

SECOND DIVISION

[G.R. No. 115402, July 15, 1998]

**LEONCIO LEE TEK SHENG, PETITIONER, VS. COURT OF APPEALS,
HON. ANTONIO J. FINEZA, AND LEE TEK SHENG, RESPONDENTS.**

D E C I S I O N

MARTINEZ, J.:

After his mother's death, petitioner^[1] filed a complaint against his father, herein private respondent, to partition the conjugal properties of his parents.^[2] In his answer with counterclaim, private respondent alleged that four (4) parcels of land registered solely in petitioner's name under Transfer Certificate of Title (TCT) 8278 are conjugal properties. Private respondent contends that the lots are owned by the conjugal regime but was registered in petitioner's name only as a trustee considering that at that time, the latter was then the only Filipino citizen in the family. Accordingly, private respondent prayed for the dismissal of the partition case and for the reconveyance of the lots to its rightful owner – the conjugal regime.

Meantime, to protect the interest of the conjugal regime during the pendency of the case, private respondent caused the annotation of a notice of *lis pendens* on TCT 8278. Petitioner moved for the cancellation of said annotation which was denied by the trial court ruling that (a) the notice was not for the purpose of molesting or harassing petitioner and (b) also to keep the property within the power of the court pending litigation.^[3] Petitioner assailed the denial of his motion to cancel the notice of *lis pendens* via petition for certiorari and prohibition to the Court of Appeals (CA), but to no avail.^[4]

Resorting to this Court, petitioner primarily contends that in the resolution of an incidental motion for cancellation of the notice of *lis pendens* (a) it was improper to thresh out the issue of ownership of the disputed lots since ownership cannot be passed upon in a partition case, otherwise, (b) it would amount to a collateral attack of his title obtained more than 28 years ago. He argues that his sole ownership as shown in the TCT would be improperly assailed in a partition case and should be done through a separate suit. On the contrary, private respondent posits that evidence of ownership is admissible in a partition case as this is not a probate or land registration proceedings when the court's jurisdiction is limited.

Though the postulates respectively proffered by both parties are not at point, luckily for private respondent, petitioner's claim is not legally tenable. There is no dispute that a Torrens certificate of title cannot be collaterally attacked^[5] but that rule is not material to this case. The annotation of a notice of *lis pendens* does not in any case amount nor can it be considered as equivalent to a collateral attack of the certificate of title for a parcel of land. The concept of no collateral attack of title is based on Section 48 of P.D. 1529 which states that:

"Certificate not Subject to Collateral attack.- A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law."^[6] (Emphasis Supplied).

What cannot be collaterally attacked is the certificate of title and not the title. The certificate referred to is that document issued by the Register of Deeds known as the Transfer Certificate of Title (TCT). By title, the law refers to ownership which is represented by that document. Petitioner apparently confuses certificate with title. Placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. Ownership is different from a certificate of title. The TCT is only the best proof of ownership of a piece of land.^[7] Besides, the certificate cannot always be considered as conclusive evidence of ownership.^[8] Mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title. To repeat, registration is not the equivalent of title, but is only the best evidence thereof. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used. In this case, contrary to petitioner's fears, his certificate of title is not being assailed by private respondent.^[9] What the latter disputes is the former's claim of sole ownership. Thus, although petitioner's certificate of title may have become incontrovertible one year after issuance,^[10] yet contrary to his argument, it does not bar private respondent from questioning his ownership.^[11]

It should be noted that what is being challenged in this case is the denial of the motion to cancel the notice of lis pendens. But whether as a matter of procedure^[12] or substance,^[13] a notice of lis pendens may be cancelled only on two grounds, which 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. Neither ground for cancellation of the notice was convincingly shown to concur in this case. It would not even be fair to justify the cancellation of the notice on the legally untenable grounds that such annotation amounts to a collateral attack of petitioner's certificate of title or that ownership cannot be adjudicated in a partition case. It must be emphasized that the annotation of a notice of lis pendens is only for the purpose of announcing "to the whole world that a particular real property is in litigation, serving as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property."^[14] Here, the parties are still locked in a legal battle to settle their respective claims of ownership. The lower court allowed the annotation pending litigation only for the purpose of giving information to the public that that parcel of land is involved in a suit and that those who deal with the property is forewarned of such fact.

On the contention that ownership cannot be passed upon in partition case, suffice it to say that until and unless ownership is definitely resolved, it would be premature to effect partition of the property.^[15] For purposes of annotating a notice of lis pendens, there is nothing in the rules which requires the party seeking annotation to prove that the land belongs to him.^[16] Besides, an action for partition is one case