

THIRD DIVISION

[G.R. No. 116825, March 26, 1998]

**SAN LORENZO VILLAGE ASSOCIATION, INC., PETITIONER, VS.
COURT OF APPEALS; HON. JUDGE ROBERTO C. DIOKNO,
PRESIDING JUDGE, RTC, MAKATI, BRANCH 62 AND ALMEDA
DEVELOPMENT & EQUIPMENT CORPORATION, RESPONDENTS.**

D E C I S I O N

ROMERO, J.:

This petition for review on *certiorari* assails the decision^[1] J. Francisco; Barcelona and Hofileña, *J.J.* concurring.¹ of the Court of Appeals denying the petition for *certiorari* filed by the San Lorenzo Village Association, Inc. which sought the reversal of the orders dated March 31 and October 15, 1992, of the Regional Trial Court of Makati, Branch 62.^[2] The lower court had denied the motion to dismiss the petition for cancellation of the restrictions annotated in Transfer Certificate of Title No. 47348 of the Registry of Deeds of Makati, Metro Manila.

Petitioner San Lorenzo Village Association, Inc. (SLVAI) and San Lorenzo Company, Inc. were the respondents in the aforesaid petition filed on December 13, 1991 before the lower court by private respondent Almeda Development and Equipment Corporation (ADEC). For clarity, the pertinent portions of that petition in Civil Case No. 91-3450 are hereby quoted as follows:

“3. The petitioner is the owner of that parcel of land with building and other improvements situated at Pasay Road, San Lorenzo Village, Makati, Metro Manila, embraced in Transfer Certificate of Title No. 47348 of the Registry of Deeds of Makati, Metro Manila, more particularly described as follows:

x x x x x x x x x x x.

The petitioner's ownership thereto is evidenced by the Deed of Sale executed by Ponciano L. Almeda, married to Eufemia Perez-Almeda, and the petitioner on September 15, 1991, entered as Doc. No. 218; Page No. 45; Book No. VIII; Series of 1991, evidenced by its copy hereto attached as Annex `A'.

4. As the owner of the said parcel of land together with the building and other improvements thereon, the petitioner has the right to enjoy and dispose of said property without limitation except those established by law (Art. 428, Civil Code).

x x x x x x x x x x x.

5. In Transfer Certificate of Title No. 47448 (sic), there appears Entry No. 59599, reading in part as follows:

`The owner of this lot or his successor in interest is required to be and is automatically a member of the San Lorenzo Village Association. The lot may not be subdivided. The lot shall only be

used for residential purposes. Only one single storey or one (duplex) house may be constructed on a single lot, although separate servant's quarter or garage may be built. The property is subject to an easement of two meters within the lot and adjacent to the rear and sides thereof not fronting a street for the purpose of drainage, sewage, water and other public facilities as may be necessary and desirable.

All buildings on the lot must be of strong materials. Building shall not be higher than 5 meters above the ground directly beneath the point in question. All building plans must be approved by the Association before construction begins. All buildings including garage, servant's quarter (*porte cocheres*) must be constructed x x x not less than 3 meters from boundary bordering a wall, not including pedestrian paths, and not less than 2 meters from the other boundaries of this lot. Sewage disposal must be by means of septic tank or into a sewage system.

Walls on the perimeter of this property shall not exceed 2 meters in height, except that no restriction as to height applies to walls made of live vegetation."

Evidenced by TCT No. 47348 and Entry NO. 59599 (Memorandum of Encumbrances) thereof marked as Annexes 'B' and 'B-1', respectively.

6. The condition prevailing along Pasay Road (San Lorenzo Village) on July 10, 1958, the date when the restrictions were imposed by the San Lorenzo Company, Inc. to lot and house owners in San Lorenzo Village and on July 11, 1958, when the Deed of Restrictions was annotated on TCT No. 60143/T-577 (the certificate of title from where TCT No. 47448 originated), is no longer the same compared today. At that time, houses located along Pasay Road (San Lorenzo Village) were used purely for residential purposes. Today, what are found along Pasay Road (San Lorenzo Village) are commercial/industrial buildings such as the matter of security and garage (sic) collections are taken care of by their buyers. Accordingly, the San Lorenzo Village Association, Inc. is no longer relevant in so far as the building and lot owners along Pasay Road (San Lorenzo Village) are concerned.

7. The aforementioned annotation in TCT No. 47348 in (sic) an unlawful limitation to the rights of the petitioner protected by the Constitution and prescribed in Art. 428 of the Civil Code.

7.1 The petitioner does not intend to be a member of the San Lorenzo Village Association, Inc.

7.2 The petitioner has its own security guards and garbage trucks.

7.3 The petitioner can effectively protect its ownership and possession without the assistance and intervention of the San Lorenzo Village Association, Inc.

7.4 The petitioner intends to construct a taller building on the lot.

8. While in Sec. 30, Presidential Decree No. 957, it is provided that -

"SEC. 30. Organization of Homeowners Association. - The owner or developer of a subdivision project or condominium project shall initiate the organization of a homeowners association among the buyers and residents of the projects for the purpose of promoting and protecting their mutual interest and assist in their community development."

there is no law compelling lot and house buyers to be a member of the San Lorenzo Company, Inc. and restricting the petitioner to construct a taller building on its lot.

9. As stated above, there is compelling reason for the cancellation of the restrictions imposed at the back of TCT No. 47348.

10. If there is no vested right in existing law which can be repealed or judicial interpretation which can be changed, there is no reason why a Deed of Restrictions annotated in a certificate of title cannot be cancelled.

