

EDUARDO FERNANDEZ, TERESITA FERNANDEZ-CAVA, LETICIA FERNANDEZ-TORREA, ADOLFO FERNANDEZ, GLORIA FERNANDEZ-HUGONIN, ZENAIDA FERNANDEZ-ILEDAN, AND ESMERNA FERNANDEZ-LEGASPI, AS HEI...

G.R. No. 115813. October 16, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the Decision dated February 17, 1994, of the Court of Appeals which dismissed the special civil action for certiorari, prohibition and mandamus with application for preliminary injunction filed by petitioners in CA-G.R. SP No. 30086. The decision effectively affirmed the Order dated July 23, 1992 of the Regional Trial Court of Negros Occidental, Branch 47, for the cancellation of Entry No. 178073, which was the notice of lis pendens pertaining to Civil Case Nos. 7687 and 7723 annotated in TCT No. T-165298 of the Registry of Deeds of Bacolod. This petition now asks for (1) the annulment of the said order of cancellation; (2) the re-annotation of said notice of lis pendens; and (3) the annulment of the decision of said RTC dated October 15, 1991 that set aside the original decision dated May 30, 1988 of the RTC in the aforecited civil cases,[2] and the order dated October 31, 1991 granting private respondent Jesus Ciocon's Motion for Execution Pending Appeal,[3] and all proceedings conducted pursuant to said decision and order. It also seeks the review of the Court of Appeals' resolution dated May 30, 1994 denying petitioners' motion for reconsideration.

This petition involves Lot 435 of the Bacolod cadastre originally titled to petitioners' predecessor-in-interest, Prudencio Fernandez. After Fernandez acquired ownership of the lot, he tried to eject private respondent Jesus Ciocon and some other occupants off the property. Allegedly, Ciocon asked Fernandez that he be given a "last chance" to repurchase the lot. Fernandez refused. After this rejection, on September 21, 1985, Ciocon instituted against Fernandez Civil Case No. 7687 before Branch 47 of the RTC of Negros Occidental for reconveyance of the land or what remains of it after deducting portions already sold to others. Ciocon claimed he had paid for the full reconveyance price to Fernandez on February 7, 1958 for which Fernandez signed a receipt. Fernandez through his guardian ad litem denied receiving any money from Ciocon and averred that Ciocon's receipt was a forgery. Fernandez died on January 23, 1966. He was substituted in the civil suit by his heirs namely: Dominadora,[4] and their children Eduardo, Teresita, Leticia, Adolfo, -

Gloria, Zenaida and Esmerna.

Private respondents Levita Llera, Hospicio Pedrina, Rufo Calves, and Monserrat Villalba were intervenors in said suit who claimed that they had purchased portions of Lot 435 from Ciocon. Civil Case 7723 was filed by Alfonso Jardenil, Anunciacion Jover, and Vicente Urbano who also claimed to have bought portions of the lot from Ciocon. Civil Case No. 7687 and Civil Case No. 7723 were eventually consolidated.

On May 30, 1988, Judge Enrique Jocson, presiding judge of RTC Branch 47, noting that the parties were indifferent about submitting to a decision based on extant but incomplete records proceeded to render judgment

dismissing both complaints and ordering private respondent Ciocon and the intervenors to deliver immediate possession of Lot No. 435 to the heirs of Fernandez.[5]

Private respondents and intervenors timely filed their notices of appeal which were given due course on July 29, 1988.

On March 12, 1990, Judge Jocson issued an Order requiring the parties to state in writing within fifteen (15) days whether or not they agree to have the records transmitted to the Court of Appeals with incomplete transcripts of stenographic notes, and if they should fail to reply after fifteen (15) days from receipt of the order, the court would consider the parties' silence as conformity and order the transmittal of the extant records to the Court of Appeals.[6]

On July 29, 1988 an order was issued ordering transmittal of the records to the appellate court.[7]

Meanwhile the Court of Appeals noted the incompleteness of the records and ordered the re-taking and completion of missing testimonies.

