

**IN RE: PETITION FOR CANCELLATION OF ADVERSE CLAIM.
ANANIAS ABUSTAN, PETITIONER AND APPELLEE, VS. RUPERTO
FERRER AND CONSUELO V. GOLEZ (SPOUSES), OPPOSITORS AND
APPELLANTS.**

G. R. No. 19519. November 28, 1964

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The spouses Ruperto Ferrer and Consuelo V. Golez, hereinafter referred to as the Ferrers, seek the review of an order of the Court of First Instance of Rizal directing the cancellation of an annotation of their adverse claim to a parcel of land situated in the Municipality of Makati Province of Rizal, and covered by Transfer Certificate of Title No. 76141 of the Office of the Register of Deeds of said province, issued in the name of appellee Ananias Abustan on May 4, 1960, upon cancellation of Transfer Certificate of Title No. 30520 in the name of Vicente C. Gomez, married to Cirila Sulingco Manuel, of the same province.

The record shows that on April 6, 1955, Gomez had executed the document Exhibit E, constituting a mortgage on said land in favor of the Ferrers, to guarantee the payment of P2,500, within one (1) year from said date; that Exhibit E provided that, if Gomez failed to redeem the property within the aforementioned period, the Ferrers could, "at their election", assume an obligation of Gomez in favor of the Meralco Loan and Savings Association hereinafter referred to as the Meralco Association — which had a first mortgage on said property, and Gomez would execute the corresponding deed of sale thereof in favor of the Ferrers; and that Exhibit E was neither registered nor annotated on Transfer Certificate of Title No. 30520, because the former state erroneously that said property was covered by Transfer Certificate of Title No. 16488 of the City of Manila.

Subsequently, or on May 9, 1956, the mortgage in favor of the Meralco Association was cancelled in pursuance of a deed to this effect. On the same date, a deed of real estate mortgage, executed by Gomez in favor of the spouses Brigido Campita and Fausta Domingo, for the sum of P3,000, was duly registered, but the annotation thereof was duly cancelled on June 8, 1957, on which date another deed of mortgage on the same property, for the sum of P6,000, in favor of the Manila Building and Loan Association — hereinafter referred to as the Manila Association — was duly registered. On March 4, 1959, the Ferrers instituted, against Gomez, Civil Case No. 4820 of the Court of First Instance of Rizal, for the recovery of the sum of money referred to in Exhibit E, but this case was later dismissed for non-appearance of the parties on the date set for the hearing thereof. Instead of seeking a revocation of the order of dismissal, the Ferrers commenced, on August 14, 1959, Civil Case No. 5726 of the same Court, against Gomez and the Manila Association. In the complaint therein: the Ferrers alleged, inter alia, the execution by Gomez of said deed Exhibit E, the failure of Gomez to pay the debt guaranteed thereby, the reason why Exhibit E was not registered, and the execution of the deed of first mortgage in favor of the Manila Association. The Ferrers alleged further that the Manila Association had been guilty of laches in failing to require Gomez, before lending him P6,000, to submit an affidavit stating that the property aforementioned was unencumbered and prayed that judgment be rendered sentencing Gomez to convey said property to them (the Ferrers), as well as to

pay damages, and the Manila Association to cancel the mortgage in their favor, upon payment by the Ferrers of the amount representing the balance of the obligation of Gomez in favor of the Meralco Association, outstanding on April 6, 1956 (it should be 1955), when Exhibit E was executed.

Gomez and the Manila Association moved to dismiss the complaint in Case No. 5726, upon the ground that the same is barred by the order of dismissal of Case No. 4820. On December 10, 1959, this motion was granted and the complaint in said Case No. 5726 was, accordingly, dismissed. No appeal was taken from the order of dismissal, which, accordingly, became final and executory. Subsequently, on March 14, 1960, Mrs. Ferrer filed with the office of the Register of Deeds of Rizal an affidavit of adverse claim to the property above referred to, based upon Exhibit E. Soon thereafter, on May 4, 1960, Transfer Certificate of Title No. 76141 was issued in the name of Ananias D. Abustan, married to Librada Buan. This Transfer Certificate of Title No. 76141 carried thereon two (2) memoranda of "encumbrances", namely, the annotation of the first mortgage in favor of the Manila Association and that of the adverse claim of the Ferrers.

