

REGISTER OF DEEDS OF MANILA, PETITIONER AND APPELLEE, VS. MAGDALENA ESTATE, INC., RESPONDENT AND APPELLANT.

G.R. NO. L-9102. May 22, 1959

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

Appeal from the order of the court of first instance of Manila, Branch IV, requiring respondent-appellant to surrender to the register of deeds of Manila, petitioner-appellee, the owner's copies of various certificates of title for the purpose of annotating thereon a notice of lis pendens.

On January 19, 1955, a notice of lis pendens in connection with civil case No. 25111 of the court of first instance of Manila, entitled Carlos Ysmael, et al., versus Magdalena Hashim, et al., was filed with the office of the register of deeds of Manila, and duly recorded. On January 25, 1955, said register of deeds, in pursuance of the provisions of Sec. 72 of the Land Registration Act, addressed a letter to, Magdalena Estate, Inc., requiring the latter to submit, within five days, the owner's duplicates of Transfer Certificates of Title Nos. 5969 to 5978 for the purpose of annotating thereon said notice of lis pendens. Two days thereafter, appellant, through counsel, instead of complying with the demand, registered its opposition thereto, alleging that—

(1) the request is improper as plaintiffs' complaint in civil case No. 25111 does not involve a real action but a personal one, as could be inferred from the relief sought for therein, to wit,

(a) accounting;

(b) dissolution and liquidation; and

(c) determination of plaintiffs' participation in terms of percentage, in the corporation; and

(2) that the annotation of the notice would work incalculable harm and prejudice to the defendant corporation which is primarily engaged in the sale and lease of real estate.

In view of this opposition, the register of deeds, who had already annotated the notice of lis pendens on the corresponding original certificates, reported the matter, through the Chief, Land Registration Commission, to the presiding Judge of Branch IV of the court of first instance of Manila, in a letter dated January 28, 1955, which reads as follows:

"Pursuant to the provisions of Section 72 of the Land Registration Act, I have the honor to report that Magdalena Estate, Inc., of 348 Echague, Manila and 1340 Tarlac St., has failed to comply with the request of this office for the submission of the owner's duplicates of Transfer Certificates of Title Nos. 5969 to 5978. The copy of the letter of this office, dated January 25, 1955 and mailed on the same date is hereto attached, together with a copy of the letter of Atty. Felipe Ysmael, attorney for the Magdalena Estate, Inc., dated January 27, 1955.

"This report is submitted for whatever action this court may deem proper to take in the premises."

On the basis of this report, the court set the case for hearing, and before it counsel for appellant renewed his

objections, further alleging that—

- (1) Branch IV of the court of first instance of Manila has no more jurisdiction over the matter by virtue of the provisions of Republic Act No. 1161; and
- (2) that under said Act, the Land Registration Commissioner has already ruled against such annotation in Consultas Nos. 32 and 34 of the register of deeds of Quezon City, also in connection with civil case No. 25111.

After hearing, the court ruled that Republic Act No. 1151 simply transferred the powers and functions of the defunct General Land Registration Office to the newly created Land Registration Commission, and has not deprived Branch IV of the powers and jurisdiction it formerly possessed, except as to "Consultas;" and that the complaint for partition filed by plaintiffs in civil case No. 25111 was a real action, the accounting, dissolution and liquidation of the corporations prayed for being merely corollaries to the main action. Thus, on March 21, 1955, the court approved the action taken by the register of deeds, and ordered appellant to surrender the owner's duplicates of the Transfer Certificates involved for annotation purposes. Hence this appeal, predicated on the ground that the lower court erred:

- In holding that Branch IV of the court of first instance of Manila and not the Land Registration Commission has the jurisdiction over the pertinent subject matter involved in this case despite the passage of Republic Act No. 1151, entitled "An Act Creating The Land Registration Commission And Authorizing And Appropriating The Necessary Funds Therefor;"
- In holding that the notice of LIS PENDENS is proper because plaintiff's complaint in civil case No. 25111 of the court of first instance of Manila is a real action;
- In holding that the Register of Deeds of Manila acted correctly in annotating the notice of LIS PENDENS on the originals of Transfer Certificates of Title Nos. 5969 to 5978; and
- In ordering the respondent-appellant to surrender its owner's duplicates of Transfer Certificates of Title Nos. 5969 to 5978 to the Register of Deeds of Manila for the purpose of enabling the latter to annotate thereon the notice of LIS PENDENS.

There is no dispute that the powers and functions of Branch IV of the court of first instance of Manila as to "consultas" under Sec. 200 of the Administrative Code, have been transferred to the Land Registration Commission by virtue of Republic Act No. 1151 which took effect in 1954, section 3 thereof providing as follows:

"SEC. 3. GENERAL FUNCTIONS OF THE COMMISSION.—The Commissioner of Land Registration shall take over all the powers and functions as are now conferred upon the Chief of the General Land Registration Office, which position is hereby abolished, as well as the powers and functions of the Judge of the Fourth Branch of the Court of First Instance of Manila, in all matters heretofore submitted to it for resolution under section two hundred of the Administrative Code. * * *."

