

HEIRS OF MARIA MARASIGAN, NAMELY, TEOFILO, ISABEL, MAXIMINA, ANICIA, AND FRANCISCO, ALL SURNAMED MARASIGAN, PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT AND MARIA MARRON, R...

G.R. No. 69303. July 23, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Who has a better right to the property in question, the party who bought it with a notice of lis pendens annotated at the back of her title or the party in whose favor the notice of lis pendens was made? The appellate court answered this question in favor of the party who had the notice annotated and who won the litigation over the property. We affirm.

The disputed property in this case is a residential lot (Lot No. 2-A) covered by Transfer Certificate of Title No. 100612 issued by the Register of Deeds of the City of Manila in the name of one Fe Springael-Bazar, married to Felicisimo Bazar.

The pertinent facts as disclosed by the record are as follows:

On April 24, 1975, Civil Case No. 97479 entitled "Maria Marron v. Felicisimo Bazar and Fe S. Bazar" was filed before the then Court of First Instance of Manila, Branch XIII. The action sought to compel defendants Bazar to execute a registrable Deed of Absolute Sale of their lot covered by T.C.T. No. 100612 in favor of Maria Marron.

On January 27, 1976, while Civil Case No. 97479 was still pending, the private respondent caused the annotation of a notice of lis pendens at the back of T.C.T. No. 100612.

On February 24, 1976, judgment was rendered in Civil Case No. 97479. The dispositive portion reads:

"WHEREFORE, the Court hereby renders judgment in favor of the plaintiff and against the defendants as follows:

a) Ordering the defendants Fe Springael Bazar and Felicisimo Bazar as vendors (1) to execute in favor of the plaintiff Maria Marron as vendee a Deed of Absolute Sale in a public instrument over the residential lot covered by Transfer Certificate of Title No. 100612 issued by the Registry of Deeds of the City of Manila to and in the name of Fe S. Bazar, married to Felicisimo Bazar; and (2) to deliver to plaintiff sufficient copies of such deed of sale, together with the Owner's copy of said Transfer Certificate of Title No. 100612, in order that the plaintiff can register the Deed of Absolute Sale with the Registry of Deeds of the City of Manila and secure a transfer certificate of title for the land in her name.

b) Ordering the defendants to pay to the plaintiff the sum of P500.00 Philippine Currency, as and for attorney's fees; and

c) Ordering the defendants to pay the costs of the suit." (Rollo, p. 15).

The above judgment became final and executory so Maria Marron filed a motion for execution which was granted. A writ of execution was issued by the court on July 12, 1976. The spouses Bazar, however, refused to surrender their title to the property in question and to execute the required deed of sale in Marron's favor. On November 29, 1978, the lower court finally ordered the Clerk of Court to execute the deed of sale in behalf of the erring spouses. When the said deed was presented to the Register of Deeds of Manila for registration, the Deputy Clerk of Court was advised to secure a court order in order that the new title issued in the name of herein petitioner Maria Marasigan could be cancelled.

It appears that on December 18, 1974, a deed of absolute sale of Lot 2-A covered by T.C.T. No. 100612 was executed by Fe S. Bazar in favor of Maria Marasigan for and in consideration of the sum of Fifteen Thousand Pesos (P.15,000.00). However, it was only on July 5, 1977 that said deed was registered with the Registry of Deeds of Manila. Consequently, T.C.T. No. 100612 was cancelled and a new title was issued in Maria Marasigan's name. When the Register of Deeds of Manila issued Transfer Certificate of Title No. 126056 naming Maria Marasigan as the new owner of Lot 2-A, the notice of lis pendens caused to be annotated by Marron on the Bazar's title was carried over on the said new title.

Meanwhile, on May 26, 1977, the Bazars filed a petition for relief from the judgment dated February 24, 1976 in Civil Case No. 97479. While their petition was still pending, they moved to set aside the said judgment on June 22, 1979 on the ground of lack of jurisdiction over their persons.

On the other hand, on February 24, 1979, Marron instituted L.R.C. Case No. 7680 captioned "Maria Marron v. Maria Marasigan" which prayed for a court order requiring the Register of Deeds of Manila to register the deed of sale executed by the Deputy Clerk of Court in behalf of the Bazars pursuant to the order dated November 29, 1978 of the Court of First Instance, Manila, Branch XIII. L.R.C. Case No. 7680 was tried by the Court of First Instance of Manila, Branch IV acting as a land registration court. Said case was dismissed for the following reason:

"x x x This court acting as a Land Registration Court, with limited and special jurisdiction cannot act on this petition under summary proceedings but (sic) should be ventilated before a court of general jurisdiction Branch XIII, which issued the aforesaid Order dated November 29, 1978, the said petition is hereby dismissed for lack of jurisdiction without prejudice on the part of the petitioner to institute the appropriate civil action before the proper court x x x." (Annex "A", p. 4, Rollo, p. 138)

On September 6, 1979, Marron filed another case docketed as Civil Case No. 126378 to have Marasigan's TCT 126056 cancelled conformably to the procedure outlined in the decision of the above land registration court. On July 30, 1980, the parties submitted said case for decision.