11. To cancel the aforementioned annotation in TCT No. 47348 and to enforce its right, the petitioner was compelled to engage the services of a lawyer for a fee and to institute this action incurring and will incur litigation expenses.”^[3]

ADEC prayed for the issuance of a temporary restraining order directing the San Lorenzo Company, Inc. and its agents “to cease and desist from making the petitioner a member of the San Lorenzo Village Association, Inc. and prohibiting the petitioner from constructing a taller building on its lot and the San Lorenzo Village Association, Inc. from collecting membership fee and monthly dues and other assessments.” It likewise prayed that the Register of Deeds of Makati be ordered to cancel Entry No. 59599 in TCT No. 47348 and that respondents pay actual damages of ₱30,000.00, attorney’s fees of ₱30,000.00 plus ₱500 allowance per attendance in court hearings and the costs of suit.

Therein private respondent SLVAI filed a motion to dismiss the petition on the grounds of lack of cause of action and lack of ADEC’s personality to sue. It alleged that ADEC was not a registered owner of the parcel of land covered by TCT No. 47348; that the sale of the property by Ponciano L. Almeda to ADEC could not bind third parties; that ADEC had no reason to pray for the cancellation of Entry No. 59599 not being the owner of the land nor a member of SLVAI but simply a stranger that had no demandable right against the SLVAI.^[4]

ADEC opposed the motion to dismiss contending that it had a cause of action against SLVAI because as the (new) owner of the lot involved, it cannot be compelled to become a member of the SLVAI for to do so would unduly limit its use of the property. Citing Philippine Suburban Development Corporation v. Auditor General,^[5] it asserted that it had the capacity and personality to sue because actual notice of the sale was equivalent to registration.^[6]

On March 31, 1992, the lower court issued an Order denying the motion to dismiss, holding as follows:

“This Court agrees with the plaintiff that it has the capacity and legal personality to file this case. Plaintiff has shown its interest in the subject property, basing its claims on a Deed of Sale dated September 11, 1990. As successor in interest of the original registered owner, plaintiff step (sic) into the shoes of the latter, consequently it can sue and be sued.”

SLVAI filed a motion for the reconsideration of that Order^[7] alleging that third persons were not bound by the deed of sale of the property entered into between ADEC and Ponciano Almeda, as said deed of sale was not registered. As such, ADEC had no cause of action against it. Furthermore, Almeda, not having paid the association dues and garbage fees, he was sued before the Regional Trial Court of Pasig, Branch 151, where the same deed of sale was presented to prevent the scheduled auction sale through a third-party claim. In quashing the third-party claim, then Judge Eutropio

Migriño ruled that the title to the property being still in the name of defendant Almeda, whatever transaction he had entered into would not be binding upon the plaintiff.

In its opposition to the motion for reconsideration, ADEC contended that said motion was *pro forma* as it merely reiterated the arguments in the motion to dismiss. Citing Article 709 of the Civil Code which states that “(t)he titles of ownership, or other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons,” ADEC averred that within the context of that law, the SLVAI was not a “third person” because it “merely caused the annotation on the title of a property of certain restraints or impositions on the exercise of ownership by the registered owner.” It added that SLVAI had no interest in the property in question “except to compel the owner thereof to be automatically a member of the San Lorenzo Village Association and to pay the consequential dues or fees and other expenses therefor.” As such, SLVAI and San Lorenzo Village Company, Inc., were included in the case “only as parties who had caused the annotation or inscription of the entry in question which limits or restricts the exercise of ownership over the aforesaid land, and who may be affected thereby, directly or indirectly, by its cancellation, in the same manner that the Register of Deeds of Makati has also been impleaded as the public official who is charged with the duty of registering or canceling the subject annotation or inscription.”^[8]

In its reply to the opposition, SLVAI countered that the motion for reconsideration was not *pro forma* as the lower court failed to consider the provisions of Article 709 of the Civil Code and Section 50 of the Land Registration Act. It alleged that the term “third persons” in Article 709 was broad enough to cover “everybody” who did not participate in the disputed act, contract or deed. It asserted that, while it had a lien over unpaid association dues and garbage fees, ADEC was not the real party in interest in the suit for cancellation of restrictions on the title that was still in the name of Almeda and therefore the case should have been dismissed outright for lack of cause of action. Moreover, while ADEC claimed to be the owner of the property, it had not explained why it had not registered the deed of sale and secured a separate title to the property.^[9]

On October 15, 1992, the lower court issued the Order denying the motion for reconsideration as follows:

“Article 709 of the New Civil Code x x x as the basis of this Motion for Reconsideration finds no application in this case. As correctly pointed out by petitioner the ‘third persons’ mentioned in Article 709, are those persons who may have adverse interests in the property itself either in the concept of an owner, or a vendee or a mortgagee, or otherwise, but definitely not that of one who has merely caused the annotation on the title of the property of certain restraints or impositions on the exercise of ownership by the registered owner. Moreover, when respondent San Lorenzo Village Association, Inc. convey (sic) the property to Ponciano Almeda, the original owner, the latter has all the rights as an owner, including the right to sell, which he did in favor of the petitioner.

As successor in interest, petitioner can validly exercise the right to sue which the original owner could lawfully do for the protection of the right as an attribute of ownership.”^[10]

SLVAI questioned the lower court’s Orders before the Court of Appeals through a petition for *certiorari* with prayer for the issuance of a temporary restraining order. It