

**IN RE: LOT NO. 4098 ZAMBOANGA CAD. NO. 123 CASE NO. 3.,
TRANSFER OF CERTIFICATE OF TITLE NO. T-8883 OF THE REGISTER
OF DEEDS OF ZAMBOANGA CITY, MAXIMINO VICENTE,
PETITIONER-APP...**

G.R. No. L-20351. February 27, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An appeal from an Order of the Court of First Instance of Zamboanga City acting as a Court of Land Registration on a petition filed under Section 112 of the Land Registration Act.

Petitioner-appellee Maximino Vicente originally filed his petition in the Court a quo alleging that he has one of the registered owners of Lot No. 4098 of the Zamboanga Cadastre, evidenced by Transfer Certificate of Title No. T-8883 of the Register of Deeds of Zamboanga City, which he and his co-owners had mortgaged on July 14, 1959 to the Zamboanga City Rural Bank for the amount of P2,000.00; that for non-payment of the mortgage debt, the said mortgage had been foreclosed and the land was sold at public auction by the City Sheriff on September 15, 1960 to Oppositor-Appellant Benito de los Santos as the highest bidder, and in whose favor the City Sheriff issued a Certificate of Sale which was duly annotated on said Transfer Certificate of Title No. 8883; that on September 5, 1961 and within the redemption period, he tendered the redemption price and interest to de los Santos, who refused to accept the same, and consequently, he depo-sited the redemption amount and interest in the total sum of P3,360.00 with the City Sheriff, who issued a Certificate of Redemption which was likewise duly annotated on the said Certificate of Title. Petitioner Vicente, therefore, asked the Court a quo to issue an order to the Register of Deeds of Zamboanga City to cancel Transfer Certificate of Title No. 8883 and in lieu thereof to issue a new Transfer Certificate of Title in his favor. His petition dated October 28, 1961 carried a notice to Messrs. Marcelino Vicente, Abun-dia Vicente, Salvina Vicente, Emilia Vicente, Rodrigo Vicente, Hilario Ventura and Ceferino Ventura, purportedly his co-owners of the land, and to the City Register of Deeds that he would present the petition for the Court's approval on the following Saturday, November 4, 1961; and below said notice, said co-owners affixed their thumb marks, with the exception of Rodrigo Vicente and Ceferino Ventura, who affixed their signatures, manifesting that they "have no objection to the granting of the petition." [1]

Oppositor De los Santos, apparently having learned of Vicente's petition although he was not served with notice thereof; timely filed his Opposition thereto. He alleged that after his purchase of the land in question as the highest bidder at the public auction sale, Vicente's co-owners had for consideration transferred to him their redemption rights for the repurchase of the land and that Vicente could therefore redeem only his own share therein, to the exclusion of the shares of his co-owners. More importantly, De los Santos questioned the jurisdiction of the Court a quo, acting as a Court of Land Registration to take cognizance of Vicente's petition, citing jurisprudence of this Court that the remedy provided in Section 112 of Act 496 is summary and not adequate for the litigation of issues pertaining to an ordinary civil action, and that controversial issues properly pertain to the general jurisdiction of the Court in ordinary civil actions and should not be brought to them as

Courts of Land Registration with the limited and special jurisdiction characteristic of such Courts.[2]

The petition, after several postponements, was submitted to the Court a quo on January 13, 1962. According to its Clerk of Court's letter of transmittal of the records to this Court, "there is no exhibit presented by both parties in this case." [3] The Court a quo thereafter issued its disputed Order of February 22, 1962, wherein after a mere recital of the fact of the filing of the petition and the opposition thereto, he ruled that:

"After a careful consideration of the petition and the opposition thereto, the Court believes that the petition is proper and in order and the opposition is not well founded."

and granted the petition for the cancellation of Transfer Certificate of Title No. 8883 and the issuance of a new certificate of title in favor of petitioner Vicente, by the City Register of Deeds.

On Appeal, Oppositor De los Santos has raised anew the issue of lack of jurisdiction of the Court a quo to render its disputed Order, without reception of evidence, notwithstanding the serious controversial issues raised in his Opposition, which took the case out of the scope of Section 112 of the Land Registration Act.

The appeal must be sustained.

