

**CARLOS J. RIVERA, IN HIS CAPACITY AS JUDICIAL ADMINISTRATOR
OF THE ESTATE OF DIEGO D. RIVERA, PLAINTIFF AND APPELLEE,
VS. TOMAS T. TIRONA, ET AL., DEFENDANTS. JOSE K. LAPUZ AND ...**

G.R. No. 12328. September 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal taken by defendants Jose K. Lapuz and Concepcion Kerr from the decision of the Court of First Instance of Rizal in its Civil Case No. 1622-P, the dispositive part of which reads:

"IN VIEW OF THE FOREGOING, the Court renders judgment ordering defendant Concepcion Kerr to surrender the owner's copy of Transfer Certificate of Title No. 1305 (47406) of the land records of Rizal Province to the Register of Deeds of Pasay City and said Register of Deeds shall cancel said certificate of title and issue, in lieu thereof, a new one in the name of the estate of the deceased Diego D. Rivera. The complaint with respect to defendants Tomas T. Tirona and Jose K. Lapuz is hereby declared dismissed. The counterclaim filed by all the defendants herein are likewise declared dismissed. The costs of these proceedings shall be paid by defendant Concepcion Kerr."

The record shows and it is not disputed that the now deceased Diego D. Rivera was the registered owner of real property situated in barrio San Roque, Pasay, with an area of 1,065 square meters, more or less, as evidenced by Transfer Certificate of Title No. 64417 of the land records of Manila. On December 8, 1944, Diego D. Rivera sold said property to Tomas T. Tirona, at the same time leasing it from Tirona for 6 months, or from December 9, 1944 to June 9, 1945, with right to repurchase the same for P25,000 within that period. By virtue of the lease agreement, Diego D. Rivera continued to be in possession of the property.

Within the period agreed upon, Diego D. Rivera tried to repurchase the property. As Tomas T. Tirona refused to allow him to do so, Diego D. Rivera filed a complaint with the Court of First Instance of Manila (Civil Case No. 3120) consigning with said court the purchase price of P25,000. Defendant Tirona was served with a copy of the complaint on January 12, 1945 and on that same date, Diego D. Rivera filed a notice of lis pendens with the office of the Register of Deeds of Manila. Said notice was forthwith entered in the Day Book of the Register of Deeds in Volume 10 of the Registry under PE 29263. These proceedings notwithstanding, defendant Tirona on January 20, 1945 sold the property in litigation to Jose K. Lapuz. The latter bought the land on the strength of the deed of sale executed by Diego D. Rivera in favor of Tirona, and upon seeing that the 'torrens title of Rivera covering the land was clean and free from any lien or encumbrance. After the torrens title of the previous owner had been cancelled, a new one, TCT No. 76662 was issued in the name of defendant Jose Lapuz.

In the meantime, Civil Case No. 3120 was tried, and on May 28, 1947, the court rendered its decision granting plaintiff Diego D. Rivera the right to purchase back the property described in the complaint upon payment to defendant Tomas T. Tirona of a sum equivalent to P25,000. On appeal to the Court of Appeals, that court in its decision dated October 7, 1949, held that Diego D. Rivera had made a valid consignment in court of the repurchase price which operated as legal instrument for the effectivity of the repurchase and declared him the

owner of the property in dispute. It also ordered the defendant Tirona to surrender his certificate of title over the property to the Register of Deeds for the City of Manila for cancellation, the latter to issue in lieu thereof a new one in plaintiff's favor. (CA-G.R. No. 2271-R.) Reconsideration of the decision having been denied, the same became final on January 26, 1950.

When Diego D. Rivera tried to enforce the abovementioned judgment, he discovered for the first time that the property was no longer in the name of defendant Tirona but that the latter had sold it to Jose K. Lapuz, who, in turn, sold it to his mother, Concepcion Kerr, in whose name the transfer/certificate of title covering the land now appears. For the purpose of cancelling this new title in the name of Concepcion Kerr, Carlos J. Rivera, the judicial administrator of the estate of Diego D. Rivera, who has since then died, instituted the present proceedings. After trial, the lower court, on November 10, 1956 rendered the decision now complained of.

