

IN RE CONSULTA FILED BY ATTORNEY VICENTE J. FRANCISCO ON BEHALF OF DOMINGO CABANTOG.

G.R. No. 45192. April 10, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

On January 21, 1936, the spouses Francisco Vicuna and Maxima Caballes made an absolute sale of three parcels of land, covered by transfer certificates of title Nos. 13395, 13396, and 13397, in favor of Domingo Cabantog for the sum of P2,500. The deed of sale was presented for registration, and the, senior clerk in the office of the register of deeds of Laguna, in the absence of the latter official, made a notation thereon to the effect that the same was presented at 12.15 o'clock on January 25, 1936, as per entry number 18624, vol. II of the day book. On his return to duty on January 27, 1936, the register of deeds had the aforesaid notation cancelled and substituted by the following:

"18624.—The inscription of the preceding deed of sale is hereby suspended until after the resolution to be rendered by the Supreme Court on the appeal intended to be presented by Maxima Caballes against the decision of the Court of First Instance of Laguna in Civil Case No. 6600 instituted by Apolonia Coronado et al. vs. Maxima Caballes et al., in which the latter has been condemned to pay to the plaintiff the amount of P1,000,000 (should be P100,000).

"The undersigned is of the opinion that it is the duty of the register of deeds to aid the courts, avoiding that their decisions may be effective due to transfers of properties made by the party losing in a case after same have been handed down; and also to protect the interest of the winning party by preventing the multiplicity of litigations."

Pending the appeal of Maxima Caballes to this court from the decision in civil case No. 6600 sentencing her to pay Apolonia Coronado the sum of P100,000, the latter secured an attachment of the three parcels of land sold by Maxima Caballes to Domingo Cabantog, which attachment was entered in the day book of the register of deeds of Laguna on January 27, 1936. Against the refusal of the register of deeds to register the deed of sale in favor of Domingo Cabantog, his counsel elevated a consulta to the judge of the Fourth Branch of the Court of First Instance of Manila, through the Chief of the General Land Registration Office, requesting answer to the following:

"QUESTIONS

"1. Is it not the ministerial duty of the register of deeds of Laguna, upon presentation to him of the absolute deed of sale in favor of Domingo Cabantog of the three (3) parcels of land hi question, with the corresponding owners' duplicate certificates of title, to register said deed of sale, cancel said outstanding certificates in the name of the vendors, and prepare and issue the proper transfer certificates of title in the name of the vendee, the proper registration fees having been tendered and accepted and there being no judicial order suspending such action?

"2. Does the register of deeds of Laguna have the authority to deny issuance of the proper transfer certificates of title in favor of the vendee on the ground alleged by him that, 'it is the duty of the register of deeds to aid the courts, avoiding that their decisions may be effective (or ineffective) due to transfers of properties made by the party losing in a case after same have been handed down; and also to protect the interest of the winning party by preventing the multiplicity of litigations', or should the register of deeds leave this question to the determination of the proper court in case the same is submitted to it for determination by any interested party?"

A copy of the consulta having been served on the register of deeds, the latter filed his answer thereto justifying his action upon the following grounds, among others:

"La resolucion del que suscribe al suspender la inscripcion de la escritura de venta otorgada por Maxima Caballes a favor del recurrente Domingo Cabantog y la negativa del mismo a expedir nuevos certificados de titulo libre de gravamen a favor del comprador Domingo Cabantog, se basa en que dicha escritura de venta es un traspaso hecho en fraude de la acreedora Apolonia Coronado, demandante en la Causa Civil No. 6600 del Juzgado de Primera Instancia de Laguna, en la cual la vendedora Maxima Caballes ha sido condenada a pagar a dicha Apolonia Coronado la suma de P100,000. En apoyo de esta afirmacion, se hace constar que la sentencia dictada en contra de dicha vendedora esta fechada el 14 de diciembre de 1935, mientras que la venta de que aqui se trata y cuya inscripcion se pide por Domingo Cabantog ha sido otorgada por Maxima Caballes el 21 de enero de 1936, o sea, mas de un mes despues de haber recaido el pronunciamiento judicial de condena. Se hace constar igualmente que el valor de todos los bienes inmuebles registrados a nombre de Maxima Caballes no puede llegar a cubrir la mitad siquiera del importe de la sentencia dictada contra ella, pues los mismos apenas si valen P30,000 vendie"ndolos al precio corriente.