On September 30, 1991, Ciocon filed a Motion to have Above-Entitled Cases Decided Anew,[8] which Judge Jocson granted on October 3, 1991. Judge Jocson reasoned that since the cases were decided on the basis of the records taken by his predecessor, and without the testimony of Roberto Tolentino, the handwriting expert who testified on the alleged forgery of Fernandez' signature, granting the motion was in the best interest of justice.[9]

On October 15, 1991, Judge Jocson rendered a second decision setting aside the judgment rendered on May 30, 1988. In the second decision, the judge explained that the Court of Appeals, after receiving the notices of appeal and the incomplete records, "remanded" the case and ordered the re-taking of the testimonies of witnesses Ciocon and Tolentino. The second decision was a complete reversal of the first decision and directed the return of the disputed lot to Ciocon and intervenors except the portions still being litigated. It also ordered the cancellation of the new title issued to Fernandez and the issuance of a new title in the name of Jesus Ciocon and intervenors.[10]

Not surprisingly, on October 25, 1991, petitioners appealed the second decision.[11]

On October 29, 1991, Ciocon moved for execution pending appeal.[12] Six days after, on November 4, 1991, the trial court granted the motion ex parte.[13] The TCT in the name of Fernandez was cancelled and a new TCT was issued in the name of respondent Ciocon. On December 2, 1991, petitioners' motion for reconsideration of the order was denied.[14]

On March 17, 1992, Ciocon filed a motion asking that the Register of Deeds of Bacolod City be directed to cancel entries in TCT No. T-164785, particularly Entries Nos. 44213, 1063, 5121, 5381 and 13188 upon the plaintiff's filing of additional bond of P300,000.00.[15] Entry No. 178073, the notice of lis pendens involved in Civil Case No. 7687 and 7723, was not among the entries listed in the motion.

It was only on April 20, 1992, at 3:45 P.M., that Entry No. 178073 was annotated on TCT T-164785.[16]

On July 23, 1992, Judge Jocson ordered the cancellation of the entries of the notices of lis pendens listed in the aforementioned motion, including Entry Nos. 177656, 178526, 178527, and 178073, all unlisted in the March 17, 1992 motion.[17]

Ciocon then sold the subject property to one Eduardo Gargar, resulting in the issuance of TCT No. T-165298 in Gargar's name. Entry No. 178073 was one of the entries carried over in TCT No. T-165298.[18] Gargar immediately mortgaged the property to the Rizal Commercial and Banking Corporation to secure a loan for P2,000,000.00.

On May 28, 1992, the trial court issued another Order, directing the transmittal of the records to the Court of Appeals.[19]

On February 2, 1993, petitioners filed a petition for certiorari, prohibition and mandamus with application for preliminary injunction under Rule 65 to annul and set aside the Order dated July 23, 1992, of the Regional Trial Court cancelling the lis pendens notations in the TCT, and its Decision dated October 15, 1991 setting aside its original decision dated May 30, 1988, for having been issued without jurisdiction. Petitioners prayed that the trial court be compelled to elevate the records of Civil Case No. 7687 and Civil Case No. 7723 to the Court of Appeals. After hearing on March 17, 1993, the case was submitted for decision.[20]

In its Decision, dated February 17, 1994, the Court of Appeals dismissed the petition and ordered the judge-designate to desist from further proceeding with Civil Cases No. 7687 and No. 7723, and to elevate the records for consideration on appeal. Said the appellate court:

It is our considered opinion that justice would be better served if we allow the regular appeal, which had been timely filed, to proceed in due course instead of annulling the various proceedings taken in the court below.

The observation is partly based on the single fact agreed on by both parties, that the appeal be allowed to push through.

It must also be noted that until and unless there is a definitive ruling, and this can only be achieved in a final judgment, on the issue of rightful possession and ownership of the property in question, there can be no satisfactory solution to the case.

Section 1 of Rule 65 (Rules of Court) governing the special civil action of certiorari presupposes that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

In the case at bar, the remedy of appeal is available which, we believe, would be more speedy and adequate, and demonstrably congruent with law and justice under the circumstances.

Evidence has been submitted, after the hearing of the application for preliminary injunction, that a judge has been designated to substitute for the respondent Judge who had been separated from the service. Hence, this Court's order is directed to said judge-designate.

