

CO CHIN LENG, PETITIONER-APPELLEE, VS. CO CHIN TONG, MACARIO CO LING AND ONG HAI TONG, RESPONDENTS-APPELLANTS.

G.R. No. L-29119. February 28, 1983

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This is an appeal from an order of the Court of First Instance of Manila, Branch IV, directing respondent-appellant Ong Hai Tong or anyone of the other respondents-appellants in possession of the owner's duplicate of Transfer Certificate of Title No. 58759 to surrender the same to the Register of Deeds of Manila within five (5) days from receipt thereof and authorizing the Register of Deeds to cancel said owner's duplicate certificate and issue a new one, in case it is not presented to the court within the time specified in the order.

Petitioner-Appellee is a co-owner of one-tenth (1/10) share of a property covered by Transfer Certificate of Title No. 58759 of the Register of Deeds of Manila, with an area of 1,084.20 square meters. He mortgaged his share to the China Banking Corporation but the Register of Deeds of Manila refused to register the mortgage because he could not present the owner's duplicate copy. Petitioner-appellee filed a petition with the Court of First Instance of Manila alleging that the owner's duplicate certificate of title is in the possession of one of the co-owners, Co Chin Tong, and that in spite of several demands made of him, he refused without justifiable reasons to surrender said duplicate copy. Even the letter of the Register of Deeds of Manila, requesting for the surrender of the owner's duplicate of title, was ignored for unknown reasons. Co Chin Leng prayed "that after due notice and hearing and upon failure of respondents to surrender the Owner's Duplicate Certificate of Title No. 58759, within five (5) days from receipt hereof or within a reasonable time thereafter this Honorable Court may grant, to declare null and void said title and direct the Register of Deeds of Manila to issue a new one in lieu thereof, after payment of the fees prescribed by law."

In the course of the hearing of the petition, Co Chin Tong's counsel manifested that the questioned document was not in the possession of his client but in the possession of Ong Hai Tong, a co-owner. For this reason, Ong Hai Tong was made a co-respondent, together with Macario Co Ling, the only other remaining co-owner.

Respondents-appellants Macario Co Ling and Co Chin Tong filed an opposition alleging that they were not in possession of the owner's duplicate copy of Transfer Certificate of Title No. 58759. In asking for the denial of the petition, they further alleged that the lower court, sitting as a land registration court, had no jurisdiction over the petition because it partakes of the nature of a civil case, which should be litigated in a proper civil action; that there is no provision of law, rule or regulation, authorizing the lower court, sitting as a land registration court, to declare null and void a valid title and issue a new one in lieu thereof; that the petition did not state a cause of action; and that the remedy prayed for is not the proper remedy under the circumstances, assuming, without admitting, that the facts alleged were true.

On the other hand, respondent-appellant Ong Hai Tong filed a separate opposition on grounds that (1) the lower

court, as a court of land registration, has no jurisdiction; (2) the petition and the reliefs prayed for state no cause of action.

After petitioner-appellee had filed his reply to respondents' oppositions, the lower court, issued the following order: "Ong Hai Tong or anyone of the respondents in possession of the owner's duplicate of Transfer Certificate of Title No. 58759 is hereby directed to surrender to the Register of Deeds of Manila, within five (5) days from receipt hereof, said owner's duplicate certificate. Should respondents fail or refuse to comply with the terms of this Order within the time specified, the Register of Deeds is authorized to cancel said owner's copy and issue a new one in lieu thereof."

A motion for reconsideration of the order was filed, but the court below issued an order denying the motion.