On February 18, 1982, the Court of First Instance of Manila, Branch IV to which Civil Case No. 126378 was assigned dismissed Marron's complaint for being premature since the decision rendered by the CFI, Branch XIII in Civil Case No. 97479 had not yet become final and executory considering that it was still the subject of a petition for relief from judgment.

On appeal, the Intermediate Appellate Court, on August 7, 1984, ruled that Marron is entitled to the property under litigation by virtue of the notice of lis pendens annotated at the back of Maria Marasigan's title. The appellate court further ruled that the decision in Civil Case No. 97479 had become final and executory because the petition for relief from judgment of the spouses Bazar was filed out of time. The dispositive portion of the appellate court's decision reads:

"WHEREFORE, the appealed decision is hereby REVERSED and another one entered —

- (a) Ordering the Register of Deeds of Manila to cancel T.C.T. No. 126056 in the name of Maria Marasigan and issue another in the name of Maria Marron by virtue of the Deed of Sale executed by the Branch Clerk of Court of Branch XIII;
- (b) Ordering the said Register of Deeds, during the pendency of this case, to refrain from registering any deed of sale pertaining to T.C.T. No. 126056 in the name of Maria Marasigan other than that of the herein plaintiff; and
- (c) Ordering the defendant Maria Marasigan to pay attorney's fees in the amount of P10,000.00." (IAC, Decision, Rollo, pp. 17-18).

Maria Marasigan who died in the course of the proceedings is now represented by her heirs in the instant petition which assigns the following errors:

I

THAT THE INTERMEDIATE APPELLATE COURT FAILED TO APPREHEND THAT THE RIGHT OF ACTION OF RESPONDENT MARIA MARRON (AS PLAINTIFF) IN CIVIL CASE NO. 97479 HAD PRESCRIBED AND SHE INCURRED IN LACHES.

II

THAT THE INTERMEDIATE APPELLATE COURT FAILED TO APPREHEND THAT RESPONDENT ABANDONED OR WAIVED HER PROPERTY RIGHTS AND EFFECTS TO/OF THE DECISION IN CIVIL CASE NO. 97479, WHEN SHE FILED CIVIL CASES NO. 7680 AND 126378, DURING ITS EFFECTIVITY.

III

THAT THE INTERMEDIATE APPELLATE COURT ERRED IN CONCLUDING THAT THE DECISION IN CIVIL CASE NO. 97479 HAS BECOME FINAL AND EXECUTORY.

IV

THAT THE INTERMEDIATE APPELLATE COURT FAILED TO APPREHEND THE LACK OF JURISDICTION OF THE TRIAL COURT IN CIVIL CASES NO. 7680 AND 126378 OVER THE PERSONS OF PETITIONERS.

V

THAT THE INTERMEDIATE APPELLATE COURT ERRED IN CONSIDERING THAT THE TRIAL COURT IN CIVIL CASE NO. 97479 HAS JURISDICTION OVER THE PERSONS OF DEFENDANTS SPOUSES FELICISIMO BAZAR AND FE S. BAZAR.

VI

THAT THE INTERMEDIATE APPELLATE COURT FAILED TO APPREHEND THAT THE DEED OF ABSOLUTE SALE EXECUTED BY THE DEPUTY CLERK OF COURT, WAS NOT LEGAL AND VALID AND WITHOUT PROOF AND EFFECT. (Brief for the appellant, pp. 1 and 2)

We find no merit in the present petition.

There is a clear showing that although the late Maria Marasigan acquired the property in question from the Bazars pursuant to a deed of absolute sale on December 18, 1974 or a little over four months before the filing of Civil Case No. 97479, the transaction became effective as against third persons only on July 5, 1977 when it was registered with the Registry of Deeds of Manila. It is the act of registration which creates constructive notice to the whole world. Section 51 of Act 496, as amended by Section 52 of the Property Registration Decree (P.D. 1529) provides:

"Sec. 52. Constructive notice upon registration. — Every conveyance x x x affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering."

Moreover, there is no question that when the late Maria Marasigan was issued her transfer certificate of title to the subject property (T.C.T. No. 126056), the Registrar of Deeds of Manila then carried over to the new title the notice of lis pendens which the private respondent had caused to be annotated at the back of the Bazar's title. In case of subsequent sales or transfers, the Registrar of Deeds is duty bound to carry over the notice of lis pendens on all titles to be issued. Otherwise, if he cancels any notice of lis pendens in violation of his duty, he may be held civilly and even criminally liable for any prejudice caused to innocent third persons (*The Director of Lands, et al. v. Reyes*, 68 SCRA 177).