WHEREFORE, the judge-designate in Civil Cases Nos. 7687 and 7723 is hereby ordered to desist from further proceeding with said cases. Instead, he is hereby directed to elevate the record thereof to this Court for consideration on appeal.

Petition DISMISSED.

SO ORDERED.[21]

The motion for reconsideration of the dismissal of the petition was denied. Hence, this petition, asserting that:

The order of July 23, 1992 (Annex C), insofar as it cancelled the notice of lis pendens caused to be annotated by the petitioners, is null and void because it was issued without jurisdiction, and in violation of due process and fundamental rules of procedure.[22]

In its support petitioners argue that:

(1)

The cancellation of said notice of lis pendens is a patent nullity because no motion for the cancellation of the notice (Entry No. 178073) was filed.

(2)

Assuming that a motion was filed, by then, the RTC had already lost jurisdiction to grant the same since the appeal by petitioners from the first and even the second decision had been perfected.

(3)

Even assuming that the motion had been filed and the RTC still had jurisdiction, there was no showing of the necessity for the cancellation of said notice of lis pendens. On the contrary, there were reasons for maintaining said notice of lis pendens.

(4)

The execution pending appeal in 1991 was itself invalid.

Considering that the issues of ownership and possession are best left for determination by the Court of Appeals, petitioners in essence aver that the appellate court erred in dismissing the petition for certiorari insofar as it refused to pass on (1) the impropriety and invalidity of the trial court's cancellation of the notice of lis pendens and (2) the lack of jurisdiction of the trial court when the latter granted the motion for execution of its second decision dated October 15, 1991, pending appeal, which was the basis of the cancellation of the cited notice of lis pendens.

On the first point, petitioners contend that in promulgating its assailed decision, and denying the corrective writ of certiorari against the RTC, the Court of Appeals refused to recognize that, at the very least, the cancellation by the RTC of the notice of lis pendens, particularly Entry No. 178073, upon a mere ex parte motion is already grave abuse of discretion, and even graver abuse since Entry No. 178073 was not even subject of the motion at all. Petitioners stress that respondent Ciocon prayed for cancellation only of certain entries appearing on the TCT but not Entry No. 178073. Petitioners point out that at the time Ciocon asked for cancellation of the other entries, there was no Entry No. 178073 yet. This entry was made more than a month after Ciocon filed his motion for cancellation of certain entries.[23] Petitioners contend that without a motion for cancellation of Entry No. 178073, no hearing on it could be conducted. Without notice and hearing, there was manifest denial of petitioners' right to due process. This infirmity in the ex parte cancellation resulted in the hasty use by Gargar, the new registered owner of Lot 435, of the property as collateral for a P2,000,000.00 loan, manifestly prejudicing petitioners.

Petitioners assert that in their motion for reconsideration of the petition, they conceded that the issues of rightful possession and ownership be resolved in the appeal rather than risk more delay. But they resolutely ask for the nullification of the order cancelling the cited notice of lis pendens and pray for re-annotation thereof.

In their opposition and comment to the petition, private respondents claim, with respect to the cited notice of lis pendens, that the order cancelling the annotation of the notice was within the discretion of the RTC and that there was no abuse of discretion on its part because the RTC could determine on its own if a notice was for the purpose of molesting the adverse party or was not necessary to protect the rights of the party who caused its annotation. They contend that since the determination of the basis for cancellation of the notice is factual, the Supreme Court is already bound by such determination by the RTC.

We note, at the outset, that the trial court's determination of the basis for cancellation of said notice is precisely the bone of contention in the present appeal. While the trial court has inherent power to cancel a notice of lis pendens, such power is exercised under express provisions of law.[24] A notice of lis pendens is an announcement to the whole world that a particular real property is in litigation. Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.[25] Under Sec. 24, Rule 14 of the Rules of Court,[26] now Sec. 14 of Rule 13 of the 1997 Rules of

Civil Procedure, a notice of lis pendens may be canceled only after proper showing that the purpose of its annotation is for molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be annotated. We have scrutinized the records but found no showing that the annotation was caused by petitioners merely to molest private respondents, nor that it was not needed to protect petitioners' rights. The peculiar and exceptional circumstances of the case, as in the rendering of two conflicting decisions by the same judge, indubitably manifest that the annotation was not merely to molest the other party but was needed to protect petitioners' interest from any hasty transfer of the property to another, making recovery of the property extremely complicated. This is exactly what happened in this case when the notice of lis pendens was cancelled.

