

REMIGIO V. TAN, AIDA T. CONCEPCION, AND ALEJANDRO V. TANKEH, PETITIONERS, VS. HON. GREGORIO T. LANTIN, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH VII; CLEMENTE V. TA...

G.R. No. L-28526. July 07, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari with preliminary injunction to set aside the Order dated December 21, 1967 in Civil Case No. 62320 of the Court of First Instance of Manila which cancelled the notice of lis pendens annotated on the titles covering three parcels of land.

Petitioners-plaintiffs filed an amended complaint praying, among other things, for the annulment of a "Deed of Absolute Sale" covering the said three parcels of land allegedly executed on July 22, 1964 by their mother, Hilaria Isabelo Vda. de Tankeh, in favor of their brother, respondent Clemente Tankeh and his wife, who caused its execution without giving any price or consideration therefor, and eventually obtaining new registered titles in their names.

On March 2, 1965, Hilaria Isabelo Vda. de Tankeh died. To protect their rights over the subject pro-perties as compulsory heirs of the deceased, petitioners caused a notice of lis pendens to be annotated on the corresponding titles.

On December 21, 1967, respondent Judge ordered the cancellation of the notice of lis pendens upon private respondents' filing of a bond in the amount of P100,000.00.

Petitioners filed the instant petition claiming that respondent Judge acted with grave abuse of discretion because said notice was necessary to protect their rights in the event of any intended alienation of the properties. Private respondents, however, argue that: (a) petitioners' claim that they have no motive to molest them is self-serving; and (b) the sufficient bond filed by them (private respondents) renders the notice of lis pendens unnecessary to protect petitioners' rights, if any. On January 29, 1968, the Supreme Court enjoined the respondents from enforcing the assailed order cancelling the notice of lis pendens.

Later, petitioner Remigio Tan died. His heirs substituted him as plaintiffs in the said civil case. However, due to oversight, no formal substitution was made in the present petition.

On October 15, 1979, respondent court rendered its decision dismissing the complaint. The decision is now pending appeal before the Intermediate Appellate Court (formerly, the Court of Appeals).

The Doctrine of Lis Pendens is founded upon reasons of public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation. This purpose would be rendered meaningless if private

respondents are allowed to file a bond, regard-less of the amount, in substitution of said notice. Moreover, the law does not authorize a judge to cancel a notice of lis pendens pending litigation, upon the mere filing of a sufficient bond by the party on whose title said notice is annotated.

Section 24, Rule 14 of the Rules of Court expressly provides that courts can cancel a notice of lis pendens only on two grounds: (a) after a proper showing that the notice is for the purpose of molesting the adverse party; or (b) it is not necessary to protect the interest of the party who caused it to be recorded. In the case at bar, respondent spouses themselves manifested their intent to temporarily encumber subject properties as security for a loan required for their business. (p. 4, Rollo) Consequently, annotation of the notice of lis pendens is essential, considering that petitioners intend to preserve subject properties for sentimental reasons, in case they are adjudged the lawful owners thereof.

WHEREFORE, the assailed order directing the can-cellation of the notice of lis pendens is hereby ANNULED or SET ASIDE and the writ of preliminary injunction is hereby declared permanent.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., concur.

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