

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT;
TOMAS BALANDRA, PETITIONER AND APPELLANT. LEVY
HERMANOS, INC., APPLICANT AND APPELLANT, VS. MENZI &
CO., INC., ET AL., OPPOS...**

G.R. No. 45848. September 30, 1938

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a case, probably the first of its kind to be docketed in this court, wherein through an error the titles to two lots were decreed and said two lots were registered in the registry in favor of two different applicants, the lot belonging to one thereby becoming the property of the other while, on the other hand, the other lot corresponding to the latter was decreed and registered in favor of the other applicant.

Briefly the facts are as follows:

Lot No. 298 of the cadastre of Cadiz of the Province of Occidental Negros was divided by the Director of Lands for the purpose of determining the boundaries of the portion belonging to Manuel Consing from that owned by Cristeta Ibañez. It resulted from said division that lot No. 1237 corresponded to Cristeta Ibañez and lot No. 1238 to Manuel Consing. Through an error, however, the decree of registration No. 1340S9 for lot No. 1237 was issued in favor of the conjugal partnership of the spouses Manuel Consing and Praxedes Belmonte, and the register of deeds of the province issued original certificate of title No. 15782 for said lot No. 1237 in favor of said spouses; while the decree No. 134090 was issued for lot No. 1238 on the same date, April 16, 1923, and the register of deeds of said province issued original certificate of title No. 15783 for said lot No. 1238 in favor of Cristeta Ibañez.

Cristeta Ibañez mortgaged said lot No. 1238, of which she appeared to be the registered owner, first to Herbert Walker and later to Candido Desiada. Said mortgages were cancelled. On May 19, 1930, she again mortgaged said lot No. 1238 to Levy Hermanos, Inc. This corporation later brought an action upon its mortgage credit. Judgment was rendered against Cristeta Ibañez and the above stated lot No. 1238 was sold at public auction and was purchased by the same corporation Levy Hermanos. The sale was confirmed by the court and the deed of transfer was registered in the office of the register of deeds, transfer certificate of title No. 19957 having been issued in the name of Levy Hermanos, Inc., after cancellation of original certificate of title No. 15783. The register of deeds, however, refused to deliver it to said* corporation for some reason not shown but presumed to be the effect of the order appealed from, which will be cited later.

As to lot No. 3237, registered in the name of the conjugal partnership of the spouses Manuel Consing and Praxedes Belmonte, it appears that the same was attached from them on September 24, 1925, by the Teal Motor Co., Inc., and sold at public auction on October 19th of the same year, by virtue of a writ of execution issued in civil case No. 24905 of the Court of First Instance of Manila. At the auction, Tomas Balandra purchased said lot No. 1237, as a consequence of which the final certificate of sale was issued by the provincial sheriff in his favor,

for failure of Manuel Consing to redeem it. By virtue of said certificate of sale, original certificate of title No. 15782 of said lot No. 1237 was cancelled by the register of deeds and transfer certificate of title No. 8927 was issued in favor of said Tomas Balandra on October 18, 1928.

On June 6, 1930, that is, eighteen days after having mortgaged lot No. 1238 to Levy Hermanos, Inc., Cristeta Ibañez, without serving notice upon the actually interested parties, filed a motion in the corresponding cadastral case of Occidental Negros praying for the cancellation of the original certificates of title corresponding to the two lots Nos. 1237 and 1238, alleging that an error had been committed in the issuance thereof, because lot No. 1237 should have been adjudicated to her instead of Manuel Consing, and lot No. 1238, which she had mortgaged three times, should have been adjudicated to Manuel Consing and not to her. The court, without having heard the interested parties, so decided and ordered on July 16, 1930, for which reason the register of deeds cancelled said certificates and issued a new certificate of title for lot No. 1237 in favor of Cristeta Ibañez and left the certificate of title for lot No. 1238 in favor of Manuel Consing pending for approximately four years in his office.

Cristeta Ibañez, after the change of certificate of title had been made, mortgaged lot No. 1237 to Menzi & Co., Inc., which brought an action for the recovery of its mortgage credit on March 23, 1932, and, pending the execution of the judgment rendered in said case, conveyed and transferred all its rights in said mortgage credit to Asuncion Monfort on October 2, 1934.