Further, the trial court's inherent power to cancel a notice of lis pendens is exercised only under exceptional circumstances, such as: where such circumstances are imputable to the party who caused the annotation; where the litigation was unduly prolonged to the prejudice of the other party because of several continuances procured by petitioner; where the case which is the basis for the lis pendens notation was dismissed for non-prosequitur on the part of the plaintiff; or where judgment was rendered against the party who caused such a notation. In such instances, said notice is deemed ipso facto cancelled.[27] These exceptional circumstances are not present in this case. It will be noted that although the case took long to resolve, it was not due to petitioners. Petitioners had in fact been adjudged owners of the lot in the first decision and it was private respondents who filed a motion that the case be decided anew, despite a timely notice of appeal from the first decision. Furthermore, it was the Court of Appeals which ordered the re-taking of the lost testimonies, which the trial court erroneously took as a "remand" of the case, resulting in a second decision which was also timely appealed. The records mentioned no such order to "remand" by the Court of Appeals. The cancellation of the lis pendens notations should not have been ordered since there had been no final judgment yet, the decisions having been timely appealed.

More significantly, a notice of lis pendens cannot be ordered cancelled on an ex parte motion, much less without any motion at all. There should be notice to the party who caused the annotation so that he may be heard to object to the cancellation of his notice and show to the court that the notice of lis pendens is necessary to protect his rights and is not merely to molest the other party.[28] As the records of this case reflect, private respondent Ciocon's motion dated March 17, 1992, to cancel certain notices of lis pendens did not include a request to cancel Entry No. 178073 in particular, and it certainly could not have been included since the entry was annotated in the TCT only a month after the filing of the motion, on April 20, 1992. However, Judge Jocson's order of cancellation included Entry No. 178073.[29]

Neither can a notice of lis pendens be ordered cancelled upon the mere filing of a bond by the party on whose title the notice is annotated. The ultimate purpose of the annotation which is to keep the properties in litigation within the power of the court and to prevent the defeat of the judgment by subsequent alienation will be rendered meaningless if private respondents are allowed to file a bond, regardless of the amount, in substitution of said notice.[30] As it happened in this case, Ciocon sold the property to Gargar who encumbered the property as security for a loan. We are, therefore, constrained to conclude that, contrary to private respondents' stand, the Court could not be bound by the trial court's determination of the bases of the cancellation of the cited notice. Further, we find the trial court's order injudicious and erroneous.

We now resolve the question of jurisdiction. The records show that the notices of appeal from the first decision of the trial court were filed within the reglementary period and were duly approved.[31] At such time the appeals were perfected. There is abundant jurisprudence stating that after perfection of an appeal, the trial court loses jurisdiction to amend a decision appealed from, and also to issue orders for execution pending appeal. The perfection of an appeal divests the trial court of jurisdiction over a case and the trial court may issue orders only if in the exercise of its residual functions. Fundamental is the doctrine that jurisdiction is fixed by law. No amount

of rationalization therefore, even a declaration that a new decision is being made in the best interest of justice, can confer on the trial court the jurisdiction it had lost. Jurisdiction cannot be acquired, waived, enlarged, diminished or extended by any act or omission of the parties. Neither is it conferred by acquiescence of the court.[32]

It must also be borne in mind that the order of cancellation of notation of lis pendens was based on the ex parte approval of the motion for execution pending appeal of the trial court's second decision. This order is fatally flawed, for being the result of a hearing ex parte, hence without notice to the adverse party and thereby violative of due process.

