

RAMON V. ROXAS, PETITIONER, VS. SPOUSES ANDRES DY AND GLORIA DY, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 101728. June 25, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

These consolidated petitions seek the reversal of the Decision of 29 November 1990 of the Court of Appeals annulling the Order of 9 October 1989 of the Regional Trial Court of Makati, Branch 133, which cancelled the notice of lis pendens on the certificate of title of petitioner Ramon V. Roxas, and the Resolution of 4 September 1991 denying reconsideration.

In G.R. No. 101760, petitioner-spouses John and Flora KUYKENDALL were the owners of a parcel of land situated at 520 P. Zamora St., Makati, Metro Manila, which was leased to respondent-spouses Andres and Gloria DY for the past seventeen (17) years at the time Civil Case No. 89- 4129, from which this incident arose, was instituted.[1]

The last written contract of lease between the KUYKENDALLs and the DYs expired on 31 December 1986; however, the DYs continued to occupy the subject property on a month-to-month basis.

Subsequently, the KUYKENDALLs decided to sell the property. On 28 August 1988, they informed the DYs of their intention and gave the latter until 30 September 1988 within which to tender an offer to purchase.[2] But the DYs never replied to the notice. Thus, on 12 October 1988, the KUYKENDALLs advised the DYs of the expiration of the period within which they could have submitted an offer to purchase the subject property.[3]

On 27 March 1989, the DYs finally offered to purchase the property in question for P4.5 million. This was flatly rejected. Instead, the KUYKENDALLs quoted a selling price of P5.5 million which was to be valid for two (2) weeks only or until 10 April 1989.

On 6 April 1989, the KUYKENDALLs made a written offer to sell the property to petitioner Ramon V. ROXAS for P5.521 million in G.R. No. 101728. The offer was accepted. On 10 April 1989, the KUYKENDALLs and ROXAS discussed the terms and conditions of the sale. The following day they closed the deal with the execution of a Letter-Agreement of Sale.

On 14 April 1989, the DYs tendered another offer to buy the property, this time for P5.5 million, but it was made after the expiration of the two (2) weeks given them. The KUYKENDALLs therefore informed the DYs that no further action could be taken on the new offer.

On 19 May 1989, the KUYKENDALLs and ROXAS executed the Deed of Absolute Sale and confirmed the previous Letter-Agreement to Sell. On 22 May 1989, ROXAS was issued Transfer Certificate of Title No. 162636 by the Register of Deeds of Makati.[4]

On 2 June 1989, the DYs commenced an action against the KUYKENDALLs and ROXAS for Annulment of

Deed of Sale and Specific Performance before the Regional Trial Court of Makati. The case was raffled to Branch 133. At the same time, the DYs caused the annotation of a notice of lis pendens on the certificate of title of ROXAS with the Register of Deeds of Makati under Entry No. 76223.[5]

On 30 June 1989, ROXAS moved for the cancellation of the notice of lis pendens. Hearings on the motion were then conducted on four (4) different dates.[6]

On 9 October 1989, the trial court ordered the cancellation of the notice of lis pendens. It noted that the DYs "failed to present evidence bearing out the allegations of the complaint,"[7] hence, the inscription on the certificate of title must be cancelled. On 29 January 1990, reconsideration of the order of cancellation was denied.

The DYs thus elevated their cause to the Court of Appeals which, on 29 November 1990, granted them redress by setting aside the order of cancellation.[8] The appellate court ruled that "(c)ancellation of a notice of lis pendens during the pendency of the suit is the exception to the general rule and must only be resorted to by the court sparingly and only on exceptional circumstances." [9] And, since the trial court denied the affirmative defense of ROXAS that the complaint stated no cause of action, the annotation of the notice cannot be said to be for the purpose of molesting ROXAS.[10]

On 4 September 1991, the appellate court denied the motions for reconsideration filed by the KUYKENDALLs and ROXAS, prompting both parties to institute separate petitions for review on certiorari.

On 19 February 1992, upon motion of counsel for respondent-spouses, G.R. Nos. 101728 and 101760 were ordered consolidated.