It appears, therefore, that lot No. 1237, which was originally registered as belonging to Manuel Consing and was purchased by Tomas Balandra, is now registered, by virtue of the order of the court dated July 16, 1930, in the name of Cristeta Ibañez, subject to foreclosure of the mortgage in favor of Asuncion Monfort; while lot No. 1238, which had originally been registered in the name of Cristeta Ibañez and was purchased at public auction by Levy Hermanos, Inc., now appears, according to said order of the court, in the name of Tomas Balandra, free of all liens and incumbrances, with the reservation of the right to claim damages against Cristeta Ibañez made in favor of Levy Hermanos, Inc.

Tomas Balandra and Levy Hermanos, Inc., as well as Menzi & Co., Inc., appealed from the order of the court of July 16, 1930.

It is evident that the order in question is null and void.

(1) Because Levy Hermanos, Inc., is thereby deprived of its right of ownership over lot No. 1238, without having been notified nor heard on the motion of Cristeta Ibañez on the change of certificates of title, in violation of the provisions of section 112 of Act No. 496. By the same order, Tomas Balandra is likewise deprived of his right of ownership over lot No. 1237, also without having been notified nor heard on said motion of Cristeta Ibañez.

(2) Both Levy Hermanos, Inc., and Tomas Balandra acquired lots Nos. 1238 and 1237, respectively, by virtue of a legal title, which consists in having purchased them at public auction by virtue of a judicial writ. Lot No. 1237 appeared to be registered in the register in the name of the execution debtor Manuel Consing and lot No. 1238, in the name of the execution debtor Cristeta Ibañez. Levy Hermanos, Inc., and Tomas Balandra are purchasers in good faith. The respective decrees of registration of said lots constitute absolute, conclusive, irrevocable and binding titles against all persons, including the Government and all the branches thereof (sec. 38 of Act No. 496, as amended by sec. 8 of Act No. 3621 and sec. 1 of Act No. 3630; *Legarda and Prieto vs. Saleeby*, 31 Phil., 590; *Government of the Philippine Islands vs. Abural*, 39 Phil., 996; *Reyes and Nadres vs. Borbon and Director of Lands*, 50 Phil., 791).

(3) The order appealed from was not issued by virtue of the petition for review authorized by section 38 above-cited, because, aside from the fact that the period of one year prescribed by law for such review had already

long elapsed, there was no fraud or even insinuation of fraud, when said decrees of registration in favor of Manuel Consing and Cristeta Ibañez were issued.

(4) If through some error, of which Levy Hermanos, Inc. or Tomas Balandra had absolutely no knowledge, the decrees were issued with the change of lots, and, if by virtue of said error, Cristeta Ibañez or Manuel Consing had suffered any damage, the remedy, in default of another, was not that granted by the order of July 16, 1930, appealed from, which is the exchange of the certificates of title, but an action for the recovery of damages against the assurance fund, in accordance with the provisions of section 102 of Act No. 496; but the rights acquired in good faith by Levy Hermanos, Inc. and by Tomas Balandra should be absolutely respected and their respective titles maintained in all their force and effect.

(5) When the appealed order of July 16, 1930, was issued, directing the issuance of a certificate of title of lot No. 1237 in favor of Cristeta Ibañez and of lot No. 1238 in favor of Manuel Consing, no longer was Cristeta Ibañez even apparently the owner of lot No. 1238, nor Manuel Consing the owner of lot No. 1237, because the latter lot had been sold at public auction to Tomas Balandra on October 19, 1925, and lot No. 1238 had also been mortgaged on May 19, 1930, to Levy Hermanos, Inc., which foreclosed its mortgage and purchased the lot at public auction by virtue of an execution, so that when the court ordered the registration of lot No. 1237 in the name of Cristeta Ibañez, Manuel Consing had already lost it long before the appealed order; and when lot No. 1238 was ordered registered in the register in the name of Manuel Consing, Cristeta Ibañez had already mortgaged it to Levy Hermanos, Inc., which later purchased it at public auction. And the queerest part of it is that, by reason of said order appealed from Cristeta Ibañez acquires a lot in exchange of another which no longer belonged to her, and Manuel Consing acquires another lot, in exchange of what formerly belonged to Cristeta Ibañez and in which the latter no longer had any interest.

The order appealed from is reversed and it is ordered that certificate of title No. 13094, issued for lot No. 1237 in favor of Cristeta Ibañez, be cancelled, and that a new certificate of title of said lot No. 1237 be issued in favor of Tomas Balandra. It is likewise ordered that transfer certificate of title No. 19957 for lot No. 1238 be delivered to Levy Hermanos, Inc. by the register of deeds of Occidental Negros, without costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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