

ROGELIA P. DIAZ-DUARTE, PETITIONER, VS. SPS. BEN AND ETHYL ONG, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 130352. November 03, 1998

Ponente: PUNO, J.

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PUNO, J.:

Before us is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to set aside the decision of the Court of Appeals awarding Lot 1208 to respondent spouses Ben and Ethyl Ong.[1]

The facts are as succinctly summarized by the trial court, viz:

"Macario Diaz married Encarnacion Reyes sometime in 1895. Out of this union, Trinidad Diaz was born in 1896. Sometime in 1903, Encarnacion Reyes died. In 1905, Macario Diaz married Cristina Pedrosa. Out of this union, x x x, Rogelia-Diaz Duarte was born in 1910.

"Trinidad Diaz, x x x, married Filomeno Arteche. This marriage was blessed by nine children, including Encarnacion Arteche and all the other plaintiffs in the case in the trial court. Trinidad Arteche died on March 21, 1977.

"On October 28, 1932, in Cadastral Case No. 17, GLRO Cad. Record No. 1040, Judge Luciano Ortiz adjudicated Lot 1208 of the Tacloban Cadastre, located in Marasbaras, Tacloban City, containing 26,738 square meters to 'Macario Diaz married to Cristina Pedrosa, of Tacloban, Province of Leyte, Philippines'. The decision having become final, Decree No. 639202 was issued by the General Land Registration Office on August 18, 1937, and Original Certificate of Title No. 19486 was issued.

"On April 30, 1941, Macario Diaz died and on October 2, 1962, his second wife Cristina died. On June 6, 1979, Rogelia Diaz-Duarte issued an Affidavit of Adjudication and Sale of Lot 1208 of the Tacloban Cadastre in favor of Wilfredo M. Corregidor for P20,000.00 before Notary Public Atty. Antonio F. Mendiola of Tacloban City who entered the same as Doc. No. 445, Page 40, Book 29, Series of 1979. By virtue of this sale, OCT No. 19486 of Macario Diaz was cancelled and in its place TCT No. T-17501 was issued by the Register of Deeds of Tacloban City in favor of Wilfredo Corregidor on June 25, 1979.

"On October 12, 1979, Wilfredo Corregidor sold back Lots 1208, 3332, and 3364 of the Tacloban Cadastre to Mrs. Rogelia Diaz-Duarte for P33,000.00 as evidenced by a deed of repurchase executed by him on said date before Notary Public Atty. Victor C. Veloso of Tacloban City who entered the same as Doc. No. 5, Page 2, Book I, Series of 1979.

"On October 17, 1979, Mrs. Rogelia Diaz-Duarte executed an adverse claim to Lot 1208 covered by TCT No. T-17501 of Wilfredo Corregidor on the basis of the deed of sale executed by Wilfredo to her on October 12, 1979.

"On April 10, 1980, 30 days having elapsed, the affidavit of adverse claim of Diaz-Duarte was cancelled by the Register of Deeds of Tacloban City, albeit erroneously, pursuant to Sec. 70 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree of the Philippines.

"On February 28, 1981, notwithstanding the resale of the property made by him in favor of Mrs. Rogelia Diaz-Duarte in 1979, Wilfredo Corregidor sold again Lot 1208 to Ben S. Ong and his wife Ethyl Ong for P35,000.00 under a deed of absolute sale executed by him on said date before a Notary Public who entered the same as Doc. No. 380, Page 79, Book I, series of 1981.

"On July 21, 1981, Ben S. Ong mortgaged Lot 1208 and some other properties to the Rizal Commercial Banking Corporation to secure a loan of P450,000.00.

"On February 17, 1983, Encarnacion A. Arteche and the other children and heirs of the deceased Trinidad Diaz-Arteche, filed a civil case for recovery of Lot 1208 of the Tacloban Cadastre against herein petitioner Rogelia Diaz-Duarte, Wilfredo Corregidor and his wife, Ben S. Ong and his wife, and the Rizal Commercial Banking Corporation and Pablo G. Amascual Jr., the Register of Deeds of Tacloban City." [2]

On October 28, 1985, the Regional Trial Court, 8th Judicial Region decided the civil case for the recovery of Lot 1208 in favor of Encarnacion Arteche, et. al., to wit: [3]

