

THE MUNICIPAL COUNCIL OF PARANAQUE, RIZAL, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF RIZAL AND MONTE DE PIEDAD Y CAJA DE AHORROS DE MANILA, RESPONDENTS.

G.R. No. 47051. June 28, 1940

Ponente: MORAN, J.

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MORAN, J.:

A petition for a writ of certiorari.

On May 4, 1934, the municipal council of Paranaque, Rizal, petitioner here, filed a petition seeking a declaration of escheat in its favor of the "Hacienda de Baclaran." This property was registered in favor of the Roman Catholic Archbishop of Manila, who obtained, in 1912, an original certificate of title thereon which later was substituted with a transfer certificate of title in favor of the "Monte de Piedad y Caja de Ahorros de Manila" and the Asiatic Petroleum Co. (P. I.) i Ltd. By virtue of said petition, a notice of lis pendens was filed in the office of the register of deeds of Rizal. On May 31, 1939, respondent, "Monte de Piedad y Caja de Ahorros de Manila," moved for the cancellation of the notice of lis pendens and the dismissal of the petition. Respondent Court of First Instance denied the motion for dismissal, postponed the consideration of the motion for cancellation until after the hearing of the petition for escheat, and set the case for hearing on August 16, 1939. On this date, however, the attorney for the petitioner asked for the postponement of the hearing, which was granted despite respondent's objection. The case was reset for hearing on September 20, 1939, and for lack of time was transferred to September 28, 1939. On this date, petitioner started to introduce its evidence, but as it encountered with some difficulties in making an orderly offer of its proof, the court postponed the hearing until further orders, "a fin de que la recurrente pueda examinar los expedientes que trajo un empleado de la Oficina General de Registro." In view of these delays, respondent, "Monte de Piedad y Caja de Ahorros de Manila," renewed its petition for cancellation of the notice of Us pendens, alleging great prejudice to its interest, it being precluded from transacting business on the property. The court, on October 23, 1939, granted tho motion and ordered the cancellation of said notice. It is the review of this order that the petitioner seeks in the present petition for certiorari.

We have once held that while ordinarily a notice of pendency which has been filed in a proper case, cannot be cancelled while the action is pending and undetermined, the proper court has the discretionary power to cancel it under peculiar circumstances, as for instance, where the evidence so far presented by the plaintiff does not bear out the main allegations of his complaint, and where the continuances of the trial, for which the plaintiff is responsible, are unnecessarily delaying the determination of the case to the prejudice of the defendant. (Victoriano vs. Rovira, 55 Phil., 1000.) These peculiar circumstances are present in the instant case, and we hold that the respondent court acted without abuse of discretion in ordering the cancellation of the notice of Us pendens.

Petition is dismissed, with costs against petitioner.

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

Petition dismissed.

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