

TEOPISTA B. DE BALANGA, PETITIONER, VS. THE COURT OF APPEALS AND LUIS MANALANG, RESPONDENTS.

G.R. No. 15438. January 31, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari which seeks to reverse the decision of the Court of Appeals affirming that of the Court of First Instance of Manila, sitting as cadastral court, and ordering the cancellation of Transfer Certificate of Title No. 13363 in the name of petitioner and the issuance of a new one in the name of respondent.

It appears that on August 20, 1947, Teopista B. de Balanga mortgaged to Dr. Augusto V. Ongsiako a parcel of land, together with a house of strong materials standing thereon, for the sum of P5,000.00. This land is covered by Transfer Certificate of Title No. 13363 issued to Teopista as follows: "Registered in the name of Teopista B. de Balanga, married to Faustino A. Balanga." This mortgage was registered in the Office of the Register of Deeds of Manila and duly annotated on said title.

After paying the indebtedness resulting in the cancellation of the mortgage, Teopista obtained from spouses Catalino Clemente and Andrea Reyes Clemente a loan of P6,050.00 payable within one year from November 21, 1948. To secure the loan, Teopista delivered to them her Certificate of Title No. 13363 promising to execute later a deed of mortgage on the land covered by said title. As Teopista was not able to comply with her promise, the Clemente spouses filed on July 31, 1954 an action against her seeking to compel her to execute the deed of mortgage which she promised, as well as to recover the sum of P5,750.00, with legal interest from November 21, 1954, plus damages and attorney's fees.

Meantime, Faustino Balanga died on August 3, 1949, survived by his widow Teopista and two minor children, Nelson and Rey. As Teopista failed to appear at the hearing, she was declared in default in an order entered on September 20, 1954. She moved to lift said order, but her motion was denied. After plaintiffs had presented their evidence, the court rendered decision ordering Teopista to pay them the sum of P5,750.00, with legal interest from the filing of the complaint, while allowing them to levy on the land described in the title given by Teopista after the decision had become final. In addition, plaintiffs were awarded attorney's fees in the amount of P500.00, plus costs.

The decision having become final, an order of execution was issued with the result that the land and the improvements standing thereon were sold by the sheriff at an auction sale to the Clemente spouses as the highest bidders. Subsequently, said spouses sold the land with its improvements to their counsel Luis Manalang for the sum of P6,760.09, subject to the right of redemption of the judgment-debtor. When the latter failed to redeem the property, a certificate of sale was issued in favor of the spouses. This certificate, together with the deed of sale executed by them in favor of Manalang, were registered and annotated on the back Certificate of Title No. 13363.

On March 8, 1956, Manalang filed a petition in the Court of First Instance of Manila, sitting as registration court, praying for the cancellation of said title and the issuance of another in his name, pursuant to Section 78 of Act No.

496, which provides:

"Sec. 78. Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description, the person claiming under the execution or under any deed or other instrument made in the course of proceedings to levy execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted: Provided, however, That every new certificate entered under this section shall contain a memorandum of the nature of the proceeding on which it is based: Provided, further, That at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under executions or to enforce liens of any description."

Teopista Balanga opposed the petition on the grounds, among others: (1) since the property levied upon and sold by the sheriff is conjugal in character, the issuance of a new title in favor of Luis Manalang would prejudice her two minor children, Nelson and Rey, heirs of her late husband; and (2) inasmuch as the property was in litigation at the time Manalang acted as counsel of the Clemente spouses, the transfer of said property to him is null and void, it being in violation of the prohibition enjoined in Articles 1491 and 1492 of the new Civil Code. And in a memorandum she submitted in support of her opposition, she contended that the house worth P17,000.00 erected on the land sold is a family home which she owned in common with her late husband, and as such it should not have been included in the sale made by the sheriff. She prayed that the petition be dismissed.

After Manalang had filed his answer, the court rendered decision granting the petition. In due time, Teopista Balanga appealed to the Court of Appeals, which affirmed in toto the decision of the cadastral court. Hence the present petition for review.

The main issue posed by petitioner refers to the jurisdiction of the cadastral court in entertaining the petition which, according to her, was passed sub-silencio by the Court of Appeals. She contends that the cadastral court should not have taken cognizance of the petition because she raised important controversial questions which can only be passed upon by the regular court, among which are: (1) whether or not the land in question which is covered by a torrens title issued in the name of Teopista B. de Balanga married, to Faustina A. Balanga, has the character of conjugal property of the spouses; (2) whether or not the house erected on the land during their marital life has the same category; and (3) whether or not said house can be deemed to have been included in the auction sale made by the sheriff it not having been annotated as an improvement on the certificate of title. Petitioner further argues that even if we grant that the levy and sale made by the sheriff is valid, the same can only affect her share in the conjugal properties and cannot include that which pertains to the minor children or heirs of her late husband.

We find this contention meritorious. While it is true that Section 78 of Act 496 on which the petition is based provides that upon the failure of the judgment-debtor to redeem the property sold at public auction the purchaser of the land may be granted a new certificate of title, the exercise of such function is qualified by the proviso that "at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under executions or to enforce liens of any description." The right, therefore, to petition for a new certificate under said section is not absolute but subject to the determination of any objection that may be interposed relative to the validity of the proceedings leading to the transfer of the land subject thereof which should be threshed out in a separate appropriate action. This is the situation that obtains herein. Teopista Balanga, the judgment-debtor, is trying to impeach or annul the execution and sale of the properties in question by alleging that they are conjugal in nature and the house erected on the land has been constituted as a family home which under the law is exempt from execution. These questions should first be determined by the court in an ordinary action before entry of a new certificate may be decreed.

This pronouncement is also in line with the interpretation we have placed in Section 112 of the same Act to the effect that although cadastral courts are empowered to order the cancellation of a certificate of title and the issuance of a new one in favor of the purchaser of the land covered by it, such relief can only be granted if there is unanimity among the parties, or no serious objection is interposed by a party in interest. As this Court has aptly said: "while this section, (112) among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title * * * and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs" (Angeles vs. Razon, 106 Phil., 384, and cases cited therein). Anyway, in cases of this nature, the decision of the court of first instance rendered in the exercise of its general jurisdiction may be registered and serve as basis for the cancellation of the current certificate of title and the issuance of a new one without the previous confirmation of the cadastral court.[1]

Wherefore, the decision appealed from is set aside, without prejudice on the part of oppositor Teopista Balanga to file in the proper court the necessary action to determine the questions raised by her in her opposition, and for this purpose she is given a period of thirty (30) days from the date this decision becomes final. Failure on her part to take such action would be deemed a waiver of her objection and would entitle Luis Manalang to secure the relief he is asking for. No costs.

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

[1] Abrasia vs. Carian, 102 Phil., 321; 54 Off. Gaz. [37] 8425.

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