are allowed only when a scrutiny of the allegations discloses that the issues presented by the pleadings need not be tried because they are so patently unsubstantial as not to be genuine issues.^[1] This may be explained by the fact that when there is no disagreement as to the facts alleged therein, the petition is considered a mere incidental matter in the land registration case which may be validly acted upon by the land registration court.^[2] Thus, this Court has invariably held in a line of cases,^[3] that relief under Section 112 of the Land Registration Act can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial

and should be threshed out in an ordinary case or in the case where the incident properly belongs.

Upon the pleadings of the parties, on the other hand, We find that real and substantial issues are raised by their respective allegations. We note that the opposition to the petition filed in the lower court denies not only the alleged rights of herein appellees to succeed to the ownership of the land subject of the liens or encumbrances sought to be cancelled, but herein appellant also disputes the claim of the petitioners that the obligation secured by the liens on the said land had prescribed. These matters put in issue are undoubtedly controversial and are beyond the limited authority of a land registration court to pass upon after the entry of the original decree of registration. To this effect was the holding of this Court in a similar case,[4] where prescription was the main issue raised by the parties:

"As may be noted, the main issue raised by the parties is not whether the lower court has jurisdiction to entertain the petition concerning the cancellation of the alleged encumbrances and the approval of the agreement relative to the sale of the land to the herein petitioners but whether said cancellation should be effected upon the ground that the right of the Government to enforce said encumbrance has already prescribed. And the lower court, while at first ruled that it had jurisdiction to act on the petition, it later reconsidered its position and held that it has no such jurisdiction because the petition involves a matter which comes within the exclusive jurisdiction of the Court of First Instance of Manila.

"We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the single reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act 496. x x x."

We have to declare, therefore, under the circumstances of this case and in the light of the authorities above-cited, that the court below does not have jurisdiction to grant the petition and order the cancellation of the liens and encumbrances on the certificates of titles in question.

WHEREFORE, the order of October 5, 1961 is set aside, with costs against appellees.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.

[1] Enriquez, et al., v. Atienza, et al., 100 Phil. 1072.

[2] See, Castillo, et al. v. Ramos, 45 O. G. 183.

[3] Lagula, et al. v. Casimiro, et al., 98 Phil. 102; Tangunan, et al. v. Republic of the Phil. 94 Phil. 171; Jimenez v. de Castro 40 O. G. (No. 3) 1stSspl. p. 80; Gov't of the Phil. v. Jalandoni, 44 O. G. 1837.

[4] Tangunan, et al. v. Republic of the Phil. supra.

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