

PETITION FOR CANCELLATION OF ENCUMBRANCE. BENJAMIN GEONANGA, PETITIONER AND APPELLEE, VS. C. N. HODGES, RESPONDENT AND APPELLANT.

G. R. No. 11323. April 21, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Respondent, C. N. Hodges, seeks a review, by writ of error, of an order of the Court of First Instance of Iloilo, granting a petition of Benjamin Geonanga and Emilio Gotera for an order directing the Register of Deeds of Iloilo to cancel attachment and levy Entry No. 11336 on Transfer Certificate of Title No. 8981 of Iloilo, covering Lots Nos. 430 and 855 of Cadastral survey of Iloilo.

Said lots were formerly covered by Transfer Certificate of Title No. 3016, in the name of the spouses Raymundo Robles and Margarita Mondejar. On August 8, 1949, these spouses borrowed from the Agricultural and Industrial Bank a sum of money, and, to guarantee its payment, they constituted, in favor of said Bank a real estate mortgage on the lots above referred to. Thereafter, the owner's duplicate of said Transfer Certificate of Title No. 3016 was held by the Bank. Sometime in 1954, respondent herein, C. N. Hodges, as plaintiff in Civil Case No. 3172 in the Municipal Court of Iloilo, entitled "C. N. Hodges, plaintiff vs. Lourdes Robles, et al., defendants", secured a writ of attachment, which was levied upon the lots in question, by filing the corresponding papers with the Register of Deeds of Iloilo, who made said entry No. 11336, on August 11, 1954, on the original of the aforementioned Transfer Certificate of Title No. 3016.

Subsequently, or on June 22, 1955, with the express consent of the Rehabilitation Finance Corporation, the legal successor of the Agricultural and Industrial Bank, herein petitioners, Benjamin Geonanga and Emilio Gotera, paid the Bank the obligation of Robles and Mondejar and bought said lots from them. Consequently, the Register of Deeds of Iloilo cancelled Transfer Certificate of Title No. 3016, and issued, to Geonanga and Gotera, Transfer Certificate of Title No. 8981, with the corresponding memorandum of said attachment and levy in favor of Hodges, which did not appear on the owner's duplicate of Transfer Certificate of Title No. 3016 held by the Bank. Hence, the petition of Geonanga and Gotera, dated June 27, 1955, for the cancellation of said entry, annotation and memorandum, upon the ground that the same is illegal, null and void, pursuant to section 26 of Commonwealth Act No. 459, which provides that:

"Securities on loans granted by the Agricultural and Industrial Bank shall not be subject to attachment nor can they be included in the property of insolvent persons or institutions, unless all debts and obligations of the debtor to the Agricultural and Industrial Bank have been previously paid, including accrued interest, collection expenses and other charges." (Italics ours.)

The petition was filed in the cadastral case in which the decree for the registration of Lots Nos. 430 and 855 had been entered. C. N. Hodges contested the jurisdiction of the lower court, sitting as a court of land registration, to grant said petition, upon the ground that the issue therein raised is a controversial one and should be threshed out,

either in an ordinary civil action, or in Civil Case No. 3172 of the Municipal Court of Iloilo. After due hearing, the Court of First Instance of Iloilo issued an order, dated July 12, 1955, overruling said opposition and granting the petition. A reconsideration of this order having been subsequently denied, the case is now before us for review, upon the record on appeal filed by respondent Hodges.

It is not disputed that, under section 112 of Act No. 496, petitioners-appellees, as registered owners of Lots Nos. 430 and 855, may petition the court having jurisdiction over the cadastral case in which the decree of registration of said lots was entered, for such relief as may be proper against "any error * * * or mistake * * * made in entering a certificate or any memorandum therein," provided that the original decree of registration is not thereby reopened and the title or other interest of a purchaser holding a certificate for value and in good faith is not impaired without his written consent. But, citing *Bank of the P.I. vs. Ty Campo Sobrino* (57 Phil., 801), *Castillo vs. Ramos* (78 Phil., 809), *Gov't of the Philippines vs. Jalandoni* (44 Off. Gaz., 1837), and *Tanganan vs. Republic of the Philippines* (94 Phil., 171; 50 Off. Gaz., 115), appellant maintains that said legal provision may be applied only when there is "no substantial controversy", or serious objection" and "there in unanimity among the parties" concerned.

It is not, and cannot be, denied, however, that, pursuant to section 26 of Commonwealth Act No. 459, Lots Nos. 430 and 855, were "not * * * subject to attachment" on August 11, 1954, when the disputed entry of attachment and levy was made, said lots being then mortgaged to the Agricultural and Industrial Bank, as security on a loan granted by this institution. Moreover, under Rule 59, section 2, of the Rules of Court, only properties "not exempt from execution" may be attached. In making said entry, the Register of Deeds of Iloilo committed, therefore, an "error * * * or mistake" so clear and patent that not even appellant herein denies it. Hence, it may be said that "there is unanimity among the parties," and no "substantial controversy" between them, about said error or mistake.

Respondent-appellant insists that the exemption, under section 26 of Commonwealth Act No. 459, has been established for the exclusive benefit of the Agricultural and Industrial Bank; that said provision may no longer be availed of, the mortgage in favor of the Bank having been cancelled on or about June 22, 1955; and that "an attachment can only be discharged or dissolved by the Judge who granted the order." We find no merit in this pretense. Pursuant to said legal provision, properties mortgage to the Agricultural and Industrial Bank, now the Rehabilitation Finance Corporation, are "not subject to attachment" unless "all debts and obligations" in favor thereof have been previously paid. In the case at bar, the credit of the Bank was settled after the entry in question. Apart from this, said entry, if valid, would retroact to the date thereof, or August 11, 1954, thus violating the spirit and purpose of the aforementioned section 26. Moreover, having been made against a "mandatory or prohibitory" provision of law, the aforementioned entry was, and is, "void" (Article 5, Civil Code of the Philippines), not merely voidable, and may, accordingly, be assailed by any party adversely affected thereby, such as petitioners herein. Again, by virtue of the payment of the debt due to the Bank, with the consent of the latter, and that of its debtors and original owners of Lots Nos. 430 and 855, petitioners herein are presumed to be legally subrogated into the rights of said creditor Bank, not only against its former debtors, but, also, "against third persons." (Articles 1237, 1302 and 1303, Civil Code of the Philippines.) Lastly, a dissolution of the writ of attachment issued by the Municipal Court of Iloilo is not sought in the present case. The only issue before us is the validity of the entry, memorandum or annotation of said attachment in the transfer certificate of title covering Lots Nos. 430 and 855. In short, petitioners' right to the relief prayed for is indubitable and appellant's objection thereto is not "serious" enough, from a legal viewpoint, to bar the exercise of the authority granted in section 112 of Act No. 496.

Wherefore, the order appealed from is hereby affirmed, with cost against appellant, C. N. Hodges. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix,

JJ., concur.

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