"Wherefore, judgment is hereby rendered as follows:

"1. Declaring the affidavit of Adjudication and Sale of Lot 1208 of the Tacloban Cadastre executed by Rogelia Diaz-Duarte on June 6, 1979 as null and void being a false document it having been established to the satisfaction of the court that Mrs. Rogelia-Diaz Duarte is not the sole heir of Macario Diaz, original owner of Lot 1208;

"2. Ordering the Register of Deeds of Tacloban City, to cancel Transfer Certificate of Title No. T-17501 of Wilfredo Corregidor and Roseanna F. Corregidor of Lot 1208 of the Tacloban Cadastre and all certificates of title emanating therefrom including TCT No. 20338 of Ben S. Ong and Ethyl Ong;

"3. Ordering the Register of Deeds of Tacloban to cancel TCT No. 20338 of Ben S. Ong and his wife Ethyl Y. Ong to Lot 1208 of the Tacloban Cadastre and issue in lieu thereof a new transfer certificate of title to the following persons: Mrs. Rogelia Diaz-Duarte, of legal age, widow and residing in Tacloban City, three-fourth or 20,052 square meters; and to the Heirs of Trinidad Diaz Arteche, represented by Mrs. Encarnacion A. Benedicto of Tacloban City, Philippines, one-fourth or 6,684 square meters, subject to the mortgage lien of the Rizal Commercial Banking Corporation.

"4. Ordering the defendants to pay the costs.

"SO ORDERED."

The defendants appealed but only the appeal of spouses Ben and Ethyl Ong was considered by the Court of Appeals as Wilfredo Corregidor, Rizal Banking Corporation and Pablo Amascual failed to file their respective briefs. [4] In their appeal, appellant-spouses raised the following errors, to wit:

I

"The trial court erred in admitting as evidence and giving it any probative value the parol testimony of the defendant Rogelia Diaz-Duarte as to the affidavit of adjudication with deed of absolute sale of the land in question executed by Rogelia Diaz Duarte in favor of Wilfredo Corregidor on June 6, 1979."

II

"The trial court erred in not finding or declaring that the affidavit of adjudication with deed of absolute sale of the land in question executed by Rogelia Diaz Duarte in favor of Wilfredo Coregidor was valid and legal.

III

"The trial court erred in not finding or declaring the deed of repurchase of the land in question executed by Wilfredo Corregidor in favor of Rogelia Diaz-Duarte on October 17, 1979 was absolutely simulated or fictitious.

IV

"The trial court erred in not declaring or finding that the deed of sale of the land in question executed by Wilfredo Corregidor in favor of the spouses Ben S. Ong and Ethyl Y. Ong on February 28, 1981 as valid and legal.

V

"The trial court erred in not declaring or finding that Rogelia Diaz-Duarte was the sole heir of Macario Diaz with respect to the property in question.

VI

"The trial court erred in ordering the cancellation of Transfer Certificate of Title No. T-20338 of Ben S. Ong and Ethyl Y. Ong of the land in question and the issuance of new transfer certificates of title to Rogelia Diaz-Duarte and to the heirs of Trinidad Diaz Arteché for the three fourth (3/4) and one fourth (1/4) portions of the land in litigation, respectively in their names by the Register of Deeds of Tacloban City."

The appellate court sustained the fourth and sixth assigned errors of the appellant-spouses. It awarded Lot 1208 to appellant-spouses Ben and Ethyl Ong after a finding that they were buyers in good faith and for value.

Hence, this petition where Rogelia Diaz-Duarte contends:

I

THE COURT A QUO GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN HOLDING THAT THE SPOUSES ONG WERE INNOCENT PURCHASERS FOR VALUE AND IN GOOD FAITH.

II

THE COURT A QUO GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN DISREGARDING THE FINDING OF THE TRIAL COURT THAT THE SPOUSES ONG WERE BUYERS IN BAD FAITH.

III

THE COURT A QUO SERIOUSLY ERRED IN DISREGARDING THE WRONGFUL AND ILLEGAL CANCELLATION OF PETITIONER'S ADVERSE CLAIM.

IV

THE COURT A QUO SERIOUSLY ERRED IN FINDING THAT PETITIONER HAS LOST HER RIGHTS OVER THE SUBJECT PROPERTY.