This Court has already held that one who buys land from a person who is not the registered owner is not considered a "subsequent purchaser of registered land who takes the certificate of title for value and in good faith and who is protected against any encumbrance except those noted on said certificate." (Revilla et al. vs. Galindez, 107 Phil., 480 and the cases cited therein.) In the present case, it is not disputed that in buying the property in question from Tomas T. Tirona, Jose K. Lapuz relied merely upon the title to the land still in the name of Diego D. Rivera and upon the deed of sale executed by Rivera in favor of Tirona which, however, had not been annotated on the title. These circumstances—not to mention the fact that Lapuz was aware that Diego D. Rivera was in possession of the land[1]—should have put him upon inquiry, that is to say, he should have investigated the right of his transferor to sell the property. This, however, he did not do. Instead, he had Diego D. Rivera title cancelled, and on the strength of his sworn statement to the effect that his purchase of the property would not in any way prejudice the rights of third parties, he was able to secure the issuance of Transfer Certificate of Title No. 76662 in his name. These circumstances tend to show that he was not a purchaser in good faith. They also show that the registration in his name was made in bad faith. The issuance of a transfer certificate of title to the purchaser is one of the essential features of a conveyance in fee simple by registration and in order to enjoy the full protection of the registration system, the purchaser must be a holder in good faith of such certificate. (Dir. of Lands vs. Addison, 49 Phil., 19.)

As to defendant Concepcion Kerr, we are inclined to rule that, like her son Jose K. Lapuz, she cannot be considered a purchaser for value and in good faith. Indeed, there is reason to believe that her purchase of the land from her son was simulated or fictitious. She was residing in the same house with her son at the time she allegedly bought the property in question. The transfer certificate of title in her name was issued only upon the misrepresentation made by her son to the effect that the sale between them would not prejudice any third party. And at the hearing of the case, she did not appear or testify, thus indicating her lack of interest in the property. Verily, as alleged by plaintiff, the title to the property was transferred in her name so that she could put up the same as security for the bail bond of her son Jose K. Lapuz who was charged with treason before the defunct People's Court.

In any event, a notice of lis pendens of Civil Case No. 3120 between Diego D. Rivera and Tomas T. Tirona involving the land in question was filed on January 12, 1945 in the office of the Register of Deeds. This notice of lis pendens is an involuntary transaction and its entry in the Day Book of the Register of Deeds is a sufficient notice to defendants Lapuz and Kerr who are subsequent purchasers. As held in the cases of Levin vs. Bass, et al., 91 Phil. 419; 49 Off. Gaz. [4] 1444. "In involuntary registration, such as an attachment, levy on execution, lis pendens and the like, entry thereof in the Day Book is a sufficient notice to all persons of such adverse claim." It is not necessary that the notice of lis pendens be annotated at the back of the owner's certificate of title. Such annotation is only necessary in voluntary transactions. (Phil. National Bank vs. Javellana, 92 Phil, 525; 49 Off.

Gaz. [1] 124; Francisco's Provisional Remedies, 1956 Ed. p. 85.) The notice should, of course, be annotated on the back of the corresponding original certificate of title, but this is an official duty of the register of deeds which may be presumed to have been regularly performed.

Defendants in their brief claim that the memorandum or entry in the Day Book is not sufficient in form to constitute a notice of lis pendens. This question, however, is being raised here for the first time on appeal. We are moreover satisfied that the notice entered substantially complies with the requirements of the law.

Having purchased the property in question subsequent to the recording of the notice of lis pendens of Civil Case No. 3120, defendants Lapuz and Kerr are consequently transferees pendente lite. They stand exactly in the shoes of the transferor Tomas T. Tirona and are consequently bound by the judgment against him. (Correa vs. Pascual, et al. 99 Phil., 696; 52 Off. Gaz. 4683; Director of Lands, et al. vs. Martin, et al. 64 Phil., 140; 47 Off. Gaz. 120; Tuason vs. Reyes and Siochi, 48 Phil., 844; Rivera vs. Moran, 48 Phil., 836.)

In view of the foregoing, the decision appealed from is affirmed, with costs against appellants.

Paras, C. J, Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon JJ., concur.

[1] This may be inferred from the allegation in the answer that "after buying said land, defendant Jose K. Lapuz at once notified Diego D. Rivera of his ownership thereon and demanded possession thereof but the latter refused to vacate the premises and the defendant Lapuz, in view of the then prevailing emergency did not insist in acquiring physical possession of the land." (Par. 5 of affirmative defenses in defendants' Answer.)

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