On July 13, 1960, Abustan filed in Land Registration Case No. 3861, G.L.R.O. Cadastral Record No. 2029, under which the property in question is registered, a petition for cancellation of said annotation of adverse claim, upon the ground that the same had been "improperly registered in violation of Section 112 of Act 496, because the right or interest sought to be enforced by the spouses, Ruperto Ferrer and Consuelo Golez, had become unenforceable by virtue of a final decision rendered by the Court of First Instance of Rizal on December 10, 1959, in Civil Case No. 5726", referring to the aforementioned order of dismissal thereof. After due hearing, this petition was granted and, a reconsideration of the action thus taken by the lower court having been denied, the Ferrers have interposed the present appeal by writ of error.

The Ferrers maintain that the lower court erred (a) in holding that the deed of mortgage constituted in their favor had become unenforceable owing to the dismissal of Civil Cases Nos. 4820 and 5726 of Rizal; (b) in not holding that the registration of the adverse claim in question operated as a registration of the deed of real estate mortgage in their favor; (c) in not holding that Civil Case No. 5726 operated as a reopening of Civil Case No. 4820; and (d) in giving due course to appellee's petition instead of requiring them to file an ordinary action.

This appeal is clearly devoid of merit. Indeed, the dismissal of Case No. 4820 had the effect of extinguishing the debt of Gomez in favor of the Ferrers. As a consequence, the latter lost the right to demand the conveyance in their favor of the lot in dispute, such right being predicated upon the default of Gomez in the payment of said debt. The extinction thereof necessarily operated to wipe out the default, if any, and, as a consequence, the relief stipulated for such event, namely, the conveyance of the property to the Ferrers. Regardless of the foregoing, the dismissal of Case No. 5726 extinguished the right, if it still existed, to said conveyance, which was sought to be enforced in that case.

Even if the annotation of the adverse claim amounted to the registration of a deed of real estate mortgage and it did not have such effect the dismissal of Case No. 4820 had extinguished the debt secured by the mortgage, and, accordingly, of the latter. Being merely an accessory contract, a mortgage cannot exist without the principal obligation it seeks to guarantee (Article 2085, Civil Code of the Philippines). So, too, even if Case No. 5726 had amounted to a reopening of Case No. 4820, which is not a fact, the dismissal of Case No. 5726 wiped out the right of the Ferrers under Exhibit E to the conveyance in their favor of the property in question regardless of its nullity under Article 2088 of the Civil Code of the Philippines no appeal having been taken from the order of dismissal of said Case No. 5726.

As regards the theory that the lower court should have required Abustan to litigate in an ordinary action, instead of allowing him to secure the cancellation of the annotation of the adverse claim under Section 112 of the Land

Registration Act, suffice it to say that the case of *Tanganan vs. Republic* (94 Phil., 171; 50 Off. Gaz., 1) relied upon by the Ferrers is not in point, for the issue therein was controversial, whereas in the case at bar, there is no dispute about the issue in Cases Nos. 4820 and 5726, about the dismissal of both and the grounds for dismissal, and about the fact that no appeal had been taken from the orders of dismissal and that the same had, accordingly, become final and executory. Neither can there be any controversy about the effect of said orders of dismissal. That of Case No. 4820, for non-appearance of the parties, was, pursuant to Section 3 of Rule 17 of the Rules of Court, "an adjudication upon the merits, unless otherwise provided by the court", and the court did not provide otherwise. Upon the other hand, the dismissal of Case No. 5726 was based upon the ground that the cause of action therein is barred by a prior judgment — namely the dismissal of Case No. 4820. "

Wherefore, the order appealed from is hereby affirmed with costs against herein appellants Ruperto Ferrer and Consuelo V. Golez. It is so ordered.

Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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