The core issue is who between petitioner Rogelia Diaz-Duarte and respondent spouses Ong, has a better right over Lot 1208. Petitioner claims ownership over Lot 1208 on the basis of the deed of repurchase between her and Wilfredo Corregidor. When the latter refused to surrender TCT No. T-17501 to her, she caused to be annotated thereon a notice of adverse claim. On the other hand, respondent spouses aver that they own Lot 1208, having bought the same from Corregidor without knowledge of its encumbrance. They contend that petitioner's notice of adverse claim in Corregidor's title, was already cancelled when they bought the property. Petitioner disputes the legality of said cancellation. She maintains that the Registrar of Deeds should not have automatically cancelled the notice of adverse claim simply because the 30-day period has lapsed.

We find for petitioner.

The good faith of appellant-spouses rests heavily on whether the notice of adverse claim on Lot 1208 was validly cancelled by the Registrar of Deeds. The issue is no longer of first impression. In the 1996 case of *Sajonas v. Court of Appeals*,^[5] we explained that a notice of adverse claim remains valid even after the lapse of the 30-day period provided by Section 70 of P.D. No. 1529 or the Property Registration Decree. Section 70 provides:

"Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing, setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.

"The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest. Provided, however that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant."

We explained in *Sajonas* that for as long as there is yet no petition for its cancellation, the notice of adverse claim remains subsisting: Thus:

"At first blush, the provision in question would seem to restrict the effectivity of the adverse claim to thirty days. But the above provision cannot and should not be treated separately, but should be read in relation to the sentence following, which reads:

'After the lapse of said period, the annotation of the adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest.'

"If the rationale of the law was for the adverse claim to ipso facto lose force and effect after the lapse of thirty days, then it would not have been necessary to include the foregoing caveat to clarify and complete the rule. For then, no adverse claim need be cancelled. If it has been automatically terminated by mere lapse of time, the law would not have required the party in interest to do a useless act." [6]

In a petition for cancellation of adverse claim, a hearing must first be conducted. The hearing will afford the parties an opportunity to prove the propriety or impropriety of the adverse claim. [7] Petitioner was unlawfully denied this opportunity when the Registrar of Deeds automatically cancelled the adverse claim. Needless to state, the cancellation of her adverse claim is ineffective.

But this is not all. Appellant spouses alleged good faith is negated by the evidence on record. At the trial court, respondent spouses declared that they retained Atty. Rufino Reyes to assist them in buying Lot 1208. According to Atty. Reyes, his clients asked him to verify the status of the land from the Register of Deeds. However, he failed to do so. Had he done so, he would have discovered the adverse claim of the petitioner over the lot. He would have also known that the adverse claim was cancelled by the Registrar on his own and not because any petition was made by any party-in-interest. [8] Respondent spouses are bound by the negligence of their lawyer.

Time and again, we have reiterated that a purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. [9] The adverse claim of petitioner Rogelia Diaz-Duarte was annotated in Corregidor's title as early as October 17, 1979. It was existing when Corregidor sold the property to respondents Ong on February 28, 1981. Hence, respondent spouses cannot be considered innocent purchasers for value and in good faith. Their claim over Lot 1208 must yield to the lien in favor of petitioner. [10]

IN VIEW WHEREOF, the decision of the Court of Appeals in C.A. G.R. CV No. 09598, is REVERSED and the decision of the trial court is hereby REINSTATED. No costs.

SO ORDERED.

Melo, (Acting Chairman), Mendoza and Martinez, JJ., concur.

[1] C.A. G.R. CV No. 09598.

[2] Court of Appeals Decision, pp. 2-5; Rollo, pp. 41- 44.

[3] Civil Case No. 6545 entitled "Encarnacion A. Benedicto, et al. v. Rogelia Diaz-Duarte, et al."

[4] Court of Appeals Decision, p. 2; Rollo, p. 41.

[5] 258 SCRA 79 (1996).

[6] Supra note 5.

[7] Id. See also Gonzales v. Bersamin, 254 SCRA 652 (1996).

[8] TSN, June 8, 1984, pp. 3-8.

[9] Sandoval v. Court of Appeals, 263 SCRA 275 (1996).

[10] Yu v. Court of Appeals, 251 SCRA 509 (1995).

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