

**IN THE MATTER OF THE PETITION TO CANCEL NOTICE OF LIS
PENDENS ON TRANSFER CERTIFICATE OF TITLE NO. 13960. EWALD
E. SELPH, ETC., PETITIONER. EWALD E. SELPH, ETC., PLAINTIFF AND
A...**

G.R. No. 13465. March 29, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from a decision of the Quezon court of first instance, concerning a ten-hectare land in Atimonan, same province, originally registered in 1917, under Torrens Certificate of Title No. 228.

Appellant does not dispute the facts. This property was after 1917 acquired by Lois Capule, wife of Simeon C. Capule, to whom Transfer Certificate of Title No. 4338 was issued. This certificate of title was later cancelled and substituted on October 2, 1930, by Transfer Certificate of Title No. 4610 in the name of Lois D. Capule. Thereafter, on October 21, 1930, Valentin Devilles obtained judgment against the Capule couple; and the latter's right and interest to the property were levied upon by virtue of two writs of execution which culminated in the sale to Devilles of the land, at public auction. Such sale was noted in February 1931 on Transfer Certificate of Title No. 4610.

Subsequently, Capule presented a complaint against Devilles which was docketed as Civil Case No. 2614. Capule won and, on March 14, 1931, reacquired the land at the Sheriffs sale, also on execution. Transfer Certificate of Title No. 5568 was consequently issued to Capule, who mortgaged the property to Manila Trading & Supply Company on October 17, 1931, to secure the payment of sixteen (16) promissory notes, as shown in the records of the Office of the Register of Deeds.

A month later or on November 14, 1931, Devilles named the spouses Capule and the Provincial Sheriff of Tayabas in a complaint (Civil Case No. 3145) to annul the execution of the judgment in Civil Case No. 2614 and to cancel the Sheriff's sale to the Capules. On the same date, Devilles caused a Notice of Lis Pendens to be inscribed in Capule's certificate of title and in the land records.

The Capules failed to pay their monetary obligation to Manila Trading & Supply Company; and judgment having been rendered in favor of Manila Trading & Supply Co., the Sheriff (November 1934) sold the property at foreclosure sale to Manila Trading & Supply Co. Capule's Transfer Certificate of Title No. 5568 was consequently cancelled and a new one, Transfer Certificate of Title No. 8578, was issued to Manila Trading & Supply Co. The, notice of Lis Pendens was annotated in this new certificate of title of Manila Trading & Supply Co.

On April 13, 1934, Valentin Devilles at last won his Civil Case No. 3145, the Supreme Court declaring (G. R. No. 40283),

"* * * The sale had by virtue of the execution of the judgment in Case No. 2614 of the Court of First Instance

of Tayabas is declared null and void and it is further ordered that the Transfer Certificate of Title No. 5568 in favor of Simeon C. Capule and Lois D. Capule, which cancelled Transfer Certificate of Title No. 4610 in favor of Valentin Devilles, be cancelled and that a new certificate of title covering the same land be issued in favor of Valentin Devilles * * *."

By documents executed on July 8, 1936, October 3, 1944 and October 14, 1949, Valentin Devilles sold the property to the spouses Vicente Aguilar and Gliceria Manalo Vda. de Aguilar (herein appellee).

On October 22, 1951, the Quezon Register of Deeds addressed a letter to Manila Trading & Supply Co., requiring the surrender of the owner's duplicate of Transfer Certificate of Title No. 8578, for cancellation in accordance with this Supreme Court's above mentioned decision.

On September 15, 1952, Manila Trading & Supply Co. sold the property, subject to the Lis Pendens to Julius S. Reese, its president; and Transfer Certificate of Title No. 13960 was issued in the latter's name, with annotation of the Lis Pendens.

On December 21, 1956, the administrator of the estate of Julius S. Reese (who had died), presented to the Quezon court a petition under sec. 112 of Act 496 for cancellation of the annotation of lis pendens, inasmuch as the litigation named therein had been decided in April 1934 but such decision, never having been executed for 21 years had lost its binding force. Her husband having died, Gliceria Manalo de Aguilar filed an opposition.

Thereafter, a few days after his petition, Reese's administrator presented a complaint against her to get possession of the property, plus damages, and attorneys' fees.

Defendant Aguilar set up the ownership of Devilles, the transfers made to her and her husband, plus the decision of this Supreme Court annulling the titles of the Capules. And she asked that the Register of Deeds be required to issue title in her favor.

The petition was heard together with the complaint, and the Hon. Vicente del Rosario, Judge, rendered one decision, the dispositive portion of which reads as follows:

"PREMISED on the foregoing considerations, judgment is hereby rendered in favor of the defendant and against the plaintiff dismissing the complaint and the petition to cancel the lis pendens existing against Transfer Certificate of Title No. 13960, declaring the defendant the absolute owner of the property in litigation and ordering the plaintiff as administrator of the estate of the deceased Julius S. Reese to deliver to the Register of Deeds of the province of Quezon the owner's duplicate of Transfer Certificate of Title No. 13960 and authorizing the Register of Deeds to cancel it and issue a new certificate of title' in the name of the defendant Gliceria Manalo Vda. de Aguilar with' the alternative order that in the event that the plaintiff refuses to deliver to the Register of Deeds the owner's duplicate of the certificate of title in question within 15 days from the date this decision shall have become final, the Register of Deeds shall cancel said owner's duplicate of Transfer Certificate of Title No. 13660 and shall issue a new certificate of title in favor of Gliceria Manalo Vda. de Aguilar * * *."