As far back as 1933, this Court has consistently held that controversial issues, such as the question of cancellation of annotation of a second mortgage, which necessarily involves the question of validity of such mortgage, can be adjudicated by the Court of First Instance only in an ordinary action, and not under the summary proceedings provided in Section 112 of the Land Registration Act for erasure, alteration or amendment of a certificate of title, entry of a new certificate or entry or cancellation of a memorandum upon a certificate.[4] Time and again, this Court under reiterated the well settled doctrine that summary 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." [5]

In *Enriquez v. Atienza*, [6] this Court again pointed out that "(T)he proceedings under (Sec. 112 of the Land Registration Act) have been aptly described as summary in nature, and are allowed 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." This Court, reviewing all its decisions dealing with the application of said Section 112, went on to state clearly that "by 'unanimity among the parties' is meant the absence of serious controversy between the parties in interest as to the title of the party seeking relief under said section." A long line of cases was again cited by this Court in its latest decision in 1968, where it again explained that it is in cases when there is no disagreement as to the facts alleged in the pleadings, such as to rule out the existence of a personal action between the parties, that the petition may be considered a mere incidental matter in the land registration case, which is an in rem action operating directly on the land, and may be validly acted upon by the Land Registration Court.[7]

In the case at bar, the pleadings readily show the existence of a controversion of facts and issues between petitioner and oppositor. Petitioner alleged that he had validly redeemed the land subject of the public action sale with no objection on the part of his co-owners. Oppositor disputed petitioner's claim, alleging in turn that petitioner's co-owners had for consideration transferred their redemption rights in his (oppositor's) favor, and that petitioner could only redeem his own share of the land. Both petitioner's Certificate of Redemption as well as the Oppositor's Certificate of Sale, as issued by the City Sheriff, were annotated on the Certificate of Title. None of the pertinent documents supporting the conflicting claims of the parties was submitted, for as earlier stated, the parties did not present any evidence at all, and the records support oppositor's statement in his brief (pages 3 and 9) that the Court a quo received no evidence whatever.[8] The Court a quo, without any finding of fact or

statement of the law, merely issued a summary pro-forma Order, expressing his belief in the propriety of the petition and granting the same.

We hold that the Court a quo erred in so doing and that it did not have jurisdiction in the summary proceedings under Section 112 of the Land Registration Act to order the cancel-lation of Transfer Certificate of Title No. T-8883 and the issuance of a new certificate of title in favor of petitioner as against the adverse claim of oppositor.

Parties litigants and their counsels should bear in mind that while the summary proceeding under Section 112 of the Land Registration Act where the Court is vested with limited and special jurisdiction as a land registration court, is certainly more expeditious in appropriate non-controver-sial matters than an ordinary civil action, to insist on such summary procedures when there exists a genuine contro-versy between the parties would be productive of the opposite result, as shown in this case and other numerous similar cases heretofore decided by this Court; it would ultimately be to their advantage and benefit to ventilate controversial issues and personal actions in the proper courts of general jurisdiction, where proofs may be duly adduced at a regular trial and damages and attorney's fees may be awarded, where warranted. Here, while there may be merit in petitioner's assertion of his right as a co-owner to redeem the property in its totality, and not merely his original share therein, the Court a quo lacked jurisdiction to adjudicate the contro-versy between him and oppositor in the summary proceeding under Section 112 of the Land Registration Act, as timely and correctly raised by oppositor, and this Court, in the absence of any facts or evidence in the record, likewise lacks jurisdiction in this instance to put an end to the con-troversy.

WHEREFORE, the Order appealed from is set aside, without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, and Barredo, JJ., concur.

[1] Rec. On Appeal, pp. 2-6

[2] Castillo v. Ramos, G.R. No. L-1031, July 31, 1947, 78 Phil. 809, Rec. on Appeal, pp. 6-13.

[3] Rollo, page 1

[4] Bank of P.I. vs. Ty Camco Sobrino, 57 Phil. 801 (February 6, 1933).

[5] Tangunan vs. Republic of the Philippines, 94 Phil. 171, 175 and cases cited.

[6] 100 Phil. 1072 (March 29, 1957) and cases cited.

[7] Mabilin v. Millar, G.R. No. L-24146, February 22, 1968.

[8] No brief was filed for petitioner-appellee.

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