

**GORGONIA LAMERA AND DIOSDADO LAMERA,
PETITIONERS-APPELLANTS, VS. MAXIMO CALLANGA,
OPPOSITOR-APPELLEE.**

G.R. No. L-30847. November 26, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In rejecting this appeal from the lower court's dismissal, of a summary petition under section 112 of Act 496 for cancellation of oppositor's torrens title on the ground that it was obtained by fraud, the Court once again reiterates the established doctrine that summary relief under Act 496 can only be granted if there is unanimity among the parties or there is no adverse claim or serious objection by any party in interest, and that otherwise, the petition must be dismissed since controversial and contentious issues must be heard and adjudicated in an appropriate civil action by the regular courts of general jurisdiction.

Petitioners filed on September 15, 1967 a petition with the Iloilo court of first instance in Cadastral Case No. 53, G. L. R. O. Record No. 940, Lot No. 166-Dueñas, to cancel T. C. T. No. T-46688 (covering Lot No. 166 of the cadastral survey of Dueñas, Iloilo) issued in the name of oppositor, under section 112 of Act 496 (Land Registration Act). Petitioners Gorgonia and Diosdado both surnamed Lamera alleged that as sister and brother of the late Salvacion Lamera, owner of the said lot under O. C. T. No. 42542 who died intestate in the last war, they were entitled to inherit the lot from their deceased sister as "compulsory heirs," but that oppositor Maximo Callanga by a "false allegation to the effect that he had purchased Lot 166 from Salvacion Lamera in 1932 and without giving notice to the petitioners as persons in interest of said lot" had obtained T. C. T. No. T-46688 to the lot in his own name, notwithstanding that Salvacion Lamera had allegedly never sold the lot to anyone. They therefore prayed of the lower court to cancel oppositor's T. C. T. No. T-46688 and to reinstate O. C. T. No. 42542 for all legal purposes.

Oppositor in due course filed on December 15, 1967 a motion to dismiss the petition, stating that the summary petition to cancel his title to the lot is "improper as a cadastral case but should be filed as a civil case," that petitioners' "malicious imputation" of fraud in effecting transfer of title to the lot in his name necessarily took the case out of the purview of Act 496 or Act 2259 (Cadastral Act) and "far beyond the province of the cadastral court," petitioners' proper recourse being "to institute a civil action against the oppositor for reconveyance."

The lower court per its order of January 13, 1968 granted the motion to dismiss and ordered dismissal of the petition, on its finding that "an appropriate civil action should be filed instead of the petition [under section 112 of Act 496]." Reconsideration was denied per its order of February 17, 1968, and petitioners appealed the dismissal to this Court on a pure question of law.[1]

Petitioners' appeal is manifestly without merit.

It is at once obvious that the petition in the lower court raises a serious and contentious issue of fraud against oppositor's title which cannot be adjudicated in summary proceedings under section 112 in the cadastral record

but must properly be litigated in a separate civil action duly filed with the lower court acting under its regular civil jurisdiction.

This has been the consistent doctrine established by the Court in a long line of cases. As emphasized in *Vicente vs. de los Santos*,^[2] "Time and again, this Court has 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 be-longs."

The Court therein thus admonished that "(P)arties-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-controversial matters than an ordinary civil action, to insist on such summary procedures when there exists a genuine controversy 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 attorneys' fees may be awarded, where warranted."^[3]

In the latest case of *Santos vs. Cruz*,^[4] the Court once more reiterated the basic principle that section 112 of Act 496 provides for summary and non-controversial erasures, alterations or amendments of entries in a certificate of torrens title only by order of the court of land registration upon petition of the registered owner or other person in interest but it expressly delimits the court's authority with the proviso "that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, with-out his or their written consent." Mr. Justice Castro therein once again stressed for the Court that "the proceedings spelled out by Act 496 are summary in character and are therefore inadequate for the litigation of issues properly appertaining to the ordinary courts acting under their ordinary civil jurisdiction," and that the "explicit serious opposition" of the registered owners, in that case as in the case at bar, to the cancellation of their certificate of title, "renders the case truly controversial and the remedy provided for by section 112 inefficacious."

No error can therefore be attributed against the appealed order whereby the lower court correctly sustained the opposition and ordered dismissal of the petition, directing that petitioners should instead file an appropriate civil action.

ACCORDINGLY, the appealed orders of dismissal are hereby affirmed. Without costs, none having been prayed for.

Makalintal, C.J., Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Republic Act No. 5440, enacted on September 9, 1968 now requires that such review by the Supreme Court of a lower court's questioned decision or final order may only be availed of by petitions for review on certiorari and no longer by appeal.

[2] 27 SCRA 1 (Feb. 27, 1969) and cases cited; emphasis supplied.

[3] *Idem*, at page 6; emphasis supplied.

[4] G.R. No. L-28612, August 30, 1973; see cases cited.

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