It is undisputed that, this land has always been in the possession of Devilles first, and of the spouses Vicente Aguilar later. Now Reese wishes to recover ownership and possession thereof on the strength of the title he obtained from Manila Trading & Supply Co. But Manila Trading & Supply Co. derives ownership from the Capules^[1] whose title in turn has been voided by the decision of this Supreme Court. On the other hand, the Aguilars are the transferees of Devilles whose title to the land (in a suit against the Capules) was expressly upheld by this Supreme Court. Both Reese and the Manila Trading, were aware of that suit by virtue of the lis pendens notice, and are bound by the judgment against the Capules, their predecessor in interest.^[2]

However, Reese claims the lis pendens may not adversely affect him because the Supreme Court decision was not

shown to the Register of Deeds until the year 1951, contrary to sec. 79 of the Land Registration Law, which provides:

"SEC. 79. No * * * judgment or decree and no proceeding to vacate or reverse any judgment or decree, shall have any effect on registered land as against persons other than the parties thereto, unless a memorandum * * * shall be filed and registered * * * Provided, however, That in case notice of the pendency of the action has been duly registered it shall be sufficient to register the judgment or decree in such action within sixty days (60) after the rendition thereof."

We think this section does not say that if the judgment is not registered within 60 days, the notice will not be binding. And even if it said so, the judgment will not be binding only as against persons other than the parties to the suit. It is still binding on, the parties (the Capules) and we hold also on the successors of such parties (like Manila Trading Co. and Reese), particularly because the titles of these successors bear the annotation relating to the *lis pendens*.

Indeed, even admitting for the sake of argument that the annotation in the Register's Office concerning the *lis pendens* had become ineffective by reason of non-presentation (to the Register) of this Court's 1934 decision there is still ample ground to hold that as Reese purchased the property with actual notice of the controversy over the title thereto, he was particularly subject to its outcome.

But the appellant argues: the appealed order would enforce the judgment of 1934, which has prescribed, more than ten years having elapsed since that year.

Remember, however, that although action on a judgment prescribes after ten years, the period begins from the time such judgment becomes final;^[3] and no proof exists as to the date when the judgment of 1934 became final. And then, in so far as Reese's attempt to get possession, the decision may be invoked in defense as *res judicata* which does not prescribe.^[4]

As to the order for surrender of the title and the issuance of a new certificate, Reese may not object on the ground of non-enforcement and prescription of the 1934 decision, because if any one could object thereto, it was the Register of Deeds who was called upon to implement the order of cancellation and issuance; and yet he has shown willingness to comply. It is true that in complying, the Register is now requiring Reese in turn to surrender his title. But the latter may not properly refuse, because he received such title from the Register upon his undertaking to respect the outcome of the litigation, the title being expressly subject thereto, by the annotation of *lis pendens*.^[5]

At any rate, according to sec. 81 of the Land Registration Act, the judgment in 1934 was "entitled to registration" upon presentation of appropriate papers to the Register of Deeds; and the section fixes no time for such presentation.^[6] And when such officer was requested in accordance with the 1934 judgment to cancel the outstanding title and to issue another in the name of Devilles' successors, he was authorized to take adequate measures by sec. 111, Act 496 of the law applicable, which reads as follows:

"SEC. 111. In every case where the cleric or any register of deeds is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the clerk or register of deeds shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the court. The court, after hearing, may order the registered owner or any person withholding the duplicate to surrender the same, and direct the entry of a new certificate of title upon such surrender."

Accordingly, the Register of Deeds required Manila Trading to surrender the title, and its refusal or failure gave

Devilles' successors the right to petition the court for appropriate orders in other words, a right of action[7] which obviously had not yet prescribed when it was asserted in the Tayabas court as a counterclaim in this case.

The appealed order is affirmed, with costs.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera and Gutierrez David, JJ., concur.

Padilla and Endencia, JJ., took no part.

[1] Chunaco vs. Partab, 43 Off. Gaz., 8729.

[2] Cruz Correa vs. Pascual, 99 Phil., 696; 52 Off. Gaz., 4683; Director of Lands vs. Martin, 84 Phil., 140; 47 Off. Gaz., 320.

[3] Art. 1152, New Civil Code.

[4] Apurada vs. Court of Appeals, L-6067, Feb. 21, 1955.

[5] Acknowledgment tolls or revives prescription. 54 Corpus Juris Secundum, Limitation of Actions, sec. 304.

[6] In fact, judging from the preceding sec. 80, it could be presented "at any time". The period for registration of document of ownership is not fixed by the statute of limitations. Indeed, the 1934 decision may be likened to a decree of registration (the lis pendens being notice to the whole world) which may be implemented even after ten years. (Manlapas vs. Llorente, 48 Phil., 298.)

[7] Which accrued at the earliest in October 1951 when the Register required presentation.

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