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SECOND DIVISION

[G.R. NO. 142406, May 16, 2005]

SPOUSES CONRADO AND MA. CORONA ROMERO, PETITIONERS, VS. COURT OF APPEALS AND SATURNINO S. ORDEN, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for *certiorari* filed under Rule 65 of the Rules of Court, seeking the nullification of the Decision[1] promulgated by the Court of Appeals (CA) on September 30, 1999 in CA-G.R. Sp. No. 49608 and the Resolution[2] promulgated on January 26, 2000, denying the motion for reconsideration.

The facts are as follows:

On April 23, 1996, petitioner Ma. Corona Romero and her siblings executed a letter-contract to sell with private respondent Saturnino Orden. In said contract, private respondent proposed to purchase from Romero and her siblings a property located at Denver cor. New York Sts., Cubao, Quezon City, covered by Transfer Certificate of Title (TCT) No. 145269, for the total amount of P17M. The contract stipulated that private respondent shall pay petitioner the amount of P7M upon the execution of the deed of absolute sale, the balance of P10M not later than December 19, 1996 and that private respondent shall shoulder the expenses to evict the squatters on the property.[3]

When private respondent failed to pay the down payment, petitioner Corona told him that she was rescinding the contract to sell.[4] Private respondent then filed a complaint for specific performance and damages against petitioners before the Regional Trial Court (RTC) of Quezon City, docketed as Civil Case No. Q-97-31114 alleging that he has complied with his obligation to evict the squatters on the property and is entitled to demand from petitioners the performance of their obligation under the contract. [5]

Simultaneous with the filing of the complaint, private respondent caused the annotation of a notice of *lis pendens* on TCT No. 145269.[6]

On August 11, 1997, Manuel Y. Limsico, Jr. and Aloysius R. Santos, subsequent buyers of the subject property sold by petitioner Corona and her siblings, filed a motion for leave to intervene with the RTC and were admitted as defendants-intervenors. They filed a motion for the cancellation of *lis pendens* which the RTC granted in its Resolution dated November 26, 1997. The RTC reasoned that:

> In the instant case, the evidence so far presented by the plaintiff do[es] not bear out the main allegations in the complaint. While the filing of the notice may not have been for the purpose of molesting the defendants and the defendants-in-intervenors, still the inscription is not necessary to protect the alleged right of the plaintiff over the subject property. The plaintiff is not entitled to the inscription of the notice on TCT No. 145269 in the name of the defendants and others because he does not have any actionable right over the subject property there being no deed of sale executed between him and the defendants over the subject real properties as offered in the alleged agreement dated April 23, 1996. The alleged agreement dated April 23, 1996 although with the conformity of Maria Corona S. Romero cannot serve as sufficient basis for the inscription of the notice on TCT No. 145269. Therefore said notice should be cancelled.[7]

The motion for reconsideration filed by private respondent was denied by the RTC in its Resolution dated August 28, 1998.[8]

On November 16, 1998, private respondent filed a petition for certiorari before the CA seeking the nullification of the resolutions of the RTC and asked for the re-annotation of the notice of *lis pendens* on the TCT.[9] The CA granted the petition in its Decision dated September 30, 1999, portions of which read:

> **First,** the general rule is that a notice of *lis pendens* cannot be cancelled while the action is pending and undetermined except in cases expressly provided by statute.
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> Section 77, P.D. 1529 (Property Registration Decree) provides:
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> **SEC. 77. *Cancellation of lis pendens.*** Before final judgment, 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 registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.
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> At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, the notice of *lis pendens* shall be deemed cancelled upon the registration of certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.
>
> In the instant case, there was not even a hearing upon which could be predicated a "proper showing" that any of the grounds provided by law exists. The cited case of Victoriano presupposes that there must be a hearing where the evidence of the party who sought the annotation of the notice of *lis pendens* must be considered.
>
> **Second,** as shown in the above cited provisions, there are only two

grounds for the court to order the cancellation of a notice of *lis pendens* during the pendency of an action, and they are: (1) if the annotation was for the purpose of molesting the title of the adverse party, or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded. While the parties are locked up in legal battle and until it becomes convincingly shown that either of the two grounds exists, the court should not allow the cancellation.