The Court finds no error of law in the granting of the petition by the lower court based on its findings "that the deed of mortgage executed by petitioner over his one-tenth share of the property described in Transfer Certificate of Title No. 58759 could not be given due course in registration inasmuch as possession of the owner's duplicate of said title is being withheld by one of the herein respondents and cannot be produced before the Register of Deeds as required by Sections 55 and 61 of Act No. 496; that the subject matter of the mortgage contract is limited to the share of petitioner in the property described in the title and does not in any way affect the interest and participation of the other co-owners as evidenced by a copy of the deed of mortgage, Annex 'S-1'; that the instant proceeding may be considered as one filed under the provisions of Section 72 of Act No. 496 by force and authority of the doctrine laid down in the case of *Director of Lands vs. Heirs of Abadezco*, G.R. No. L-36155, promulgated May 8, 1934, where the Supreme Court ruled that in the registration of a mortgage if the owner's duplicate certificate is being withheld or otherwise could not be presented at the time of registration, the procedure outlined in Section 72 may be availed of by the interested party to the end that registration of the deed of mortgage may be accomplished; that it is indubitable that this Court, acting as a land registration court, has the authority and jurisdiction to pass upon all issues raised under the provisions of Section 72 of Act No. 496 and to enforce its order by suitable process by force and effect of the provisions of the second paragraph of Section 112 of the same Act which requires that all petitions and motions after original registration shall be filed and entitled in the original case in which the decree of registration was entered; and considering finally that insofar as the merits of the issue involved in this case are concerned respondent Ong Tai Tong has not advanced any valid or justifiable reason to support her refusal to surrender the owner's duplicate of Transfer Certificate of Title No. 58759 but has limited herself to a discussion of the technical or procedural aspects of the remedy sought by the petitioner and has, furthermore, impliedly admitted being in possession of said owner's duplicate certificate by her failure to deny the allegation in the amended petition to that effect."

The cited case of *Director of Lands vs. Heirs of Pablo Abadezco, et al.* properly relied upon by the lower court in its questioned order duly outlined the procedure a party may take in order that the registration of any instrument or deed affecting registered land may be recorded, in case the owner neglects or refuses to surrender his duplicate certificate of title, as follows:

"The provisions of the Land Registration Act relating to disposition of land after registration, are found in its sections 50 to 99, 110 and 111. Section 50 provides that no deed, mortgage, lease or other voluntary disposition of registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties as evidence of authority to the register of deeds to effect the registration. The registration of such voluntary disposition is the operative act which conveys and binds the land. Under Section 52, such registration shall be effected by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by the register of deeds upon the certificate of title; but, under Section 55, no such memorandum shall be made unless the owner's duplicate certificate is presented to the register of deeds.

"It is evident, therefore, that, in order that the registration of any instrument or deed affecting registered land may be made, the owner's duplicate certificate must be presented to the register of deeds. What should then be the legal process in case the owner neglects or refuses to surrender his duplicate certificate? In case of an absolute sale or transfer of title in fee simple, the party claiming to be entitled to the registration of such sale or transfer, may, under Section 111, file a petition to the court, and after hearing, the court may order the holder of such certificate to surrender the same, and direct the entry of a new certificate upon such surrender. In case of an attachment or other lien or adverse claim of any description, the register of deeds shall, under section 72 and within twenty-four hours after the registration of such attachment, lien or adverse claim, send notice by mail to the registered owner requesting him to send or produce his certificate; but if the owner neglects or refuses to comply within a reasonable time, the register of deeds shall suggest the fact to the court, and the court, after notice, shall enter an order requiring the owner to produce his certificate at a time and place to be named in the order, and may enforce the order by suitable process. In case of a judgment or decree rendered in an action to recover the possession of title to real estate or an interest therein, the court, on application and after due notice, shall enter an order requiring the owner to produce his certificate, and may also enforce the order by suitable process. (Sections 82 and 83)."

The Court further expressly declared therein that as in the case at bar, "in order to give full effect to the purposes of Sections 50, 52 and 55 of the Land Registration Act, in relation to Sections 60 to 63 thereof, the provisions of Section 72 are also applicable to the registration of a mortgage deed affecting registered land."

The other point raised by respondents-appellants questioning petitioner-appellee's right to constitute a mortgage on his individual one-tenth share in co-ownership with them on the ground that they had an agreement requiring the unanimous consent thereto of all co-owners before the actual partition of the property was likewise correctly rejected by the lower court, with its ruling in its order denying reconsideration that "the order sought to be reconsidered was limited to the issue of whether or not respondents may be compelled to surrender the owner's duplicate certificate in order that the deed of mortgage executed by petitioner may be given due course in registration and that the law and the evidence presented adequately support the issuance thereof; that in a proceeding for the surrender of the owner's duplicate in order that a mortgage may be annotated thereon the court does not pass upon questions relative to the validity or effect of the mortgage which can be determined only in an ordinary case before the courts, (and) does not have the jurisdiction to pass upon the alleged effect or invalidity . . ."

ACCORDINGLY, the appealed orders are here by affirmed, with costs jointly severally against respondents-appellants.

Melencio-Herrera, Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

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