

**ROBERTA DIAZ Y CRUZ, PETITIONER, VS. HON. JESUS Y. PEREZ,
PRESIDING JUDGE, 7TH BRANCH, COURT OF FIRST INSTANCE,
PASAY CITY, ET AL., RESPONDENTS.**

G.R. No. 12053. May 30, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

Roberta Diaz y Cruz is an old woman, 83 years of age, residing in Pasay City and possessing real and personal properties roughly estimated at half a million pesos.

On August 18, 1956, three of her nine legitimate children, and two of her grandchildren by another daughter, joined in a petition addressed to the Rizal Court of First Instance, to declare her incompetent to take care of herself and manage her properties and to appoint a guardian of her person and her properties. The allegations, too long to relate, set out a prima facie case of incompetency[1](Special Proceeding 1483-P).

On November 7, 1956, while the above special proceeding was pending hearing before respondent Judge Jesus Y. Perez, Roberta Diaz y Cruz received from the Register of Deeds of Rizal a letter advising her that by reason of said proceedings, a notice of lis pendens had been annotated on her Transfer Certificate of Title to real property No. 32872 of that Province.

Wherefore, on November 29, 1956, she filed in the above-mentioned proceedings a petition to cancel the lis pendens. In view of the opposition of the adverse parties, the respondent judge denied the petition. Her motion to reconsider having failed, Roberta Diaz filed a notice of appeal, record on appeal, and appeal bond.

But on January 22, 1957, the respondent judge disapproved the record on appeal, holding the appealed orders to be interlocutory, and therefore not appealable.

So on February 26, 1957, this petition for mandamus and certiorari was filed in this Court. The first, to compel approval of the record on appeal; the second, to annul the order refusing cancellation of the notice of lis pendens.

We think mandamus does not lie. As the respondent judge said, the order was interlocutory, which can not "be the subject of appeal until final judgment is rendered." (Section 2, Rule 41.) It is comparable with an order refusing to annul a preliminary attachment[1] or an order denying or granting a preliminary injunction[2] which have been held to be interlocutory [3]

As to the certiorari, petitioner may not seriously urge lack of jurisdiction. In asking the Court to annul the lis pendens she admitted its jurisdiction to annul and also to refuse annulment.

Was there abuse of discretion? The lis pendens had been obviously annotated for the purpose of advising any one who might wish to buy the realty, that there is in court a petition to declare Roberta Diaz incompetent to dispose of her properties so that such purchaser may make the necessary inquiries and take steps to protect his interest, bearing in mind that if said Roberta Diaz should be declared incompetent, his purchase will be or might be

affected adversely.[4] It is a proper cautionary measure which the courts should be slow to disturb, unless the petition for guardianship was prima facie unconvincing, or was not made in good faith, or as alleged by petitioner here, the pendency of guardianship proceedings may not be considered as lis pendens affecting the realities of the person allegedly incompetent.

"The effect of filing a notice of lis pendens is to charge the stranger with notice of the particular litigations referred to in the notice; and if the notice is effective, a third party who acquires the property affected by the lis pendens takes subject to the eventuality of the litigations." [1]

And its purpose is "to hold property within the jurisdiction and control of the court pending determination of the controversy, thereby preventing third persons from acquiring such interests therein as would preclude giving effect to the judgment." [2]

In the light of the object and salutary effects of the notation, we see no reason to declare it improper in this case, specially because the allegations of the guardianship petition specified instances wherein the incompetent disposed of her properties in favor of persons allegedly taking undue advantage of her advanced age and weak mental and physical condition.

The argument is presented that sec. 79 of Act No. 496 and sec. 24 of Rule 7 indicate the cases wherein lis pendens may be annotated, and that guardianship proceedings is not included therein. In the first place sec. 79 is not an exclusive enumeration. In the second place, these proceedings affect "the use" or possession of the real estate within the meaning of above sections, even "the title", in the sense that the proceedings will curtail or take away the right of the owner to dispose of the same.

Anyway, it is to be doubted whether the above sections were intended to be exclusive of other circumstances wherein equity and general convenience would make lis pendens appropriate. Indeed, cases have held it to be proper in receivership proceedings[3] involving realty, and in lunacy proceedings[1] situations closely akin to the instant litigation.

In this connection, it is insisted that both sections only apply to "actions" which are different from "special proceedings", like guardianship. It is enough to point out that the Rules provided for civil actions are generally applicable to special proceedings. (Rule 73, section 2.)

Lastly, we are advised that after hearing the petition the lower court found in April 1957 that by reason of her advanced age and weak mind, Roberta Diaz could not manage her properties-she does not even remember them-and needed a guardian to help administer her interests. This, in a way, vindicates the annotation and the court's refusal to cancel it.

Clearly then no abuse was made of the court's discretion. Petition denied, with costs.

Paras, C.J., Montemayor, Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

[1]In fact, on April 6, 1957, after this case had been submitted for decision the court declared her incompetent and appointed the Philippine National Bank as guardian of her properties.

[1]Olsen & Co. vs. Olsen, 48 Phil., 238.

[2]Diokno vs. Reyes, 7 Phil., 385; Lopez vs. Dinglasan, 47 Off, Gaz., 650; 84 Phil., 292.

[3]Cf. *Victorino vs. Rovira*, 55 Phil., 1000; *Paranaque vs. Court of First Instance*, 70 Phil., 363.

[4]*Cruz Correa vs. Luciano*, 52 Off. Gaz., 4683; 99 Phil., 696; *Bancairen vs. Diones*, 98 Phil., 122.

[1]*Atkins, Kroll & Co. vs. Domingo*, 46 Phil., 362.

[2]34 American Jurisprudence, 364, 365.

[3]34 American Jurisprudence, 378, 379.

[1]*Corpus Juris Secundum* 583.

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