"El que suscribe cree sinceramente que es su deber denegar o al menos suspender la inscripcion de traspasos fraudulentos, sobre todo cuando como en el presente caso le consta a el personalmente que hay un pronunciamiento judicial condenatorio previo al otorgamiento de la escritura cuya inscripcion se pide, mientras tanto o hasta que un tribunal competente pueda decidir la naturaleza verdadera de dicho traspaso. Este es un paso prudente que evita no solamente el perjuicio que se puede irrogar a los acreedores del vendedor sino tambien al gobierno por los litigios que puedan entablar terceras personas que aleguen despues ser compradores inocentes. Se evita asi mismo el que una sentencia judicial quede inerica por actos imprudentes y precipitados sometidos por un Registrador de Titulos en la inscription de documentos de dudosa legalidad."

The case came up for oral hearing, at which Attorney Vicente J. Francisco for Domingo Cabantog, Fiscal Viilanueva for the register of deeds, and Attorney Lorenzo Sumulong for Apolonia Coronado extensively argued their respective sides of the controversy. After hearing, the Fourth Branch of the Court of First Instance of Manila, His Honor, Judge Montemayor presiding, entered a resolution setting out the controlling facts and closing with the following conclusion:

"After carefully studying the case, the court agrees with Attorney Francisco and Fiscal Villanueva that, without considering the merits of the contention of Apolonia Coronado as to the alleged fraud in the transfer of the three parcels of land, strictly as a matter of procedure, the register of deeds should have given due course to the registration of the deed of sale in favor of Cabantog. Without doubting the good faith of the register of deeds and even commending his civic spirit and his desire to help the courts, it is believed that in the present case the law did not expect, much less require him to make use of his personal knowledge of the facts or of what he believed to be the intention of the parties, in the performance of his official duties as register of deeds, namely the registration of instruments presented to him for recording. The parties interested are supposed and expected by the law to take the steps necessary to protect their own interests and take the necessary precautions. The undersigned does not understand why long before the deed of sale presented for registration, and even pending trial of civil case No. 6600, Apolonia did not take the steps necessary to protect her interests and insure the satisfaction of the judgment which she expected from the court. Again, if the defendant Maxima Caballes received copy of the decision in civil case No. 6600 on January 17, 1936, it is reasonable to presume that

Apolonia Coronado must have received copy of the same about the same time, if not earlier, and yet we find that attachment of the three parcels of land was not presented for recording or registration with the register of deeds until January 27, 1936, that is, two days after the presentation of the deed of sale. Moreover, there is no evidence to show, as far as the present consulta is concerned, that Maxima Caballes is now insolvent and that the deed of sale under consideration was really made in fraud of creditors. There is no showing either that by authorizing and directing the register of deeds to admit the deed of sale for registration in his office, Apolonia would be losing and be deprived of all her remedies against the said parcels of land. It should also be borne in mind that civil case No. 6600 of the Court of First Instance is now pending appeal in the Supreme Court.

"In view of the foregoing, this court rules that the register of deeds of the Province of Laguna should have registered the deed executed by Maxima Caballes and Francisco Vicuna in favor of Domingo Cabantog. It should be understood, however, that this ruling is without prejudice to any action that may be taken by Apolonia Coronado in the proper court to guide or control the action of the register of deeds with respect to the deed in question. Furthermore, this ruling does not in any manner touch upon the nature, propriety or validity of the transfer of the three parcels of land to Cabantog."

