

**MAGDALENA HOMEOWNERS ASSOCIATION, INC., RICARDO CHUNG,
JOSE ESTRELLA, LEONCIO PALANCA, NORBERTO ROBLEZA, J.S.
VALBUENA, GREGORIO CANCIO, FRANCISCO BUENCAMINO, AND
JESUS TOMACRUZ...**

G.R. NO. 60323. April 17, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

A Resolution of the Court of Appeals[1] ordering, on motion, the Register of Deeds to cancel a notice of lis pendens annotated in several Torrens titles,[2] is the subject of the special civil action of certiorari at bar.

The notice of lis pendens was recorded at the instance of the plaintiffs in Civil Case No. Q-18223 of the Court of First Instance at Quezon City.[3] The case involved a dispute regarding the ownership of certain lots within a subdivision known as Magdalena Rolling Hills which the residents claimed had been reserved as an "open space" and therefore could not in any manner be sold, disposed of or encumbered.

The subdivision was owned by the Magdalena Estate, Inc. (hereafter, simply MEI), located at New Manila, Quezon City. It originally had a total area of 355,490 square meters. Among the subdivision lots was Lot 15, Block 18, which had an area of 21,460 square meters. A part of this Lot 15, measuring 7,100 square meters, had initially been set aside as the subdivision's "open space," i.e., reserved for use as a park, playground or recreational zone.

However, an amendment of the plan of the subdivision (amended subdivision plan [LRC] Psd-18617)[4]--substituting the area earlier designated as open space with an area of 7,100 square meters (being as aforesaid a portion of Lot 15, Block 18), with several other lots (Lots 21 to 27 of Block 20) having a combined area also of 7,100 square meters -- was approved by the City Council of Quezon City. The Council also authorized the subdivision for disposition to the public of the former open space.[5] Subsequently, the Court of First Instance of Quezon City also approved the same amended subdivision plan ([LRC] Psd-18167) in accordance with Republic Act No. 44, subject to the condition "that all the roads, alleys, drainage and open space, dedicated for public use, delineated therein, shall be made subject to the limitations imposed by law." [6]

MEI then had the original open space (a portion of Lot 15, Block 18) resurveyed and subdivided into several lots. The new plan, (LRC) Pcs-2299, was approved in due course by the Land Registration Commission.[7]

Some time afterwards, by virtue of a deed executed by MEI and accepted by the City Mayor of Quezon City, MEI donated to the City Government certain lots in its subdivision for use as parks and playgrounds; and the donation was ratified by the City Council.[8]

After the donation of the parks and playgrounds just mentioned, MEI disposed of the entire Lot 15, Block 18 -- including that part thereof originally designated as open space (measuring 7,100 square meters). An area of 15,778 square meters within this Lot 15, was subsequently conveyed to the Development Bank of the Philippines

(DBP) by way of dacion en pago on May 19, 1971.[9] The rest, residential lots with an aggregate area of 5,688 square meters, were sold to third parties who thereafter constructed houses thereon.[10]

Now, the purchasers of the other subdivision lots, who had organized themselves into a non-stock corporation known as the Magdalena Homeowners Association, Inc., believed that the act of the Quezon City Government of authorizing the release of said Lot 15 as open space, after it had been so declared and earlier dedicated as such -- and its substitution by another portion of the subdivision -- was beyond the City Government's authority. They therefore brought suit against the Magdalena Estate, Inc. (MEI) in the Court of First Instance at Quezon City for the recovery of said Lot 15 as "open space" for public use of the residents of the subdivision.[11] The complaint, amended a few months later to implead the Quezon City Government,[12] prayed for judgment (1) that MEI pay Quezon City P2,575,200, representing the market value of Lot 15, Block 18, or that, alternatively, (2) the transfer certificates covering Lots 1 to 10, Block 11 (12?), (LRC) Psd-19167, with an aggregate area of 5,359 square meters -- i.e., Transfer Certificates of Title Numbered 166683, 166754 to 166753, inclusive of the Registry of Deeds for Quezon City -- be cancelled and new ones issued in the name of Quezon City for the use and enjoyment, as parks and playgrounds, of the residents of the subdivision.[13] Answers were in due course filed by the defendants.

While the case was pending, notices of lis pendens were, at the plaintiffs' instance, inscribed by the Register of Deeds of Quezon City on the Torrens titles of all the lots embraced within Block 12 (Numbered 166754 to 166763, inclusive, as well as those titles numbered 258973, 258974, 266509, 266510, 267304 to 267309, inclusive).[14] These were among the lots previously conveyed by MEI to the Development Bank of the Philippines by way of dacion en pago, supra[15]

Judgment was rendered by the Trial Court after due proceedings,[16] the dispositive portion of which is as follows:

"WHEREFORE, considering that the plaintiffs have no cause of action against defendant Quezon City government, the complaint against it is hereby DISMISSED.

