

**DIONISIA JAMORA, PLAINTIFF AND APPELLEE, VS. DOMINGA DURAN, RICARDO DURAN, MARIA AGUIRRE, MAXIMIANO ABELLA AND GERARDO VILLASIN, DEFENDANTS AND APPELLANTS.**

*G.R. No. 46454. October 18, 1939*

Ponente: VILLA-REAL, J.

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**VILLA-REAL, J.:**

The present appeal was taken by the defendants Dominga Duran and others from the decision of the Court of First Instance of Leyte, the dispositive part of which reads:

"Wherefore, the court renders judgment ordering the defendant Gerardo Villasin to execute a deed of conveyance of the southern portion of lot 432 in favor of the plaintiff Dionisia Jamora, and ordering the Registrar of Deeds of the Province of Leyte, upon the finality of this judgment and after compliance therewith by the defendant Gerardo Villasin, to cancel the Transfer Certificate of Title No. G24 and to issue another Transfer Certificate of Title wherein he shall state that the plaintiff Dionisia Jamora is the owner of the southern portion of lot No. 432.

"The costs shall be paid jointly and severally by the defendants."

At the commencement of the trial of this case, the parties submitted to the Court for decision the following stipulation of facts:

"Come now the parties by their undersigned attorneys in the above-entitled case and hereby respectfully submit the following stipulation of facts for the bases of the decision:

"1. That in civil case No. 3857 filed in the Court of First Instance of Leyte by the plaintiff herein, of date the 17th of June, 1936, against Dominga Duran, Ricardo Duran, Maria Aguirre and Maximiano Abella, as defendants, the parties by their respective attorneys filed a stipulation of facts for the bases of the decision. Said stipulation of facts is hereunder quoted and made part hereof.

" 'The parties by their undersigned attorneys hereby submit the following stipulation, of facts for the basis of the decision:

" '1. That under date of August 20, 1935, the defendants herein (civil case No. 3837, entitled Dionisia Jamora v. Dorainga Duran et al.) to wit, Dominga Duran, Ricardo Duran and Maria Aguirre filed a suit against Salustiana Jamora for the recovery of the title and possession of the identical land described in paragraph 3 of the complaint in civil case No. 3837—said suit being numbered 2889 of this court. A copy of said complaint is hereto attached as Appendix A and made part hereof.

" '2. That the said Salustiana Jamora was absolved from the complaint by the Court of First Instance of Leyte in a decision rendered in January, 1930, a copy of which is hereto attached as Appendix B, and made part hereof.

" '3. That upon appeal to the Supreme Court, the said decision was affirmed in August, 1930, a copy of the

decision of the Supreme Court in G. R. No. 33163—which the General Register No. of the case, is here attached as Appendix C. and made part hereof.

" '4. That on November 4, 1932, the plaintiff herein Dionisia Jamora, bought the land in question from the said Salustiana Jamora, who is her sister, for the amount of Six Hundred Pesos (P600),

" '5. That there are two houses on the lot in question, one belonging to Brigido Jamora, a brother of the plaintiff and administrator of the lot, and the other belonging to Pantaleno Suyom, plaintiff's tenant.

" '6. That the tax declaration was in the name of Salustiana Jamora which has been changed to that of the plaintiff Dionisia Jamora, as evidenced by the certified copies of the Tax Dec. Nos. 9250 & 16432 hereto attached as appendices E and F respectively; and likewise the taxes have been paid by the said Salustiana Jamora and subsequently by Dionisia Jamora as evidenced by the tax receipts hereto attached as appendix G.

" '7. That on November 28, 1932, the defendants Dominga Duran, Ricardo Duran and Maria Aguirre, together with Enrica Soriano filed a joint claim to the lot in question in cadastral case No. 20, G. L. R. O. Rec. No. 1068 of of Tacloban, Leyte, wherein the defendants herein alleged ownership thru inheritance from their father Natalio Duran.

" '8. On December 29, 1932, the following decision was rendered by the Court in the said Cadastral Case No. 20 G. L. R. O. Rec. No. 1068:

" ' "LOT NO. 432, in favor of Enrica Soriano, of age, married to Tiburcio del Pilar, the portion situated on the northern part, containing an approximate area of 250 square meters, with the improvements thereon; Dominga Duran, of age, married to Maximiano Abella, Ricardo Duran, of age widow of Hipolito Mantolo and Maria Aguirre, of age, single, the remaining portion on the southern part, with the improvements thereon, in the proportion of 205 square meters each, residents of the municipality of Tacloban, Leyte, I. F."