Respondent-appellant contends that the case at bar falls within the subject matter of "consulta" and should have been referred to the Commissioner of Land Registration for resolution, and not before the Fourth Branch, inasmuch as Sec. 4 of Republic Act 1151 (formerly Sec. 200 of the Administrative Code) provides that where the Register of Deeds is in doubt as to the proper step to be taken, or Register of Deeds of Manila vs. Magdalena Estate, Inc. when the party in interest does not agree with said register of deeds, as in the instant case, the matter must be decided by way of "consulta" by the Land Registration Commissioner. In other words, it is contended that even if the register of deeds does not entertain any doubt, the matter must perforce be submitted and passed upon by the Commissioner just because the party in interest, which is the respondent-appellant in this case, does not agree with the register of deeds. This contention compels us to refer to Sec. 4 of Republic Act 1151, particularly

the portion relied upon, which we emphasized. Said section reads as follows:

"REFERENCE OF DOUBTFUL MATTERS TO COMMISSIONER OF LAND REGISTRATION.—When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration, or where any party in interest does not agree with the Register of Deeds with reference to any such matter, the question shall be submitted to the Commissioner of Land Registration either upon the certification of the Register of Deeds, stating the question upon which he is in doubt, or upon the suggestion in writing by the party in interest; and thereupon the Commissioner, after consideration of the matter shown by the records certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His decision in such cases shall be conclusive and binding upon all Register of Deeds, Provided, further, That when a party in interest disagrees with the ruling or resolution of the Commissioner and the issue involves a question of law, said decision may be appealed to the Supreme Court within thirty days from and after receipt of the notice thereof."

At first blush, it would seem that there are two alternative instances whereby a "consulta" must be sought: first, when the register of deeds is "in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration," or, second, "where any party in interest does not agree with the register of deeds with reference to any such matter." A closer analysis of the provision, however, reveals that the essential element which must exist in order that the matter may be brought to the Commissioner by way of "consulta," is the doubt on the part of the register of deeds as to "the proper step to be taken (by him) or memorandum to be made (by him) in pursuance of any deed, mortgage, or other instrument presented to him for registration" by the party interested in it. It refers to a step or act still undone by the register of deeds by reason of his doubt, which he must bring to the attention of his superior, the Commissioner, "either upon his certification stating the question upon which he is in doubt, or upon the suggestion in writing by the party in interest."

Respondent-appellant's contention that even without the existence of doubt on the part of the register of deeds the matter must be brought to the Commissioner in "consulta" because the "party in interest (appellant) does not agree with the register of deeds," is untenable. The expression "or where any party in interest does not agree . . ." is hot in itself an independent requisite whereby a matter must be brought in "consulta," but that this disagreement must arise from the doubt existing in the mind of the register of deeds by reason of which he has not as yet taken any step or acted upon the registration sought for, because if the register of deeds has no doubt as to the step he has to take or memorandum he has to make, then there would be no occasion for the party in interest to disagree.

In the present case the register of deeds did not entertain any doubt as to the registrability of the notice of lis pendens presented to him for registration, and he did not hesitate to annotate the same on the originals of the Transfer Certificates of Title in question; in fact, after recording the lis pendens he forthwith sent a letter to respondent-appellant requesting the submission of the owner's duplicates for annotation purposes. It was the refusal of appellant to submit said owner's copies that gave rise to the action taken by the register of deeds in reporting the matter to the Fourth Branch of the court of first instance of Manila, in pursuance to Sec. 72 of the Land Registration Act, the pertinent portion of which reads as follows:

"* * *. 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 to the owner to produce his certificate at a time and place to be named therein, and may enforce the order by suitable process."

Appellant contends that the court of first instance of Manila, Branch IV, cannot act on the report of the register of deeds, much less to order the surrender by appellant of the owner's copies of the Titles in question for the annotation of lis pendens, because under Republic Act 1151, only the Commissioner of Land Registration could

do so.

This is untenable. If at all, the Commissioner may have some concurrent, but not exclusive, jurisdiction on the matter; and were we to interpret strictly the provision of Sec. 72 of the Land Registration Act, it is only the court of first instance that could compel the herein appellant to surrender its duplicates of the certificates in question to the register of deeds for the purposes already stated— annotation of *lis pendens*—for, we believe that Sec. 72 above quoted has not been repealed by Republic Act 1151, the repealing clause of which only refers to existing laws or parts thereof that may be inconsistent therewith, and certainly Sec. 72 of Act 496 is not inconsistent with Republic Act 1151.

Anent the question raised in the second assignment of error regarding the propriety of the annotation of the notice, it is contended that, under Sec. 24 of Rule 7 of the Rules of Court, a notice of *lis pendens* is proper only in an action affecting the title or right of possession of real property and in real actions (*Saavedra vs. Martinez, et al.*, 58 Phil., 767); that the complaint filed in civil case No. 25111 being for an accounting, dissolution and liquidation, and a determination of the plaintiffs' participation in terms of percentage in the defendant corporations, is not a real action. We have carefully examined said complaint as quoted in appellant's brief, and we find that the plaintiffs therein seek not only the accounting of all the transactions and funds of herein appellant, but also of all its properties, which naturally include the land covered by the transfer certificates of title already mentioned. The complaint, therefore, involves a real action and not a personal one. In it plaintiffs pray that they be declared entitled to 25 per cent interest in all the assets of the defendant corporations Juan Ysmael & Co., Inc., and Magdalena Estate, Inc., and the notice of *lis pendens* in question refers to the properties of appellant Magdalena Estate, Inc., which are precisely affected and involved in the complaint. Therefore, under Sec. 24 of Rule 7 of the Rules of Court, plaintiffs in civil case No. 25111 have the right to record in the office of the register of deeds of the place in which the property is situated, a notice of the pendency of the action.

Wherefore, the order appealed from is hereby affirmed, with costs against respondent and appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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