

ELENA PERALTA VDA. DE CAISA, ET AL., PETITIONERS, VS. HON. GUSTAVO VICTORIANO, ET AL., RESPONDENTS.*G. R. No. 12905. February 26, 1959*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari seeking the annulment of an order of respondent judge dated July 10, 1957 directing petitioners to surrender to the Register of Deeds of Rizal their owner's duplicate of Transfer Certificate of Title No. 51585 in order that the attorney's lien of their former counsel Flaviano T. Dalisay, Jr. may be annotated on the back thereof.

Petitioners are the widow and children of the late Valeriano Caina who was the owner of a parcel of land covered by Transfer Certificate of Title No. 21702. A portion of this property was transferred to one Gavina Cierte de Andal and as a result said title was cancelled and a new one issued in their names bearing No. 51585. Respondent Flaviano T. Dalisay, Jr. was the attorney of one of petitioners, Elena Peralta Vda. de Caina, in an action for ejectment filed before the Justice of the Peace of Caloocan, Rizal, against one Ricardo Nabong, which was dismissed and appealed to the Court of First Instance of Rizal. In the latter court, the case was docketed as Civil Case No. 3875, and because of the non-appearance of defendant, the latter was declared in default and judgment was rendered in favor of plaintiff. This judgment became final and executory for lack of appeal.

On June 26, 1957, respondent Dalisay filed a motion in the same ejectment case for annotation of his attorney's lien on the back of Transfer Certificate of Title No. 51585 claiming that, notwithstanding the services he had rendered to the widow and her children who were represented by him in said case, they have failed to pay him his attorney's fees which he fixed at P2,020. This motion was set for hearing and thereafter the same was granted in an order entered on July 10, 1957 wherein the court ordered petitioners to surrender their duplicate copy of said certificate in order that the annotation requested may be made. Upon receipt of a copy of this order, petitioners filed a motion for reconsideration alleging that they were never furnished with a copy of respondent's motion, nor notified of the date of its hearing, for which reason they were not able to appear to contest the same.

This motion was opposed by respondent Dalisay who averred that petitioners were furnished with a copy of his motion by registered mail three days before the hearing as shown by the return card attached to his written opposition. And on August 27, 1957, the court denied the motion. Hence the present petition for certiorari.

This issue, to be determined is whether the attorney's lien of respondent Dalisay for services he had rendered in the ejectment case can be ordered annotated on the back of Transfer Certificate of Title No. 51585. An attorney's lien is of two kinds: one is called retaining alien and the other charging lien. The retaining lien is the right of the attorney to retain the funds, documents, and papers of his client which have lawfully come into his possession until his lawful fees and disbursements have been paid and to apply such funds to the satisfaction thereof. The charging lien is the right which the attorney has upon all judgments for the payment of money, and executions issued in pursuance of said judgments, which he has secured in a litigation of his client (Section 33, Rule 127;

Rustia vs. Abeto, 72 Phil., 133). Under this rule, this lien, whether retaining or charging, takes legal effect only from and after, but not before, notice of said lien has been entered in the record and served on the adverse party (Macondray & Company, Inc. vs. Jose, 66 Phil., 590; Menzi and Company vs. Bastida, 63 Phil., 16).

It may therefore be seen that the right of a lawyer to insure the payment of his professional fee is either to retain the funds, documents, and papers of his client which may have lawfully come into his possession, or to enforce it upon any judgment for the payment of money he may secure in favor of his client. And it has been held that the retaining lien is dependent upon possession and does not attach to anything not in attorney's hand³. The lien exists only so long as the attorney retains possession ends (Rustia vs. Abeto, supra).

In the instant case, the lien which respondent attorney tried to enforce for the satisfaction of his professional fee is charging in the sense that his purpose is to make of record his claim in order that it may be considered in the execution of the judgment that may be rendered in the case, and this he has already done. Thus, he had already caused a statement of his claim to be entered in the record of the ejectment case and that is all what the rule requires of him to do. Certainly, he cannot go any further, such as what he led the trial court to do, that is, to have his lien annotated on the back of the title of petitioners which is beyond the province of the court. The lien of respondent is not of a nature which attaches to the property in litigation but is at most a personal claim enforceable by a writ of execution. The respondent judge has therefore exceeded his authority in issuing the order subject of the present petition for certiorari.

Petition is granted. The order of respondent judge dated July 10, 1957 is hereby set aside. Costs against respondent Flaviano T. Dalisay, Jr.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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