

ESTELA O. FERNANDEZ, ET AL., PLAINTIFFS-APPELLANTS, VS. JOSE K. LAPUS, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-11452. January 16, 1959*

Ponente: MONTEMAYOR, J.

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This is an appeal from the order of the Court of First Instance of Quezon City (Judge Caluag), dated October 3, 1956, dismissing plaintiffs-appellants' complaint by reason of the pendency of another case, Civil Case No. Q-1496, of the same Court of First Instance of Quezon City, said to have been appealed to this Tribunal under G.R. No. L-10657. Said case No. Q-1496 was dismissed by the trial court mainly on the ground of prescription (Judge Yatco). In reality, the order of dismissal was not appealed because plaintiffs-appellants therein failed to perfect the appeal on time. So, what they did was to file a petition for relief with the trial court to set aside its order of dismissal, and when this 'ft petition for relief was denied; or rather dismissed, plaintiffs-appellants appealed said order of dismissal or denial to this Court. Only recently, however, this Tribunal affirmed the appealed order by a decision promulgated on May 16., 1958.

Because of the present case before the trial court was dismissed on motion of one of the defendants, no evidence was presented; and so for the facts of the case, we have to rely on the allegations in the pleadings.

On July 27, 1944, Concepcion Kerr by virtue of a deed of sale, Exhibit A, sold a parcel of land, designated as Lot No. 517-B of the Piedad Estate, located at San Bartolome, Caloocan, Rizal, now Quezon City, covered by Transfer Certificate of Title No. 37019 of the Rizal Registry of Deeds, with an area of about 10,000 square meters, to Olimpio Fernandez and Numeriano L. Valeriano for P22,500.00. The deed of sale, with T.C.T. No. 37019 attached, was filed in the Office of the Register of Deeds of Manila, who was then acting as Register of Deeds for Greater Manila (including Caloocan). Due to the numerous documents pending registration in the Register's Office, the registration of the deed of sale, Exhibit A, was not completed. T.C.T. No. 37019 was not cancelled; no new T.C.T. was issued in the name of the buyers, and what is more, the first original of Exhibit A and the owner's duplicate of T.C.T. No. 37019 were lost in the office of the Register of Deeds of Manila during the battle for liberation of the city. Olimpio Fernandez was killed during said battle, about February 11, 1945. He was survived by his widow, Angelina O. Fernandez, and his two daughters, Dr. Estela O. Fernandez and Dr. Priscilla O. Fernandez, married to Pericles Subido, who are now four of the plaintiffs in the instant case.

Because of the death of Olimpio Fernandez who was the one familiar with the purchase of the lot and who had copies of the deed of sale and of the papers evidencing its supposed registration, and because of the destruction of the records of the Register of Deeds of Manila, Olimpio's heirs could not reconstitute the registration of the deed of sale. Their only record was a receipt for the payment of the taxes due on the lot after liberation.

Sometime in August, 1952, Concepcion Kerr, the vendor of the lot, petitioned the trial court that a copy of the owner's duplicate of T.C.T. No. 37019 be issued to her, saying that her copy had been lost during the Japanese occupation, at the same time claiming that she was the owner of the lot in question, and that the certificate of title

had never been pledged or otherwise delivered to any person or entity in pledge or to guarantee any obligation. Her petition was granted on September 6, 1952, and the issuance of a new copy of said T.C.T. No. 37019 was noted on the back of the original title on September 17, 1952. When the lot in question was transferred from Caloocan to Quezon City for purposes of record, T.C.T. No. 37019 of Rizal became T.C.T. No. 28155 of the Quezon City Register of Deeds.

In June, 1955, plaintiffs herein were able to secure a duplicate original of the deed of sale, Exhibit A, with the stamp of the Register of Deeds of Manila on it, said to indicate that the first original of the said deed had been presented for registration. They sought to register said duplicate original in the office of the Register of Deeds of Quezon City, but the same was not accepted for not being accompanied by, the owner's duplicate of T.C.T. No. 37019. Because of this nonacceptance by the Register of Deeds, plaintiffs on June 22, 1955 filed an adverse claim for said lot, the same having been noted on the back of T.C.T. No. 37019-Rizal (T.C.T. No. 28155-Q.C). On June 24, 1955, the Register of Deeds informed defendant Kerr of said adverse claim and asked her to surrender the owner's duplicate of T.C.T. No. 37019 in her possession, but she either failed or refused to comply with said request.