A notice of lis pendens means that a certain property is involved in a litigation and serves as notice to the whole world that one who buys the same does it at his own risk (*Rehabilitation Finance Corporation v. Morales*, 101 Phil. 171). It was also a clear notice to Maria Marasigan that there was a court case affecting her rights to the property she had purchased.

As earlier stated it was only on July 5, 1977 that the sale between Maria Marasigan and the Bazars became effective as against third persons. The registration of the deed of sale over the subject property was definitely subsequent to the annotation made on January 27, 1976. Consequently, Marasigan was bound by the outcome of the litigation against her vendors or transferors. (See *Rivera v. Tirona, et al.*, 109 Phil. 505).

We reiterate the established rule that:

"x x x the filing of a notice of lis pendens charges all strangers with a notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire on the property is subject to the eventuality of the suit. The doctrine of lis pendens is founded upon reason of public policy and necessity, the purpose of which is to keep the subject matter of the litigation within the power of the Court until the judgment or decree shall have been entered; otherwise, by successive alienations pending the litigation, its judgment or decree shall be rendered abortive and impossible of execution. x x x." (*Laroza v. Guia*, 134 SCRA 341)

The late Marasigan's transferors did not interpose any appeal from the adverse judgment dated February 24, 1976 in Civil Case No. 97479. The 30-day period under the old rule (Rule 41, Section 3 of the Revised Rules of Court now amended by *Batas Pambansa Bilang 129*, Section 39) within which the Bazars may have taken an appeal started to run from May 12, 1976 when they were served with a copy of the said decision. On June 11, 1976, the February 24, 1976 decision in Civil Case No. 97479 became final and executory. At this point after the finality of the said decision, the Bazars no longer had the right to alienate the property subject of the litigation. Any transaction effective during the period of litigation is subject to the risks implicit in the notice of lis pendens and to the eventual outcome of the litigation.

Moreover, we agree with the finding of the appellate court that the petition for relief from judgment by the Bazars dated May 26, 1977 was filed beyond the two periods provided in Section 3, Rule 38 of the Revised Rules of Court. There may have been some errors in the computations but the petition itself was out of time.

Rule 38, Section 3 of said Rules provides, in part, that:

"Sec. 3. Time for filing petition x x x — A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered or such proceeding was taken. x x x"

The 60-day period must be reckoned from May 12, 1976 when the Bazars were served with a copy of the assailed decision. Therefore, the 60-day period expired on July 11, 1976. It was only after 379 days or more than 12 months after they learned of the judgment that the Bazars filed their petition for relief from said judgment. (See *Domingo v. Dela Cruz*, 23 SCRA 1121) The appellate court computed the 6-month period from the date the judgment was rendered. Rule 38 states that the counting should commence from the entry of the judgment or order. (See *Dirige v. Biranya*, 17 SCRA 840). A judgment is entered only after its finality and Civil Case No. 97479 became final on June 11, 1976. Since the records do not bear the exact date the questioned judgment was entered, the 6-month period can be counted for purposes of our decision from July 12, 1976 when the writ of execution of the final judgment was issued. The phrase "or other proceeding" in Section 3 of Rule 38 includes a writ of execution (*Aquino v. Blanco*, 79 Phil. 647). The 6-month period from July 12, 1976 lapsed on January 8, 1977. A period of ten (10) months had already lapsed when the Bazars filed their petition for relief from judgment on May 26, 1977. Obviously, the petitioners cannot now question the effects of the final and executory judgment in Civil Case No. 97479. In the words of *Laroza v. Guia* (*supra*) they cannot render the final judgment abortive and impossible of execution. The deed of sale executed by the Deputy Clerk of Court on behalf of the Bazar spouses pursuant to the court's judgment was valid and binding.

The petitioners cannot also raise before us the issues of prescription or laches and lack of jurisdiction over the persons of the Bazar spouses in Civil Case No. 97479. This cannot be done in this petition which stems from Civil Case No. 126378 in the trial court and AC-G.R. No. 00183 in the appellate court. The Bazars were the proper parties who ought to have raised them as defenses either in a motion to dismiss or in their answer. Since they did not do so, the same were deemed waived. (See Rule 9, Section 2 of the Revised Rules of Court; *MD Transit & Taxi Co., Inc. v. Estrella*, 113 SCRA 378; *Torreda v. Boncaros*, 69 SCRA 247; *Visayan Electric Co., Inc. v. Commissioner of Internal Revenue*, 39 SCRA 43; *Republic v. Mambulao Lumber Company*, 6 SCRA 858).

WHEREFORE, in view of all the foregoing, the petition is hereby DISMISSED for lack of merit. The appellate court's decision is AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, and Cortes, JJ., concur.

Bidin, J., took no part, participated in the appealed decision.

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