

**MAGDALENA ESTATE, INC., PETITIONER AND APPELLEE, VS.
ALFONSO YUCHENGCO, ETC., OPPOSITOR AND APPELLANT.***G.R. No. 12963. May 30, 1960*

Ponente: BAUTISTA ANGELO, J.

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This is an appeal from an order of the Court of First Instance of Quezon City, acting as land registration court, directing the register of deeds to cancel the annotation of mortgage appearing on the back of Transfer Certificate of Title No. 21440 (21077) upon petitioner's posting a surety bond in the amount of P10,000.00.

On December 16, 1935, K. H. Hemady, President and General Manager of the Magdalena Estate, Inc. and the China Insurance & Surety Co., Inc., signed jointly and severally a promissory note in favor of the Oriental Investments Corporation for the sum of P8,000.00 payable within 60 days from said date. As security for the payment of all damages, losses, and expenses, including attorney's fees, which the China Insurance & Surety Co., Inc. may incur in case Hemady fails to pay said note, the Magdalena Estate, Inc., petitioner herein, executed a mortgage in favor of the China Insurance & Surety Co., Inc. on a parcel of land covered by Transfer Certificate of Title No. 21440 (21077) which was registered on December 17, 1935 and annotated on the back of said title.

On May 25, 1955, the Magdalena Estate, Inc. filed a petition in the Court of First Instance of Quezon City, Branch V (G.L.R.O. No. 917) alleging, among others, that sometime in 1951 Hemady asked counsel to prepare the cancellation of the mortgage because the promissory note for P8,000.00 has already been paid but on account of the fact that the president of the China Insurance & Surety Co., Inc. cannot be found and Hemady died in 1952, the cancellation was not effected. Petitioner prayed for the cancellation of the mortgage not only because the promissory note has long been paid but also on the ground of prescription, no action having been taken by the China Insurance & Surety Co., Inc. for the foreclosure of the mortgage, nor by the Oriental Investments Corporation against K. H. Hemady and the China Insurance & Surety Co., Inc. for the collection of the promissory note, since the execution of the mortgage on December 16, 1935.

After a copy of the petition was served upon Alfonso Yuchengco, executor of the estate of the late Enrique T. Yuchengco, the latter being the majority stockholder of the China Insurance & Surety Co., Inc., he filed, thru counsel, an opposition to the petition alleging that due to the dispute among some of the heirs of the late Enrique T. Yuchengco, "he has, up to the present, been unable to obtain authority to take the necessary steps to liquidate the China Insurance & Surety Co., Inc. and to legally represent it in court litigation", and that although 19 years had already elapsed since the execution of the mortgage, it does not necessarily follow that the action based on said mortgage had already prescribed. Oppositor alleged further that as the record of the China Insurance & Surety Co., Inc. has not been reconstituted which would enable him to verify the payment alleged by petitioner and he finds no evidence to show that the promissory note guaranteed by the mortgage was in fact paid, the petition is premature and should be denied.

After trial, the court, presided over by Hon. Nicasio Yatco, issued an order on May 23, 1956 denying the petition

on the ground that there being no proof of payment of the mortgage indebtedness and prescription having been alleged as a reason therefor, no order can be issued for the cancellation of the mortgage because "such matter could be threshed out only when it sits as a court of general jurisdiction and not when it is sitting as a land registration court, which has only a special and limited jurisdiction."

After the order of May 23, 1956 had become final, petitioner filed a motion for reconsideration contending that if the court is of the opinion that it has jurisdiction to order the cancellation of the mortgage if proof of payment is presented, it likewise has jurisdiction to pass on the question of prescription as a cause of extinguishment, citing in its favor Section 112 of Act No. 496. It averred further that since the Oriental Investments Corporation which, as certified to by the Securities and Exchange Commission, is not registered in said office either as a corporation or a partnership, (Exhibit A) did not file any claim in the intestate proceedings of the late Hemady within the period prescribed by law, the corporation is already barred from filing any action on the promissory note and so the cancellation of the mortgage is in order. The court, on July 16, 1956, denied the motion for reconsideration on the same ground of lack of jurisdiction.

On August 20, 1956, petitioner again filed an identical petition praying that, since the court is authorized to cancel any memorandum or grant any relief under Section 312 of Act No. 496 provided a security is given therefor, it be allowed to post a bond in the amount of P8,000.00 in lieu of the mortgage on condition that the cancellation of this encumbrance be ordered. But again, the court denied the petition in an order of the following tenor:

"Considering that the herein petition is analogous to another petition filed by the same petitioner under date of August 20, 1956, which has already been passed upon by this Court and its order therein has already become final, this Court suggests to counsel for petitioner to make proper negotiations for the transfer of this case to the other sala."

Subsequently, the case was transferred to Branch IV presided over by Judge Hermogenes Caluag. Pursuant to the agreement of the parties, oppositor filed his opposition to the petition for cancellation stating his reasons therefor, and after the court had heard the arguments of both parties, it granted the relief prayed for as stated in the early part of this decision.

Oppositor appealed to the Court of Appeals, but having found that the questions involved are of law, it certified the case to us.

Appellant now contends (1) that the lower court, sitting as a court of land registration, erred in taking cognizance of the petition and in issuing the order of October 26, 1956; (2) assuming that it has such jurisdiction, it erred in issuing the order on the ground of *res judicata*; and (3) the lower court erred in ordering the cancellation of the mortgage even upon the filing of a surety bond by appellee.

The main issue which in our opinion should be determined is: Can a court of first instance, acting as land registration court, order the cancellation of a mortgage annotated on a certificate of title provided that a bond be put up in lieu thereof even without the consent of the mortgagee?

Petitioner-appellee contends that it can do so under Section 112 of Act 496 which in part provides:

"* * * Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; * * * or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it

may deem proper." (*Italics supplied*)

The law relied on by appellee cannot be applied because it cannot be doubted that when the mortgagee China Insurance & Surety Co., Inc. signed jointly and severally the promissory note with Hemady in favor of the Oriental Investments Corporation, it did so only on condition that the Magdalena Estate, Inc. should mortgage the property in question in its favor to secure its undertaking. And in order to make it effective, this mortgage was registered and annotated on the back of the certificate of title. To order the substitution of the mortgage for a surety bond would in effect novate the contract entered into between the parties which cannot be done without their consent. Here that consent is lacking. If this cannot be done by a court of general jurisdiction, much less can it be done by a court of limited and special jurisdiction under Section 112 of Act 496. Evidently, the lower court, in issuing the order appealed from acted in excess of the power and jurisdiction granted to it by said Act.

Wherefore, the order appealed from is set aside, with costs against appellee Magdalena Estate, Inc.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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