

**IN RE: PETITION FOR THE CANCELLATION OF ENCUMBRANCE
APPEARING IN TRANSFER CERTIFICATE OF TITLE NO. T-7601 OF
DAVAO. NATIVIDAD VILLAFLOR, PETITIONER-APPELLEE, VS. JOSE
JUEZAN, OP...**

G.R. NO. L-35205. April 17, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The principal issue in this appeal is whether or not an adverse claim annotated in a transfer certificate of title may be cancelled when the validity or invalidity of the claim is still subject of inquiry in a civil case pending resolution by the trial court.

The Special Fifth Division of the Court of Appeals[1] resolved to forward this case to this Court on the ground that the appeal raises only questions of law and the Court of Appeals has no jurisdiction to decide the case on the merits.[2]

The facts are not controverted.

“It is undisputed that on February 22, 1961 the appellant registered his affidavit of adverse claim in Transfer Certificate of Title No. T-1217 (formerly a part of Original Certificate of Title 806) under primary entry No. 26083 of the Register of Deeds of Davao. The affidavit conformed to the requirements of Section 110, Act 496.

On March 1, 1961, the herein appellant filed Civil Case 3496 seeking from the defendant therein the surrender of owner’s duplicate of Transfer Certificate of Title T-1217 in order that the deed of sale in favor of the herein appellant will be registered or annotated in the certificate of title.

In Civil Case No. 3496 the defendant’s answer raised the issue of validity of the deed of sale in favor of the herein appellant. In fact, trial was had on this issue and the case until the present is pending decision in view of the death of Judge Abbas.

More than four (4) years after the appellant’s adverse claim was annotated that is, on October 15, 1965 and while case No. 3496 is (sic) pending, the herein appellee presented for registration two (2) deeds of sale affecting the land subject of the action, the first dated March 21, 1963 conveying 8.6185 hectares and the second dated September 6, 1965 conveying the remaining 3.0219 hectares and as a consequence, Transfer Certificate of Title T-1217 was cancelled and in lieu thereof, Transfer Certificate of Title T-7601 was issued to the appellee wherein the adverse claim annotated was carried on.

It is this adverse claim which the appellee seeks to be cancelled in this case. The lower court first ordered its cancellation, then in an order dated July 7, 1967 the court reconsidered and finally the court in its order dated August 25, 1967 returned to its original stand. Hence, this appeal.”[3]

On September 23, 1967, the trial court denied for lack of merit the motion for reconsideration of the above order.

Appellant Jose Juezan assigns as alleged errors by the trial court the following:

“I

THE LOWER COURT ERRED IN ITS ORDER DATED AUGUST 25, 1967 DIRECTING THE CANCELLATION OF THE OPPOSITOR-APPELLANT’S ADVERSE CLAIM AT THE BACK OF TRANSFER CERTIFICATE OF TITLE T-7601.

II

THE LOWER COURT ERRED IN ITS ORDER DATED SEPTEMBER 23, 1967 DENYING THE OPPOSITOR-APPELLANT’S MOTION FOR RECONSIDERATION OF THE ORDER DATED AUGUST 25, 1967.”[4]

On August 21, 1968, petitioner-appellee filed a motion to dismiss appeal in the Court of Appeals on the ground that the issue involved has become moot and academic, because oppositor-appellant Jose Juezan filed a notice of lis pendens on the property covered by T.C.T. No. T-7601 and in connection with Civil Case No. 3496.[5]

The basis of Civil Case No. 3496 is a deed of absolute sale dated July 7, 1956, allegedly executed by Simon Maghanay in favor of appellant Jose Juezan. This document is also the basis of the Affidavit of Adverse Claim ordered cancelled by the trial court. The purpose of said adverse claim is to protect the interest of the appellant pending this litigation.

Thus, considering that a notice of lis pendens had been annotated on T.C.T. No. T-7601 of petitioner-appellee, the Court finds no basis for maintaining the adverse claim.

This Court sees no reason for disturbing the questioned order of the trial court dated August 25, 1967 directing the cancellation of the oppositor-appellant’s adverse claim at the back of transfer certificate of title No. T-7601. The notice of lis pendens filed by the oppositor-appellant affecting the same property in connection with Civil Case No. 3496 is sufficient.

Moreover, in the manifestation that was filed by counsel for appellant on February 8, 1990, it appears that the related case pending in the Court of Appeals docketed as CA-G.R. No. 43818-R was terminated thus affirming the decision of the trial court, and entry of judgment has been made per letter of transmittal dated November 5, 1975.[6]

Consequently, the instant case has been rendered moot and academic.

WHEREFORE AND BY REASON OF THE FOREGOING, the appeal is dismissed for lack of merit and for being moot and academic. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Associate Justice Ramon C. Fernandez, ponente, and Associate Justices Ruperto G. Martin and Guillermo S. Santos, concurring.

[2] Pages 67 to 74, Rollo.

[3] Pages 2 to 3, Appellant’s Brief (references omitted).

[4] Page 1, Rollo.

[5] Pages 33 to 37, Rollo.

[6] Page 79, Rollo.

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