HOWEVER, insofar as the action for recovery of open space is concerned, judgment is hereby rendered authorizing the plaintiffs to recover the subject space from MEI, thereafter to be donated to the Quezon City government, to maintain and develop the same for the ultimate use of the common weal."

Not satisfied with this judgment, the petitioners went up to the Court of Appeals to seek its modification.[17]

While the case was pending adjudgment, MEI and DBP filed separate motions with the Court of Appeals praying for cancellation of the notice of lis pendens annotated on the titles of the lots in Block 12 of the subdivision.[18] These motions were granted by resolution dated December 10, 1981. Reconsideration was sought and denied by Resolution dated February 8, 1982. Hence, the petition at bar, for nullification of the resolutions of December 10, 1981 and February 8, 1982 on the theory that in promulgating them, the Court of Appeals had acted with grave abuse of discretion if not indeed without or in excess of its jurisdiction.

The petitioners' first argument, that the Court of Appeals had no jurisdiction to take cognizance of and grant the motion to cancel notice of lis pendens because no such motion had ever been filed in the Court a quo, cannot be sustained.

According to Section 24, Rule 14 of the Rules of Court[19] and Section 76 of Presidential Decree No. 1529,[20] a notice of lis pendens is proper in the following cases, viz:

a)

An action to recover possession of real estate;

b)

An action to quiet title thereto;

c)

An action to remove clouds thereon;

d)

An action for partition; and

e)

Any other proceedings of any kind in Court directly affecting the title to the land or the use or occupation thereof or the buildings thereon.

The notice of lis pendens -- i.e., that real property is involved in an action -- is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may well be inferior and subordinate to those which may be finally determined and laid down therein.[21] The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. And its continuance or removal -- like the continuance or removal of a preliminary attachment or injunction -- is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.

In the case at bar, the case had properly come within the appellate jurisdiction of the Court of Appeals in virtue of the perfection of the plaintiffs' appeal. It therefore had power to deal with and resolve any incident in connection with the action subject of the appeal, even before final judgment. The rule that no questions may be raised for the first time on appeal have reference only to those affecting the merits of the action, and not to mere incidents thereof, e.g., cancellation of notices of lis pendens or, to repeat, the grant or dissolution of provisional remedies.

Now, a notice of lis pendens may be cancelled 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." [22]

The Court of Appeals found as a fact that the case had dragged on and had been unnecessarily prolonged by repeated amendments of the complaints by the plaintiffs, and that the circumstances on record justified the conclusion that the annotation of the notice of lis pendens was intended to molest and harass the defendants.[23]

That determination, and the conclusion that Presidential Decree No. 1529 "authorizes the cancellation of notices of lis pendens before final judgment upon order of the Court, upon the grounds previously mentioned," are not whimsical or capricious, despotic, arbitrary or oppressive in the premises so as to call for correction by the extraordinary remedy of certiorari.

WHEREFORE, the petition is DISMISSED, with costs against the petitioners.

IT IS SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Promulgated on December 10, 1981 in CA-G.R. No. 63455-R entitled "Magdalena Rolling Hills Homeowners Association, Inc., et al. v. Magdalena Estate, Inc., et al."

[2] TCT Nos. 166754 to 166763, inclusive of the Registry of Deeds of Quezon City

[3] Commenced by complaint filed on October 30, 1973

[4] (LRC) Psd-18617

[5] Rollo, pp. 55-56. Approval was made on June 18, 1962. The tentative plan of the subdivision had been approved by the Director of Planning on March 12, 1958 (Rollo, p. 55)

[6] Rollo, p. 23

[7] Id. Approval was given on December 12, 1962

[8] Resolution No. 7159, series of 1966, dated Feb. 2, 1966: Rollo, pp. 56-57

[9] Rollo, pp. 57, 217

[10] Id.

[11] The complaint, docketed as Civil Case No. Q-18223, was filed on October 30, 1973.

[12] Amended a second time on September 1, 1975 in accordance with Section 5, Rule 10 of the Rules of Court

[13] Rollo p. 23

[14] Id., p. 219

[15] SEE footnote 9

[16] Id., pp 21-23, the judgment being dated June 20, 1977

[17] The case was docketed as CA-G.R. No. 63455-R

[18] Rollo, pp. 33-36, 37-39

[19] Sec. 24 refers to "an action affecting the title or the right of possession of real property" Sec. 2 Rule 4 states inter alia that real actions are those "affecting title to, or for recovery of possession, or for partition or condemnation of or foreclosure of mortgage on real property."

[20] An enactment amending and codifying the laws relative to registration of property and other purposes

[21] SEE Heirs of Maria Marasigan v. I.A.C., 152 SCRA 253 (1987); Tanchoco v. Aquino, 154 SCRA 1 (1987)

[22] Sec. 24, Rule 14, Rules of Court (last paragraph); Sec. 77, PD 1529; Tan v. Lantin, 142 SCRA 423 (1986)

[23] Rollo, p. 49

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