

ATANASIO PINEDA, PLAINTIFF AND APPELLEE, VS. MARGARITA SANTOS, IN HER OWN BEHALF AND AS JUDICIAL ADMINISTRATRIX OF THE INTESTATE ESTATE OF NATALIO SANTOS, DEFENDANT AND APPELLANT.*G.R. No. 34845. March 03, 1932*

Ponente: IMPERIAL, J.

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The defendant Margarita Santos in her own behalf and as judicial administratrix of the intestate estate of Natalio Santos, appealed from the judgment of the Court of First Instance of Rizal requiring her to pay the plaintiff the sum of P8,000 with legal interest from March 28, 1926 until fully paid, and the amount of P2,334.30 as damages, and costs.

The action was brought by the plaintiff-appellee to annul the contract of sale hereinafter discussed.

On July 14, 1925, appellant and appellee executed Exhibit D whereby the former bound herself to sell to the latter 213,370 square meters of calcareous land in the municipality of Montalban, Province of Rizal, belonging to the late Natalio Santos, whose judicial administratrix she was, for the sum of P8,000, the contract to be subject to the approval of the proper probate court. According to Exhibit C the appellee made a part payment of P500 to the appellant. Having obtained the judicial approval on the 30th of that month, the parties executed the deed Exhibit A, whereby the appellant sold the land in fee simple to the appellee at the price stipulated, receiving a check (Exhibit B) for the remainder of the agreed price, P7,500. The appellee entrusted the draughting of the deed of sale to his lawyer, Lorenzo Sunico and upon the date of its execution and acknowledgment both parties appeared before the latter, who acted as notary public. In the deed the appellant expressly stated that she was the owner in fee simple of the property, and that she conveyed it "free of all charge, lien, and liability." At that time the property was registered under the Torrens system and the transfer certificate of title No. 8986 was issued in favor of one Gabriel Cruz who had previously executed another absolute deed of sale in favor of the late Natalio Santos, but as it had not been presented for registration, no new transfer certificate was issued. On that occasion the appellant exhibited the said transfer certificate to the notary public; the latter as well as the appellee examined it and saw that it bore no annotation of any encumbrance, or of the *lis pendens* which now appears thereon and which we shall discuss later. After the deed had been signed Attorney Sunico took it with him, together with the transfer certificate of title, to the office of the registrar of deeds for the Province of Rizal, in order to have the first recorded and the second cancelled, and a new transfer certificate issued in favor of the appellee. When the lawyer went back to said office to get those documents he was surprised to see that the *Us pendens* notice had been entered on the transfer certificate of title as of April 25, 1925, 8.16 a. m. He spoke to registrar Jose Tupas, and upon asking him why he had made the annotation with an earlier date, he was told that one A. A. Addison had filed a *lis pendens* notice on April 24, 1925, and that, having noted the 25th of said month on the original certificate of title to the land, he had to do so on the transfer certificate as well. Sunico left the office and returning to his own, informed his client, the appellee, of what had happened, who thereupon took steps to have the deed of

sale set aside, and later brought an action for nullity, which was nonsuited, and later reproduced in the action which gave rise to this appeal.

Some time before the discovery of the lis pendens notice, the appellee had conveyed the same property at the same price to the Pineda, Ampil Manufacturing & Co., Inc., but when the latter found that there was such a notice recorded, it sought and obtained the rescission of the sale.

While the appellee was in possession of the land and before he transferred it and brought the action for nullity, he was engaged in the lime business for which he had purchased the property, and spent the sum of P2,334.30 which is one of the sums awarded to him by the court.

The appellant has assigned a number of alleged errors as committed by the court a quo, but they all hinge on the main question, whether the lis pendens notice appearing on the transfer certificate of title was entered after the consummation of the contract of sale, and whether there was fraud in the contract vitiating the appellee's consent. For this reason we shall not stop to consider or take up these assignments of error separately.

We have carefully examined all the evidence and arrived at the conclusion that said annotation was entered on the transfer certificate of title after the execution of the deed of sale, and that the appellant's statement in the deed to the effect that the property was absolutely free of all liens and encumbrances was untrue and therefore misled the appellee into giving his consent. This conclusion is borne out both by the testimony of the appellee and Attorney Sunico, and by the admissions of the registrar of deeds, Jose Tupas. The latter plainly admitted during his testimony that he entered the lis pendens notice upon the transfer certificate of title many days after the date therein set forth, probably after the 1st of May, and from this it may be reasonably inferred that this official did not exactly remember the correct date of the annotation, which leads us to believe that the testimony of Attorney Sunico and the appellee was not altogether improbable when they said that such annotation was made after July 30, 1925, and only when the transfer certificate of title was presented at the office of the registrar together with the deed of sale.

A notice of the pendency of an action in accordance with section 79 of Act No. 496, applicable to the case in question, constitutes a legal lien and the result of the litigation referred to affects the parties thereto and all who might have any interest in the lands which are the subject of such action. (Section 79, Act No. 496; *Atkins, Kroll & Co. vs. Domingo*, 46 Phil., 362.) The present case must not be governed by the provisions of articles 42 and 43 of the Mortgage Law, invoked by the appellant.

The judgment appealed from being in accordance with the law, it is hereby affirmed in its entirety, with the costs of this instance against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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