

LEONORA A. PUNONGBAYAN, PETITIONER, VS. HON. GREGORIO G. PINEDA, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXI, ANGEL L. BAUTISTA AND REGISTER OF DEEDS ...*G.R. No. 58193. August 30, 1984*

Ponente: CONCEPCION, JR., J.

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Petition for certiorari with preliminary mandatory injunction with prayer for a restraining order to annul and set aside the order of the respondent judge directing the cancellation of the adverse claim and notice of lis pendens annotated at the back of TCT No. 19417 of the Register of Deeds of Iligan City, registered in the name of Angel L. Bautista appearing thereon as Entry No. 434.

The pertinent facts as gathered from the pleadings are as follows:

Leonora Punongbayan and St. Peter's College, Inc. were the owners of two parcels of land described in TCT No. 296 and TCT No. 7546, respectively. They mortgaged the two properties to the Manila Banking Corporation (Manila Bank, for short) to guarantee a loan of P550,000.00. Subsequently, St. Peter's College, Inc. sold the property with TCT No. 7546 to Angel Bautista, the latter to assume the obligation of paying the outstanding balance of the mortgage to the Manila Bank.[1] Angel Bautista, however, failed to pay the assumed obligation and as a result, the properties were extrajudicially foreclosed and sold at public auction to the Manila Bank as the highest bidder for the price of P131,467.58. Within the one year redemption period, Leonora Punongbayan, represented by Danilo Punongbayan redeemed the property with TCT No. 296 for the amount of P28,327.09 and a certificate of re-demption was issued in her favor and the owner's dupli-cate copy of TCT No. 296 was likewise delivered to her by the Manila Bank. Within almost the same period, Angel Bautista paid the amount of P148,316.05 to the Manila Bank as payment of the redemption price of the two parcels of land. The Manila Bank issued a certificate of redemption[2] in favor of Angel Bautista with respect to the land with TCT No. 10937 (formerly TCT No. 7546) only, alleging that the redemption referred to his property only as the other property with TCT No. 296 had been redeemed by Leonora Punongbayan. The Manila Bank likewise returned to Angel Bautista the amount of P28,327.09, which the latter refused to accept and instead made several demands from the Manila Bank to issue a certificate of redemption in his favor with respect to the two parcels of land. The Manila Bank denied the request. Thus a complaint was filed by Angel Bautista against the Manila Bank (Civil Case No. 24992) for Specific Performance with Damages before the Court of First Instance of Rizal, Branch XXI.

After trial, the trial court rendered a decision in favor of Angel L. Bautista. The Manila Bank appealed to the Court of Appeals. Pending appeal, Angel L. Bautista filed an ex-parte petition before the lower court for the issuance of a certificate of final conveyance (sale) over the two properties, which the trial court granted. By virtue of such certificate of final conveyance, TCT No. 296 was cancelled and a new TCT No. 19417 was issued in the name of Angel L. Bautista. Upon knowing this, Leonora Punongbayan caused the annotation of an adverse claim

and notice of lis pendens (Entry No. 434) at the back of TCT No. 19417[3] and filed before the lower court a motion to set aside the order of the respondent judge directing the issuance of a certificate of final conveyance (sale), which the trial court denied. Angel L. Bautista thereafter filed an ex-parte manifestation and motion praying for the cancellation of Entry No. 434.[4] The trial court issued an order granting the motion[5] without giving Leonora Punongbayan a chance to be heard. Leonora Punongbayan then filed a motion to set aside such order,[6] which the trial court denied.[7] Thus, by virtue of such order, the Register of Deeds of Iligan City cancelled the adverse claim and notice of lis pendens. Hence, this petition for certiorari with preliminary mandatory in-junction with prayer for a restraining order to annul and set aside the order of respondent judge with respect to the cancellation of the notice of lis pendens to re-annotate the notice of lis pendens on TCT No. 19417 and to restrain the private respondent from making a transfer of the land covered by TCT No. 19417. As prayed for, the Court issued a temporary restraining order.[8]

The issue for resolution is whether or not the notice of lis pendens annotated at the back of TCT No. T-19417, under Entry No. 434, was properly and legally ordered cancelled.

The petitioner, Leonora Punongbayan claims that the cancellation was illegal since no notice was sent to her concerning the hearing of the motion for cancellation of said annotation and was consequently denied the right to be heard.

We find merit in the contention of the petitioner.

The rule for the cancellation of a notice of lis pendens provides that there should be notice to the party who caused it to be recorded so that he may be given a chance to be heard and show to the court that the notice is not for the purpose of molesting the adverse party and that it is necessary to protect his rights. The last paragraph of Section 24, Rule 14 of the Rules of Court provides that:

"The notice of lis pendens hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded."

In the case of *Sarmiento vs. Ortiz, et al.*, the Court ruled:

"A trial court commits grave abuse of discretion in ordering the cancellation of a notice of lis pendens on a certificate of title where there was no unnecessary delay attributable to plaintiff and his counsel in the resolution of the main case for annul-ment of said certificate; especially when such cancellation was ordered without notice to plaintiff's counsel." [9]

And in the case of *Natano vs. Esteban, et al.*, the Court ruled:

"For three reasons, the order directing the cancellation of the notice of lis pendens should be set aside: First, it was granted ex-parte. Plaintiffs were thus deprived of their right to be heard on notice. Second, the order dismissing the complaint had not yet become final. That order in effect had placed plaintiffs at a disadvantage. It opened the floodgate to the commission of a fraud. What if, after the cancellation of the notice of lis pendens in the office of the Register of Deeds, defendants should thereafter sell the land to a purchaser in good faith and for value? Third, There is no showing that the notice of lis pendens 'is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.'" [10]

In view of the foregoing, the respondent judge committed grave abuse of discretion in issuing the questioned order directing the cancellation of the notice of lis pendens without notice to the party who caused its annotation.

WHEREFORE, the writ prayed for is hereby GRANTED and the questioned order directing cancellation of the notice of lis pendens is hereby ANNULLED and SET ASIDE. The Register of Deeds of Iligan City is hereby

ordered to re-annotate the notice of lis pendens on TCT No. 19417. The temporary restraining order issued by the court is hereby made permanent. With costs against the private respondent Angel L. Bautista.

SO ORDERED.

Aquino, (Acting Chairman), Abad Santos, Escolin, and Cuevas, JJ., concur.

Makasiar and Guerrero, JJ., on leave.

[1] Rollo, pp. 114-116.

[2] Id., pp. 91-93.

[3] Rollo, pp. 56-57.

[4] Rollo, pp. 78-80.

[5] Id., p. 81.

[6] Id., pp. 82-86.

[7] Id., pp. 87-88.

[8] Id., p. 98.

[9] G.R. No. L-18583, January 31, 1964, 10 SCRA 158.

[10] G.R. No. L-22034, October 28, 1966, 64 O.G. 6488.

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