

**CIRILO ABRASIA, REGISTER OF DEEDS, PETITIONER AND APPELLEE
VS. GREGORIO CARIAN, OPPOSITOR AND APPELLANT.***G. R. No. L-9510. October 31, 1957*

Ponente: CONCEPCION, J.

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This is an appeal from an order of the Court of First Instance of Negros Occidental.

It appears that Lots 1617, 1S55, 1949, 1921, 1516, 1613, 1614 and 1616 of Cadastral Survey of Kabankalan, Negros Occidental, were registered, under the Torrens system, in the name of the spouses Guillermo Nombre and Victoriana Carian alias Victoria Carian, and belonged to their conjugal partnership. Upon the death of Guillermo Nombre, who was not survived by descendants or ascendants, some of his collateral relatives instituted Civil Case No. 6936 of the Court of First Instance of Negros Occidental, against his widow Victoriana Carian and other collateral relatives of said deceased. On March 9, 1937, decision was rendered in said case¹ pursuant to a compromise agreement between the parties therein. It was stipulated in his agreement that said eight (8) lots belonged to the aforementioned conjugal partnership; that Guillermo Nombre and Victoriana Carian were each entitled to one-half pro-indiviso of said lots, with the improvements thereon; that Guillermo Nombre had died intestate; that his only heirs were his widow, Victoriana Carian, and his aforementioned collateral relatives; that these heirs of Guillermo Nombre assumed the obligation to pay his debts, aggregating P775, as well as the corresponding inheritance tax, all of which shall be taken from his share of the conjugal partnership; that Victoriana Carian shall redeem two (2) properties mortgaged by her, one to Januario Rivas, and another to Ruperto Loberas; that, during her lifetime, Victoriana Carian shall be entitled to the use and possession of Lot No. 1617, by virtue of her usufructuary right, as widow of Guillermo Nombre, and in satisfaction thereof; that, as soon as the decision shall become final, the properties of the conjugal partnership would be divided into two (2) equal parts, one of which shall belong to Victoriana Carian, and the other to the heirs of Guillermo Nombre; that the latter shall pay Victoriana Carian the aforesaid mentioned sum of P775, without interest, within one (1) year; that to secure such payment, said heirs of Guillermo Nombre mortgaged their rights and interest over his share in the aforementioned conjugal partnership; and that both parties shall bear, share and share alike, the obligation to satisfy the unpaid land taxes on the properties above mentioned.

Almost fifteen (15) years later, or on January 8, 1952, Gregorio Carian made a sworn "declaration of heirship" stating that Victoriana Carian had died intestate on May 9, 1938, leaving no debts or obligations of any kind whatsoever, and that he is her nephew and only heir, he being the son of her only brother, Jacinto Carian, and asking the register of deeds of Negros Occidental to issue, in his (Gregorio Carian's) name, the certificates of title corresponding to the share of Victoriana Carian in the conjugal partnership above referred to and covered by the decision in said Civil Case No. 6936.

Copy of this decision and said declaration of heirship were, on January 15, 1952, filed with the office of the register of deeds of Negros Occidental, which, thereafter, cancelled Original Certificate of Title No. 2162S (RO-1634)—covering Lot No. 1516—and issued, in lieu thereof Transfer Certificate of Title No. T-9084 "unto

Gregorio Carian." Three (3) years later, or- on March 21, 1955, Cirilo Abrasia, the register of deeds of Negros Occidental, filed with the Court of First Instance of Negros Occidental—in the cadastral case covering said lot—a petition stating that the decision in Civil Case No. 6936 had been "improperly registered because the same was not confirmed by the cadastral court nor was there a motion ever filed in a cadastral court for the purpose of having said decision confirmed by the cadastral court", that "through this oversight and mistake of law", the office of said register of deeds had erroneously cancelled the aforementioned Original Certificate of Title No. 21625 and issued, in lieu thereof, said Transfer Certificate of Title No. T-9084, and that the mistake thus committed was "jurisdictional" in nature, and praying for authority to cancel this transfer certificate of title, "as of no value and legal effect, thereby reinstating" said Original Certificate of Title No. 21625 (RO-1634). By an order, dated April 2, 1955, this petition was granted by the Court of First Instance of Negros Occidental. On April 27, 1955, Gregorio Carian filed a motion for reconsideration of said order, which was opposed by the heirs of Guillermo Nombre, on May 13, 1955, and by the register of deeds, on May 20, 1955. Soon, thereafter, or on May 20, 1955, said motion for reconsideration was denied. Hence, the present appeal taken by Gregorio Carian.

Herein appellee, the Register of Deeds of Negros Occidental, has not filed a brief, he having chosen to rely on the order appealed from, which, in turn, merely makes reference to the reasons stated in appellee's petition and to a "manifestation" made by him "in open court," which is not described, however, either in said order, or elsewhere in the record on appeal now before Us. However, the unverified opposition, filed by the heirs of Guillermo Nombre, to the motion for reconsideration of appellant herein, suggests that appellee's petition and the order appealed from were seemingly predicated upon the following grounds, namely: (1) that Victoriana Carian had left unpaid debts and (2) that the decision in Civil Case No. 6936 can not properly be registered without previous confirmation by the cadastral court.

With respect to the first ground, the record before Us does not show that Victoriana Carian had any unpaid debts. Indeed, no allegation to this effect was made in appellee's petition of March 21, 1955, and no evidence has ever been taken in connection therewith, either before or after said petition was granted. However, said opposition to the motion for reconsideration cites the debts specified in the decision and in the compromise agreement in Civil Case No. 6936, and the sums of P1,200 and P2,000 allegedly due, respectively, to Eugenia Gargalicano and Crisostomo Abdin, from Victoriana Carian, at the time of her death on May 9, 1938.

It is important to note, in this connection, that the order appealed from was issued on April 2, 1955, or about seventeen (17) years later, and over eighteen (18) years since the rendition of the aforementioned decision. In the absence of proof to the contrary—and there is none to this effect—we must presume, therefore, that the cause of action of the creditors of Guillermo Nombre and Victoriana Carian had prescribed long ago. In fact, considering that none of those creditors has complained against the issuance of Transfer Certificate of Title No. T-9084, in favor of Gregorio Carian, in 1952, or deemed it fit to intervene in the present case, there is every reason to believe that their respective claims must have been fully settled. What is more, section 1 of Rule 74 of the Rules of Court explicitly provides that "it shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent," and no such petition has ever been filed. In any event, insofar as said transfer certificate of title may be injurious to their interest, said creditors, if any, are the only parties who could possibly seek a relief against the issuance thereof. Neither the register of deeds nor the heirs of Guillermo Nombre have a cause of action therefor.

Moreover, it appears that, after the issuance of Transfer Certificate of Title No. T-9084, Lot No. 1516, covered by the same, had become the subject-matter of a deed of lease executed—presumably by Gregorio Carian—in favor of one Espiridion Presbitero and duly filed with the office of the register of deeds, as well as annotated on the back of said transfer certificate of title. The cancellation of this title would affect the rights of said lessee, who has not

been heard, or given an opportunity to be heard, prior to the issuance of the order appealed from.

Apart from the foregoing, neither the appellee nor the lower court has cited, and we are not aware of, any legal provision or authority in favor of the theory that the decision in Civil Case No. 6936 can net be registered and cannot justify the cancellation of Original Certificate of Title No. 21625 (RO-1634) and the issuance of Transfer Certificate of Title No. T-9084, without previous confirmation by the cadastral court.

In view of the foregoing, the order appealed from should be, as it is hereby, set aside and reversed, without special pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montenmyor, Reyes, A. Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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