Apolonia Coronado moved for reconsideration but was unsuccessful, and has appealed from the foregoing resolution of the lower court, assigning various errors specified in her brief.

Consolidating the several errors assigned, the present appeal calls for a determination of the nature of the function of a register of deeds with reference to the registration of a deed of sale of a registered land. Is that function ministerial or discretionary under the law? Section 57 of the Land Registration Act (No. 496) provides:

"Sec. 57. An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, which the grantor or grantee may present to the register of deeds in the province where the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. The register of deeds shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee, and shall prepare and deliver to him all owner's duplicate certificate. The register of deeds shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to the last prior certificate. The grantor's duplicate certificate shall be surrendered, and the word 'canceled' stamped upon it. The original certificate shall also be stamped 'canceled'. The deed of conveyance shall be filed and indorsed with the number and place of registration of the certificate of title of the land conveyed."

According to this provision of the law, upon presentation of a deed of conveyance of a registered land, together with the grantor's duplicate certificate, the register of deeds shall (1) make out in the registration book a new certificate of title; (2) prepare and deliver to the grantee an owner's duplicate certificate of title; (3) note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to the last prior certificate; (4) require the surrender of the grantor's duplicate certificate for purposes of cancellation; (5) cancel likewise the original certificate and (6) file and indorse in the manner required the deed of conveyance presented for registration. The duties enjoined upon the register of deeds by the aforesaid section of the Land Registration Act are clearly ministerial and mandatory in character not only as is indicated by the auxiliary "shall" but by the nature of such functions required to be performed by him. Upon the other hand, section 193 of the Administrative Code, in referring to the "general functions of register of deeds" provides that "it is the duty of a register of deeds to record in proper form all instruments relative to such lands, the recording whereof shall be required or allowed by law," We have not overlooked reference to the case of *Debrunner vs. Jaramillo* (12 Phil., 316), in which it was said that the duties of a registrar of property when he is acting under the Mortgage Law, are to a large extent judicial, as indicated in articles 18, 100 and 101 et seq. of that law, and to the case of *Betco vs. La Flor de Intal* (43 Phil., 517), where it was said that "registers of deeds perform both functions of an administrative character and functions which are at

least of a quasi-judicial nature." Notwithstanding divergence of facts between these cases and the present case, we have given weight to what seem are logical inferences of counsel for the appellant in the application of general principles, but we find that as plausible an argument to the contrary may be found in *Standard Oil Co. of New York vs. Jaramillo* (44 Phil., 630) and *Garcia Sanchez vs. Rosauero* (40 Phil., 231) ; and *Williams vs. Suñer* (49 Phil., 534) with the same divergence of facts and the laws involved.

Limiting ourselves to the facts of the present case, we are of the opinion that it is the duty of the register of deeds of Laguna under the law to register the deed executed by Maxima Caballes and Francisco Vicuna in favor of Domingo Cabancog. If the register of deeds is in doubt as to the propriety of recording any given instrument, section 200 of the Administrative Code provides the procedure to be followed:

"SEC. 200. Reference of doubtful matter to judge of fourth branch of Court of First Instance at Manila.—Where the register of deeds is in doubt with regard to the proper step 10 be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented for registration or where any party in interest does not agree with the register of deeds with reference to any such matter, the question shall be referred to the judge of the Fourth Branch of the Court of First Instance of the Ninth Judicial District either on the certificate of the register of deeds stating the question upon which he is in doubt or upon the suggestion in writing of the party in interest; and thereupon said judge, upon consideration of the matter as shown by the record certified to him, and in ease of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made."

The question of whether or not the conveyance was made to defraud creditors of the transferor should better be left for determination by the proper court. There is as much danger in giving this authority to the register of deeds without judicial intervention as there would be injustice in the suggested frustration of a judicial victory for Apolonia Coronado.

The resolution of the lower court is confirmed with costs against the appellant. So ordered.

Avanceña, C.J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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