" '9. That the decree No. 596222 to the lot in question was filed on June 23, 1936.

" '10. That before and since 1932, the plaintiff has been and is residing in the City of Manila.' "

The principal legal question to be decided in the present appeal is whether or not the trial court erred in ordering the defendant Gerardo Villasin to execute a deed of conveyance of the southern portion of lot 432 in favor of the plaintiff Dionisia Jamora, and in ordering the Registrar of Deeds of the Province of Leyte, upon the finality of the judgment and compliance therewith by the defendant Gerardo Villasin, to cancel transfer certificate of title No. 624 and to issue another stating that the plaintiff Dionisia Jamora is the owner of the southern portion of lot No. 432.

According to the above-quoted stipulation of facts, on August 20, 1935, the herein defendants and appellants filed a complaint in the Court of First Instance of Leyte, civil case No. 3837, against Salustiana Jamora for the recovery of the ownership and possession of the portion of land here in question, judgment therein having been rendered in January, 1930, in favor of the defendant and against the plaintiffs, absolving the former from the complaint. On appeal from this judgment, this Court affirmed oh August 28, 1930.

On November 4, 1932, the herein plaintiff, Dionisia Jamora, purchased from the said Salustiana Jamora, her sister, the land in question for P600.

On November 20, 1932, Dominga Duran, Ricardo Duran and Maria Aguirre, together with Enrica Soriano, filed an answer in Cadastral Record No. 20, G. L. R. O. Rec. No. 1068, alleging that they were the owners by inheritance from their father Natalio Duran of the lot in contention.

On December 29, 1932, judgment was rendered in said case adjudicating to Enrica Soriano the northern portion

and to Dominga Duran, Ricardo Duran and Maria Aguirre the southern portion of lot No. 432, declaring them the undivided owners of the said lot in the proportion of 205 square meters for each of the three.

On June 23, 1936, the corresponding decree No. 596,222 was registered for the issuance of title.

In Civil Case No. 3857 of the Court of First Instance of Leyte, commenced by Dionisia Jamora against the defendants in the present case, for the recovery of title and possession of the land in controversy, which said plaintiff had purchased from her sister, Salustiana Jamora, the former was declared the owner thereof, and the defendants were ordered to return to the said plaintiff the possession of the land, reserving to her the right to ask in Cadastral Record No. 20 for the annulment of the decree of registration No. 596,222 and the adjudication in her favor of lot No. 432 in question. The judgment became final for failure of the defendants to take any appeal therefrom.

Making use of the right reserved to her in the aforesaid judgment, on July 10, 1937, the herein plaintiff put in a motion in the said cadastral record No. 20 praying for the revision of the said decree No. 596,222 and the adjudication in her favor of the southern portion of lot No. 432. Due to the lapse of one year from the issuance of the said decree of registration No. 596,222 on June 23, 1936, the Court denied the petition for review.

When the herein defendants filed their answer in Cadastral Record No. 20 on November 20, 1932, claiming to be the owners of the lot in question and asking for the registration thereof in their name, there had already been rendered against them in January, 1930, in civil case No. 3837, wherein said defendants were plaintiffs and Salustiana Jamora was defendant, for the recovery of title and possession of the land in question, a judgment absolving the said defendant. The said judgment was affirmed by this Court in August, 1930, on appeal. Hence, in filing their answer in Cadastral Record No. 20, on November 20, 1932, claiming to be the owners of the land in suit, the herein defendants-appellants knew that they were not such owners, for it is presumed that they were notified of the decision of this court (section 334, subsection 31, Act No. 190), unless they prove the contrary, which they have not done.

The defendants-appellants raise the question of whether the decision rendered in civil case No. 3857 constitutes *res judicata* as to the right of the herein plaintiff to ask that the defendants surnamed Duran, Aguirre and Abella be sentenced to execute in favor of Dionisia Jamora a deed of conveyance of the questioned land and to ask for indemnity for damages. The said appellants contend that as a decree of registration had been issued in their favor, and as the plaintiff and not asked for the revision of the said decree within one year from its issuance, under section 38 of Act No. 496, known as the Land Registration Act, she cannot now ask for the annulment thereof. The present case does not seek to reopen the registration case or to annul the decree of registration issued, but to compel the defendants who have obtained the said decree of registration with full knowledge that they were not the owners of the land which they had sought to register, to convey the same to its true owner; for equity and justice do not permit that one enrich himself at the cost of another.