Third, the Doctrine of *Lis Pendens* is founded upon reasons of public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation. This purpose would be rendered meaningless if the private respondents are allowed to file a bond regardless of the amount, in substitution of said notice. Moreover, the law does not authorize a judge to cancel a notice of *lis pendens* pending litigation, upon the mere filing of a sufficient bond by the party on whose title said notice is annotated.

In the case at bench, the judgment is even defective, in that the same does not specify who among the private respondents – whether the defendants-vendors or intervenors-vendees—should file a bond.

Fourth, if there was indeed an agreement to sell between the petitioner and the private respondents-owners (which question of fact is not for this court to determine in this petition), then the said parties are bound by the provisions of Article 1475 of the Civil Code, to wit:

ART. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contract.

As a matter of fact, there would have been no need for a notarial rescission if there was no actionable contract at all.

Without ruling on the merits of the case below, we are constrained to remind the public respondent that when a case is commenced involving any right to land registered under the Land Registration Law, any decision therein will bind the parties only, unless a notice of the pendency of such action is registered on the title of said land, in order to bind the whole world as well. Therefore, in order that a notice of *lis pendens* may affect the right of a subsequent purchaser, such notice should be annotated on the back of the certificate of title.

In any case, a notation of *lis pendens* does not create a non-existent right or lien. It serves merely as a warning to a person who purchases or contracts on the subject property that he does so at his peril and subject to the result of the pending litigation. It is not even required that the applying party must prove his right or interest over the property sought to be annotated.

> Thus, it was legally erroneous for the respondent court to order the cancellation of the notice.
>
> **Finally,** when a judge improperly orders the cancellation of a notice of *lis pendens,* he is said to have acted with grave abuse of discretion, as held in the case of *Sarmiento vs. Ortiz.*
>
> ***WHEREFORE,*** the petition is ***GRANTED***. The challenged resolutions of the public respondent dated 26 November 1997 and 28 August 1998 are ***SET ASIDE*** for being ***NULL AND VOID***. The public respondent is directed to issue an order for the Register of Deeds to restore the annotation of the notice of *lis pendens* upon the affected title.[10] (Citations omitted)

The motion for reconsideration filed by petitioners was denied on January 26, 2000.[11] Hence the present petition alleging that:

> THE COURT OF APPEALS GRAVELY ERRED IN ORDERING THE REANNOTATION OF THE NOTICE OF LIS PENDENS ON THE SUBJECT TITLE DESPITE THE FACT THAT THE COMPLAINT FILED BY THE PRIVATE RESPONENT AFFECTED NEITHER THE TITLE TO NOR THE POSSESSION OF THE SUBJECT PROPERTY.[12]

Petitioners contend that: the notice of *lis pendens* is not necessary in this case since the complaint does not pray for an express award of ownership or possession; what is involved in this case is a contract to sell and not a contract of sale, thus, no title has passed to private respondent yet which needs to be protected by a notice of *lis pendens*; by ordering the re-annotation of the notice of *lis pendens,* when private respondent did not even assert a claim of possession or title over the subject property, the CA went against the doctrine in *Villanueva vs. Court of Appeals*,[13] where this Court held that the applicant must, in the complaint or answer filed in the subject litigation, assert a claim of possession or title over the subject property in order to give due course to his application; the CA, in concluding that there was no hearing before the annotation was cancelled, overlooked the fact that the motion for cancellation was set for hearing on November 12, 1997, that private respondent was duly notified but failed to appear, and that he was able to file his opposition to the motion to cancel *lis pendens* which the RTC considered before promulgating its Resolution dated November 26, 1997.[14]

Private respondent, on the other hand, contends that: the court a quo cancelled the notice of *lis pendens* even before it has been apprised of all the relevant facts of the case; the CA was correct in ruling that while the parties are locked in legal battle and until it becomes manifest that the grounds set forth in Sec. 77, P.D. No. 1529 exist, the trial court should not allow the cancellation of the *lis pendens*; the RTC ruling in this case is proscribed by the case of *Tan vs. Lantin*[15] which held that the law does not authorize a judge to cancel *lis pendens* pending litigation, upon the mere filing of a bond; the danger sought to be prevented by the Tan ruling, *i.e.*, the defeat of the judgment or decree by subsequent alienation, already happened in this case because the subject property was sold on July 28, 1999 by petitioners to Mueller Trading Corporation;[16] said sale was made with evident bad faith by