On July 13, 1955, plaintiffs Valeriano and Mrs. Fernandez, through counsel, wrote to defendant Kerr, calling attention to her improper act of securing a copy of, the owner's duplicate of T.C.T. No. 37019, and requesting her to surrender the same so that the deed of sale, Exhibit A, could be completely registered. Instead of complying with this request, however, defendant Kerr sold the lot to Abel Tantengco and his wife Aurora G. Dinio, who in turn sold it on August 1955, to the spouses Jose K. Lapus and Consolacion A. Lapus, son and daughter-in-law, respectively, of defendant Kerr. The sales to Tantengco and his wife and to Lapus and his wife were registered on August 9, 1955, and in T.C.T. No. 28658 was issued to the last purchasers. In T.C.T. No. 28658 was issued to the last purchasers, there was annotated the adverse claim of the plaintiffs.

On August 10, 1955, Numeriano L. Valeriano and Mrs. Fernandez (Angelina) filed Civil Case No. Q-1496 in the Court of First Instance of Quezon City, against defendants Kerr, Tantengco, and Dinio and Lapus for the recovery of the lot in question and for declaration of their ownership thereof, but the complaint was dismissed on November 29, 1955 on the grounds of prescription and lack of cause of action. As we have already stated, for reasons of excusable negligence, according to them, plaintiffs failed to appeal the said order of dismissal on time. So, they filed a petition for relief, which was also dismissed, and on appealing this last order of dismissal to this Tribunal, we affirmed the said order of dismissal of the petition for relief, thereby rendering the order of dismissal of the complaint in Civil Case No. Q-1496 final.

Before the order of dismissal in Civil Case No. Q-1496 had become final and without any authorization from the trial court, defendant Register of Deeds cancelled the adverse claim of plaintiffs Valeriano and Mrs. Fernandez, as well as the notice of lis pendens both annotated on the back of T.C.T. No. 28658, issued to defendant Lapus. On February 12, 1956, Valeriano and Mrs. Fernandez filed in the Office of the Register of Deeds a "reiteration of adverse claim and/or lis pendens on land covered by T.C.T. No. 28658." It first, the Register of Deeds refused to annotate the "said reiteration of adverse claim and notice of lis pendens, but on being elevated en consulta to the Land Registration Commission, the Commissioner on April 11, 1956, ordered the Register of Deeds to make the annotation.

On April 13, 1956, defendant Lapus mortgaged the lot in question to defendant Philippine Bank of Commerce, to secure the payment of certain loans, overdrafts and other credit accommodations, fixed at P10,000.00.

On May 16, 1956, plaintiffs-appellants filed the present suit, Civil Case No. 1865 of the Court of First Instance, Quezon City, to recover the possession and ownership of the lot. However, as already stated, the complaint was

dismissed by order of October 3, 1956 on the ground that there was another case pending between the same parties and for the same cause of action. It is this order of dismissal that is now before us on appeal. The appeal was prosecuted and the brief for both parties 'were filed before the promulgation on May 16, 1958 of our decision finally deciding the first case, No. Q-1496, which was then being considered pending.

While the first case was pending before us on appeal from the trial court's dismissal of the petition for relief, there yet existed the possibility that the dismissal of said first case on the ground of prescription might be reversed and that the said first case would be decided on the merits, in which case, there would also be the possibility that the original plaintiffs' cause of action would be sustained, and that the sale of the lot by defendant Kerr to Olimpio Fernandez and Numeriano L. Valeriano would be declared valid and effective, and the subsequent sales of the same lot to Tantengco and his wife and Lopus and his wife and the mortgage of said lot to the Philippine Bank of Commerce would be declared void. So, the trial court erred in dismissing the complaint in the present case (Civil Case No. 1865). What it should have done was to suspend the court proceedings until Civil Case No. Q-1496 of the same court was finally decided.

However, in view of our final ruling that the plaintiffs in Case No. Q-1496 were barred by prescription from prosecuting their suit, the subsequent sales of the lot and its mortgage to the bank would not now be affected. Said final ruling necessarily renders the present action and its appeal before us, moot, at the same time curing the error committed by the trial court in dismissing it. True, the children of Olimpio Fernandez, who are Drs. Estela and Priscilla, both surnamed Fernandez, were not included as party plaintiffs in said first case and they might contend that they were not bound by the final determination of said first case. However, it would appear that their mother Angelina was one of the party plaintiffs participating in said case, and she prosecuted the suit not only in her own name, but in behalf of her deceased husband, Olimpio Fernandez, and the determination of said suit would naturally bind the two daughters who are deriving their title and interest in the lot from the estate of their deceased father. If the action to enforce the sale of the lot in favor of their father is barred, and so said lot in the eyes of the law was not sold to him, then there was no right or interest in the same which the two daughters could inherit. Stated differently, the plaintiffs in said first case represented the same interest as the other plaintiffs Estela and Priscilla in the present case.

IN VIEW OF THE FOREGOING, the present appeal is dismissed. No costs.

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

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