

HERMINIA OLIVEROS, APPLICANT AND APPELLEE, VS. JULIA C. CATOT, OPPOSITOR AND APPELLANT.*G.R. No. 46431. November 14, 1939*

Ponente: IMPERIAL, J.

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In the land registration case G. L. R. O. Record No. 4004 of the Court of First Instance of Manila, the appellee put in a motion asking that the appellant present and deliver to the Register of Deeds of said city transfer certificate of title No. 17428 which was in her possession, on the ground that lots Nos. 70 and 71, Block 6, of the Rizal Park subdivision, described in the aforesaid certificate of title were purchased by her from the heirs of the deceased Ramon Arevalo y de Jesus in whose name the title had been issued. The appellant opposed the motion alleging: that the same lots had been conveyed to her on May 8, 1935, for the sum of P600, by Enriqueta Montes, widow of the deceased Ramon Arevalo y de Jesus, in her name and on behalf of all his children, heirs of the said deceased, as evidenced by the public deed executed on the same date before Notary Public Matias Vergara; and that the said certificate of sale was delivered to her by the said Enriqueta Montes by virtue of the sale and in consideration of the fact that she delivered to the vendor, aside from the price, money to pay the fees for the docketing of the application to be presented for the administration of the estate of the aforesaid deceased and for the other expenses of registration of the sale and the issuance of a new transfer certificate of title. After trial, the court entered an order on November 18, 1936, requiring the appellant within five days from notice of the order to present to the registrar of deeds of Manila transfer certificate of title No. 17428. The appellant excepted to the order and appealed therefrom.

The trial court required the delivery of the transfer certificate of title pursuant to section 111 of Act No. 496, reading as follows:

"SEC. 111. In every case where the clerk or any register of deeds is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the clerk or register of deeds shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the court. The court, after hearing, may order the registered owner or any person withholding the duplicate to surrender the same, and direct the entry of a new certificate upon such surrender.

"If in any case the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate can not be delivered up, the court may by decree annul the same and order a new certificate of title to be entered. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

"If in any case an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when the mortgage is discharged or extinguished or the lease is terminated, like proceedings may be had to obtain registration as in the case of the nonproduction of an owner's duplicate."

The aforequoted section provides that the court may order the surrender of a certificate of title if an interested party presents a motion to this effect and if at the trial held for the purpose it is shown that the certificate of title is held by a third person without any right to it. The question, therefore, to decide is whether the appellant possesses and holds the transfer certificate of title without any just cause or right thereto. It is conceded that the appellant received the title from Enriqueta Montes who was the one who sold to her the lots described therein, and that the delivery of the document was made by virtue of the sale and in consideration of the fact that the appellant also gave her money to commence the intestate of Ramon Arevalo y de Jesus, to secure the approval of the sale by the court, and to defray other expenses necessary for the cancellation of the said transfer certificate of title and the issuance of a new one. It is said that the sale made by Enriqueta Montes was invalid because it was effected without the knowledge or approval of the court. However, it appears that if the sale was illegal in connection with the half of the lands corresponding to the co-heirs of the widow Enriqueta Montes, the sale was not defective as to the other half pertaining to the vendor as her conjugal property. On February 12, 1935, the court entered an order in the intestate of Ramon Arevalo y de Jesus, special proceedings No. 29784, whereby it adjudicated one-half of the lands to Enriqueta Montes and the other half to her children or the other heirs of said deceased. This order shows conclusively that the vendor Enriqueta Montes was actually the owner of the half of the lots described in transfer certificate of title No. 17428.

According to the facts, the controversy arose from the circumstance that the same lands were sold twice. We do not now decide which of these two sales is preferred and valid, but we do hold that until this question has been definitely resolved, it cannot be contended that the appellant holds the transfer certificate of title without just cause or right thereto, wherefore, it is not just that she be compelled to part with said document by surrendering it to the Registrar of Deeds. As we have already said, it seems that the sale, as to one-half of the lands, is valid because Enriqueta Montes was and is the owner of said half. If this conclusion is correct, it constitutes another reason for the appellant to hold the transfer certificate of title.

The appealed order is set aside, with the costs of this instance to the appellee. So ordered.

Villa-Real, Diaz, Concepcion, and Moran, JJ., concur.

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