In *Government of the Philippine Islands vs. Court of Nueva Ecija* (49 Phil., 433), this court held:

"Where a person takes a certificate of title in his own name to land belonging to another and the circumstances are such that he must be presumed to have had full knowledge of the rights of the true owner, he is guilty of fraud and may be compelled to convey the land to the defrauded party or to pay damages." (*Velayo Bernardo vs. Siojo*, 58 Phil., 89; *Bagayas vs. Guilao*, 37 Off. Gaz., 207).

The question now is whether the defendant Gerardo Villasin who, on December 22, 1937, by virtue of a deed of sale, executed by the said defendants-appellants, acquired the ownership of the lot in question, by the cancellation of original certificate of title No. 17816 in the name of the said defendants-appellants in whose favor the decree of registration was issued, and the issuance in lieu thereof of transfer certificate of title No. 624 in the name of

Gerardo Villasin, is a purchaser in good faith or not.

The appealed decision shows that on August 12, 1937, the attorney for the plaintiff Dionisia Jamora filed with the office of the registrar of deeds of the Province of Leyte a notice of lis pendens between the parties, which notice was on the same date noted on the back of original certificate of title No. 17816 of the land in question, but not on the duplicate of said certificate for the owner.

Section 79 of Act No. 496 provides that:

"No action: to recover possession of real estate, or to quiet the title thereto, or to remove clouds upon the title thereof, or for partition or other proceeding of any kind in court affecting the title to real estate or the use and occupation thereof or the buildings thereon, and no judgment or decree, and no proceeding to vacate or reverse any judgment or decree, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum stating the institution of such action or proceeding and the court wherein the same is pending, and the date of the institution thereof, containing also a reference to the number of the certificate of title of the land affected and the volume and page of the registration book where it is entered, shall be filed and registered. \* \* \*

Section 401 of the Code of Civil Procedure provides as follows:

"In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the registrar of land titles of the province in which the property is situated a notice of the pendency of the action, containing the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. From the time only of filing such notice for record shall a purchaser, or incumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, but only of its pendency against parties designated by their real names."

It will be seen that section 79 of Act No. 496 above-quoted provides that actions regarding registered lands only affect the parties litigant unless there is filed or registered a memorandum stating the institution of the action or proceeding. And section 401 of the Code of Civil Procedure above-quoted also provides that an action affecting the title or the right of possession of real property only affect the parties litigant unless there is recorded in the office of the registrar of titles of the province in which the property is situated a notice of the pendency of the action, and from the time only of filing such notice for record shall a purchaser, or incumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action.

In the present case, the notice of lis pendens was filed in the office of the registrar of deeds of the Province of Leyte on August 12, 1937, and was noted on the back of original certificate of title No. 17816 of the land in litigation, but not on the duplicate of said certificate issued to the owner. From the said date, therefore, Gerardo Villasin, purchaser of the litigated land, which purchase took place on December 22, 1937 from his codefendants surnamed Duran, Aguirre and Abella, had already constructive notice of the pendency of the litigation over the said land; consequently, said purchase was subject to the result of the said litigation, regardless of the fact that the notice of lis pendens was not noted on the duplicate of the original certificate of title issued to the vendors, because under the law the filing in the office of the registrar of deeds of the notice of lis pendens and its registration is what constitutes constructive notice to third persons of such pendency.

The syllabus of the decision of this Court in *Pineda vs. Santos* (56 Phil, 583), which the appellant cites in his brief in support of his argument that the notice of lis pendens not having been noted on the duplicate of the title for the owner, said notice is without legal affect against a third person as notice of the pendency of the case between the plaintiff and the defendants over the land in litigation, does not reflect the true doctrine laid down in the body of

the decision, for said decision reiterated the doctrine enunciated in *Atkins, Kroll & Co., vs. Domingo* (46 Phil., 362), to the effect that "The effect of filing notice of lis pendens is to charge the stranger with notice of the particular litigation referred to in the notice; and if the notice is effective, a third person who acquires the property affected by the lis pendens takes subject to the eventuality of the litigation."

In view of the foregoing considerations, we are of the opinion and so hold that the filing of the notice of lis pendens in the office of the registrar of deeds and the notation thereof on the back of the corresponding original certificate of title is what constitutes a constructive notice to any purchaser or vendee of a lien upon the real property in litigation as to the parties litigant.

Wherefore, finding no error in the appealed judgment, the same is hereby affirmed in all its parts, with the costs to the appellants. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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