In their respective petitions, the KUYKENDALLs and ROXAS fault the Court of Appeals for upholding the inscription on the certificate of title simply on the basis of the bare allegations of the complaint. The appellate court allegedly ignored the fact that hearings were conducted to determine if the DYs were truly entitled to the annotation on the certificate of title and that it was only thereafter that the trial court ordered the cancellation of the notice of lis pendens.

The consolidated petitions are meritorious. Under Sec. 24, Rule 14, of the Rules of Court, the notice of lis pendens "x x x may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded."

Clearly, there are two (2) grounds for the cancellation of a notice of lis pendens, i.e., that the notice is for the purpose of molesting the adverse party; and, that it is not necessary to protect the rights of the party that caused it to be recorded.

A cursory review of the assailed decision shows that the appellate court limited itself only to the first ground, i.e., that the notice is for the purpose of molesting the adverse party, in determining whether or not the notice of lis pendens should be cancelled. It apparently held the strained view that cancellation of the notice of lis pendens during the pendency of the suit must be resorted to sparingly and only under exceptional circumstances. This is patent error.

Section 77 of P.D. 1529, otherwise known as the "Property Registration Decree," provides that cancellation of the notice may be effected even before final judgment if there is proper showing that any of the grounds for its cancellation exists. Specifically, it provides –

"Sec. 77. Cancellation of lis pendens – Before final judgment, a notice of lis pendens maybe cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that

it is not necessary to protect the rights of the party who caused it to be registered x x x x" (underscoring supplied).

Thus, the cancellation of a notice of lis pendens, being a mere incident to an action, may be ordered at any given time by the court having jurisdiction over it.[11]

But, while a notice of lis pendens cannot ordinarily be cancelled for as long as the action is pending and unresolved, the proper court has the authority to determine whether to cancel it under peculiar circumstances, e.g., where the evidence so far presented by the plaintiff does not bear out the main allegations in the complaint.[12]

In the instant case, while the filing of the notice may not have been for the purpose of molesting the adverse parties, still, if it is later shown that the inscription is not necessary to protect the right of the DYs over the subject property, then it should be cancelled.

The trial court conducted hearings on the motion for cancellation of the notice on four different occasions. In these hearings, evidence by the parties in support of their respective allegations was received by the trial court and, on the basis thereof, it concluded that the DYs were not entitled to the inscription of the notice on the certificate of title of Ramon V. Roxas because they did not have any actionable right over the subject property. We are not inclined to disturb these factual conclusions considering that these findings were no longer passed upon or reviewed by the Court of Appeals which, in effect, sustained them.

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The Decision of 29 November 1990 of the Court of Appeals is REVERSED and SET ASIDE, and the Order of 9 October 1989 of the Regional Trial Court of Makati, Branch 133, is REINSTATED and REITERATED.

Costs against respondents.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Complaint in Civil Case No. 89-4129, p. 2; Rollo in G.R. No. 101760, p. 59.

[2] Petition in G.R. No. 101760, p. 7.

[3] Id., p. 8.

[4] Petition in G.R. No. 101728, p. 14.

[5] Decision in CA-G.R. SP No. 20065, 29 November 1990, p. 5; Rollo, G.R. No. 101728, p. 51; Rollo, G.R. No. 101760, p. 32.

[6] Petition in G.R. No. 101728, p. 3.

[7] Order in Civil Case No. 89-4129, 9 October 1989, p. 5; Rollo, G.R. No. 101760, p. 68.

[8] Decision in CA-G.R. SP No. 20065, 29 November 1990, p. 9; Rollo, G.R. No. 101728, p. 55; Rollo, G.R. No. 101760, p. 32.

[9] Id., p. 8.

[10] Id, p. 7.

[11] Vda. de Kilayko v. Tengco, G.R. No. 45965, 27 March 1992, 207 SCRA 600.

[12] Baranda v. Gustilo, G.R. No. 81163, 26 September 1988, 165 SCRA 756.

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