The Court is not unaware of *Asmala vs. Comelec*,[33] holding that the mere filing of a notice of appeal does not divest the trial court of its jurisdiction over a case to resolve pending incidents; and *Roxas vs. Dy*,[34] that 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. The operative phrase, however, is that the cancellation be ordered by a court having jurisdiction over it. Such is not the case here for the RTC already lost its jurisdiction upon the perfection of the appeal from its first decision as early as 1988.

The cancellation order of the notice of lis pendens in this case, Entry No. 178073, should be set aside for three reasons. First, it was granted ex parte. Petitioners were deprived of their right to be heard on notice. Second, there was no showing that the annotation of the notice was for the purpose of molesting the adverse party, nor that it was not necessary to protect the rights of those who sought the annotation. And third, at the time of the order of cancellation of the notice, the trial court no longer had jurisdiction.

Lastly, we need not delve on the appellate court's dismissal of the petition for certiorari. It is mooted by petitioners' acceptance, although reluctantly, of the appellate court's judgment that the issues of rightful possession and ownership of the property be resolved in the appeal.

WHEREFORE, the assailed decision of the Court of Appeals is hereby MODIFIED as follows:

(1)

The Order dated July 23, 1992 of the Regional Trial Court of Negros Occidental, Branch 47, in Civil Cases No. 7687 and No. 7723 insofar as it directed the cancellation of the notice of lis pendens, Entry No. 178073 on TCT No. T-165298, is ANNULLED and SET ASIDE.

(2)

The Register of Deeds of the City of Bacolod is directed to RE-ANNOTATE the notice of lis pendens, Entry No. 178073 on TCT No. T-165298.

(3)

The judge-designate in Civil Cases No. 7687 and No. 7723 is ordered to elevate the records of said cases to the Court of Appeals for consideration on appeal.

(4)

The Court of Appeals upon receipt of the complete records is directed to immediately proceed with the appeal for the determination of the rightful ownership and possession of the lot in dispute.

Costs against private respondents.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Sometimes spelled "Villalba" in the records.

[2] CA Records, pp. 36-38.

[3] Id. at 39.

[4] Dominadora I. Fernandez, the widow of Prudencio Fernandez and the mother of the present petitioners, was herself a co-petitioner in CA-G.R. SP No. 30086 but died during its pendency.

[5] Rollo. p. 118.

[6] Id. at 121.

[7] Id. at 119.

[8] Id. at 122-124

[9] Id. at 125.

[10] CA Rollo, p. 38.

[11] Id. at 55.

[12] Id. at 56-57.

[13] Rollo, pp. 129-130.

[14] Records, p. 60.

[15] Records, pp. 62-63.

[16] Rollo, p. 232.

[17] Id. at 86.

[18] Id. at 232.

[19] Records, p. 66.

[20] Rollo, p. 78.

[21] Id. at 82-83.

[22] Id. at 54.

[23] Id. at 133.

[24] Victoriano vs. Rovira, 55 Phil 1000, 1003 (1930).

[25] Tan et al. vs. Lantin et al., 142 SCRA 423, 425 (1986).

[26] Sec. 24. Notice of lis pendens. - In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the registrar of deeds of the

province in which the property is situated a notice of the pendency of the action, containing the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. From the time only of filing such notice for record shall a purchaser, or incumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of action, and only of its pendency against parties designated by their real names.

The notice of lis pendens hereinabove mentioned 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.

[27] Regalado, Justice Florenz D., Remedial Law Compendium, Vol. I, 5th Revised Edition, p. 145, 1988.

[28] Punongbayan vs. Pineda, et. al., 131 SCRA 496, 499 (1984). Citing Sarmiento vs. Ortiz, 10 SCRA 158 (1964); Natano vs. Esteban et al., 18 SCRA 481, 485-486 (1966).

[29] See notes 10, 11 and 12.

[30] Supra, note 18.

[31] Rollo, p. 119.

[32] Fabian vs. Desierto, 295 SCRA 470, 488 (1998); De Jesus, et al. vs. Garcia, et al., 19 SCRA 554, 558 (1967).

[33] 289 SCRA 746, 752 (1998).

[34] 223 SCRA 643, 647 (1993). Citing Vda. De Kilayco vs. Tengco, 207 SCRA 600 (1992). Stress supplied.

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