

**IN RE: PETITION FOR THE ISSUANCE OF OWNER'S
DUPLICATE OF TRANSFER CERTIFICATE OF TITLE NO. 28709, TO
CANCEL ENCUMBRANCES AND TO ISSUE NEW TITLE TO HEIRS.
CONCEPCION OCAMPO VDA. ...**

G.R. No. 11260. April 29, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

On 21 March 1956 the petitioners filed a petition in G.L.R.O. Cad. Rec. No. 159 alleging and claiming that they are the heirs of the late Manuel Rivera who died intestate leaving a parcel of land situated on Evangelista street, Santa Cruz, Manila, containing an area of 47.10 sq. m. more or less, described in transfer certificate of title No. 28709 (Sp. Proc. No. 29718, Court of First Instance of Manila) ; that the owner's duplicate certificate of title to the parcel of land in the possession of one of the heirs was lost or destroyed during the battle for liberation of Manila in February 1945; that on the back of the transfer certificate of title, a certified copy of which is attached to the petition (Annex A), two encumbrances are recorded, to wit: (1) the appointment on 19 June 1926 of Mariano Ocampo y Zamora as administrator of the estate of the late Manuel Rivera y Angeles in Sp. Proc. No. 29718 of the Court of First Instance of Manila, entered at 10:52 o'clock a.m. on 20 June 1927; and (2) a notice of the levy upon execution dated 12 July 1932 to satisfy a judgment rendered by the Court of First Instance of Manila in Case No. 36466 in favor of Maria A. Garcia, plaintiff, against Jacinta Rivera, defendant, for the sum of P1,630.80 with interest thereon from 22 April 1931 until paid and P50.24 for costs of the suit and expenses incurred in the execution of the judgment, entered at 11:12 o'clock a.m. on 13 July 1932; that the two encumbrances have no more reason to continue recorded on the transfer certificate of title, because the administrator Mariano Ocampo y Zamora died in 1938 and the record of special proceedings No. 29718 was destroyed or burned during the war; because the sum due the judgment creditor Maria A. Garcia, which was for P1,630.80 only together with interest thereon from 22 April 1931 until paid, and P50.24 for costs and expenses incurred in the execution of the judgment, had already been satisfied in the form of rentals received by the judgment creditor from Irineo A. Cristobal, the petitioners' lessee, amounting to P5,200 which is very much in excess of the amount due her, and for that reason she should turn over the excess to the petitioners under the principle of solutio indebiti; and lastly because the entry of the encumbrance having been made on 13 July 1932, or more than ten years from the date of entry, whatever right the judgment creditor might still have thereunder is already barred by statute; and that the petitioners as heirs of the late Manuel Rivera y Angeles, already had executed a deed of partition of the parcel of land attached to the petition (Annex B). They prayed that the Registrar of Deeds in and for the City of Manila be directed to issue another owner's duplicate of certificate of title No. 28709; to cancel the two encumbrances appearing on the back thereof; and to issue a new title in the name of the petitioners in the proportion stated in their petition.

Maria A. Garcia filed an opposition to the petition on the ground that on 20 March 1956 she brought an action against the petitioners in the same Court raising the question of ownership and title to the parcel of land (civil No.

29242, p. 71, Rec. on App.); and that for that reason the land registration court had no jurisdiction to grant what the petitioners pray in their petition. The petitioners filed a reply to the opposition; the oppositor, a rejoinder to the petitioners' reply; the petitioners, a sur-reply; the oppositor, an answer to the sur-reply; and the petitioners, a closing remarks.

After hearing, on 26 April 1956 the Court of First Instance of Manila, Fourth Branch, acting as land registration court, entered an order directing the Registrar of Deeds in and for the City of Manila, upon payment of his lawful fees, to issue another owner's duplicate of transfer certificate of title No. 28709, in lieu of the lost one, and, to cancel the two encumbrances appearing on the back thereof, but denying the petitioners' prayer for a new transfer certificate of title to be issued in their names, without prejudice to their right to file for registration the deed of partition executed by them with the Office of the Registrar of Deeds in accord with law and the Rules of Court.

The oppositor has appealed to this Court on the ground that the order is contrary to law. In her brief she assigns an error of law only.

Sections 109 and 112 of Act No. 496 provide:

If a duplicate certificate is lost or destroyed, or cannot be produced by a grantee, heir, devisee, assignee, or other person applying for the entry of a new certificate to him or for the registration of any instrument a suggestion of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered. The Court may thereupon, upon the petition of the registered owner or other person in interest, after notice and hearing direct the issue of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as the original duplicate for all the purpose of this Act. (109)

* * * Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; * * * and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: * * * (112)

There is no question that under the foregoing quoted provisions of Act No. 496, the court of first instance, acting as land registration court, may, upon petition of the registered owner or other person in interest, after notice and hearing, and upon satisfactory proof, direct the issuance of a new duplicate certificate of title in lieu of a lost or destroyed one, and the cancellation of encumbrances on a certificate of title which have terminated or ceased. Having shown to the satisfaction of the Court that the owner's duplicate of transfer certificate of title No. 28709 had been lost or destroyed during the battle for liberation of Manila, the appellees are entitled to the issuance of another owner's duplicate of transfer certificate of title No. 28709. Having also shown to the Court's satisfaction that Mariano Ocampo y Zarilora, who had been appointed by the probate court in Sp. Proc. No. 29718 to administer the estate of the late Manuel Rivera y Angeles, died in 1938, and the record of that fact on the back of the certificate of title would serve no useful purpose, the appellees may ask for the cancellation thereof and the Court commits no error in directing the cancellation of the annotation on the certificate of title of the administrator's appointment by the probate court. As regards the second encumbrance recorded at the appellant's instance, from 13 July 1932, the date of the registration, to 21 March 1956, the date of the filing of the instant petition, and 20 March 1956, of the appellant's complaint in civil case No. 29242 (p. 71, Rec. on App.), almost 24 years had already elapsed without the appellant having taken any step to make effective her right thereunder and for that reason whatever right she might have under it is already barred by the statute of limitations. Such being the case the said encumbrance may also be ordered cancelled.

Jurisdiction being conferred by law, the filing of a suit by the appellant against the appellees in the Court of First Instance to secure a declaration that she is the owner of and entitled to one-half of the parcel of land, cannot divest the land registration court of its jurisdiction to hear and determine the appellees petition for an order directing the Registrar of Deeds in and for the City of Manila to issue another duplicate for the owner of transfer certificate of title No. 28709 in lieu of the one lost and to cancel the encumbrances mentioned above, pursuant to the provisions of sections 109 and 112 of the Land Registration Act herein before quoted.

The order appealed from is affirmed, with costs against the appellant.

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

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