

## SECOND DIVISION

[ CA-G.R. CV NO. 100561, December 12, 2014 ]

**CYNTHIA CORAZON T. PANGILINAN, PETITIONER-APPELLANT,  
VS. MARIA ROSITA G. TINIO, OPPOSITOR-APPELLEE.**

### D E C I S I O N

**SALAZAR-FERNANDO, J.:**

Before this Court is an appeal from the Order<sup>[1]</sup> dated November 12, 2012 of the Regional Trial Court, National Capital Judicial Region, Branch 80, Quezon City in LRC Case No. Q-31866 (11) entitled: *In Re: Cancellation of Annotation of Encumbrance (Sec. 7, R.A. 26 and Notice of Adverse Claim) of Transfer Certificate of Title No. N-313427 of the Register (sic) of Deeds of Quezon City, Cynthia Corazon T. Pangilinan, Petitioner*, the dispositive portion of which reads:

**"WHEREFORE**, premises considered, the Motion to Dismiss filed by oppositor-adverse claimant Maria Rosita G. Tinio is PARTIALLY GRANTED. The petition insofar as the prayer for the cancellation of the adverse claim is hereby DISMISSED. However, with respect to the prayer for the cancellation of encumbrance created under Section 7 of RA No. 26, the Court hereby admits the exhibits presented by the petitioner during the hearing on October 26, 2011 as proof of compliance with the jurisdictional requirements and she is hereby allowed to present her evidence before the Branch Clerk of Court on December 11, 2012 at 10:00 in the morning.

**SO ORDERED."**

The facts are:

On July 7, 2011, petitioner Cynthia Corazon T. Pangilinan (Pangilinan for brevity) filed with the Regional Trial Court (RTC) of Quezon City a Petition<sup>[2]</sup> for Cancellation of Annotation of Encumbrance of Transfer Certificate of Title No. N-313427 of the Registry of Deeds of Quezon City, docketed as LRC Case No. Q-31866 (11), alleging that: she is the absolute owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. N-313427 of the Registry of Deeds of Quezon City; however, the dorsal side of said title bears an annotation of encumbrance dated January 19, 1996, pursuant to Section 7 of R.A. No. 26; the period within which any party whose rights or interests in the property duly noted on the original or reconstituted certificate of title at the time it was lost or destroyed had already elapsed; on June 24, 2010, oppositor-appellee Maria Rosita G. Tinio (Tinio for brevity) caused the annotation of a Notice of Adverse Claim on TCT No. N-313427 under Entry No.

2010014075; in her Notice of Adverse Claim, oppositor-appellee Tinio claimed to have rights over, interest and participation in the subject property, but she failed to establish acceptable evidence to prove the same; petitioner-appellant Pangilinan is a buyer in good faith, having bought the subject property from Olivia Garrido, through a Deed of Absolute Sale dated February 11, 2008, free and clear of any lien or encumbrances; to date, oppositor-appellee Tinio has not instituted any court action or proceeding involving the subject property; and, considering the fact that an adverse claim is effective only for thirty (30) days from the date of annotation, the same may now be canceled pursuant to Section 70 of Presidential Decree (P.D.) No. 1529, as amended, otherwise known as the Property Registration Decree.

In an Order<sup>[3]</sup> dated August 26, 2011, the lower court found the petition sufficient in form and substance and set the case for initial hearing on October 26, 2011 at 1:30 o'clock in the afternoon. It also directed that said order be posted at designated places and that the same, together with copies of the petition, be served upon oppositor-appellee Tinio, the Solicitor General, the City Prosecutor of Quezon City, the Register of Deed of Quezon City, and the Land Registration Authority.

On October 13, 2011, the Office of the Solicitor General filed a Notice of Appearance<sup>[4]</sup> and authorized the City Prosecutor of Quezon City to appear in this case.

During the initial hearing on October 26, 2011, petitioner-appellant Pangilinan caused the marking of her exhibits to prove compliance with the jurisdictional requirements. On the same day, Atty. Ella Cristina C. Culangen entered her appearance as counsel for oppositor-appellee Tinio.

On November 10, 2011, oppositor-appellee Tinio filed a Motion to Dismiss<sup>[5]</sup> alleging that: the petition should be dismissed for lack of legal personality to sue petitioner-appellant Pangilinan and the petition states no cause of action; while petitioner-appellant Pangilinan is the registered owner of the subject property covered by TCT No. N-313427, oppositor-appellee Tinio, together with her siblings, stand to suffer damage and injury should the subject property be sold, donated or transferred to a third party; she is one of the heirs of the late Spouses Artemio and Anita Galang, the subject property's previous owners, who neither sold, donated nor encumbered the same during their lifetime; it was only sometime in 2010 and after the death of their parents when she and her siblings were informed that the title of their parents was canceled and a new certificate of title was issued in the name of other persons; the signature of Anita Galang appears to have been falsified in order that the perpetrators of fraud could claim that the owner's duplicate of TCT No. N-147028 got lost and thus a new copy thereof would be issued; however, the said owner's duplicate is still in the possession of oppositor-appellee Tinio and her siblings; they learned later that the perpetrators of fraud, misrepresenting themselves as agents of their mother, who was already dead nine (9) years ago, had filed a petition for issuance of a new owner's duplicate of TCT No. 147028 (now TCT No. N-313427) with the RTC of Quezon City, Branch 97 which granted the same; the series of transactions over the subject property took place without the knowledge of oppositor-appellee Tinio and her siblings between 2007 and 2009 when their parents were already dead.

On February 27, 2012, petitioner-appellant Pangilinan filed her Comment/Opposition

to the Motion to Dismiss<sup>[6]</sup> alleging essentially that: the annotation of adverse claim is invalid, frivolous and vexatious; she is a buyer in good faith and for value and before buying the subject property, she conducted due diligence and found the same to be free and clear of all liens and encumbrances, except the annotation under Section 7 of R.A. No. 26; being a buyer in good faith and for value, she has a better right than oppositor-appellee Tinio and her siblings; the notice of adverse claim of oppositor-appellee Tinio was registered on June 24, 2010, and the thirty (30)-day period elapsed on July 25, 2010, thus the same may now be validly canceled pursuant to Section 70 of P.D. No. 1529, otherwise known as the Property Registration Decree, as amended; and, the lower court, sitting as a Land Registration Court has no jurisdiction over the allegations in the Notice of Adverse Claim, the proper remedy being an action in a regular court of general jurisdiction for annulment of title.

On November 12, 2012, the lower court issued the assailed Order. An Omnibus Motion (*Re*: motion for reconsideration on (sic) the Order dated November 12, 2012; motion for inhibition) was denied in an Order<sup>[7]</sup> dated February 14, 2013. Hence, this appeal, assigning this lone error:

THE LOWER COURT GRAVELY ERRED IN DISMISSING THE PETITION FOR THE CANCELLATION OF THE ADVERSE CLAIM BASED ON THE GROUND, OR EVEN JUSTIFICATION, DISCUSSED IN THE ORDER, WITHOUT A HEARING TO DETERMINE THE VALIDITY OF THE ADVERSE CLAIM AS REQUIRED UNDER SECTION 70 OF PD NO. 1529.

The appeal is impressed with merit.

Petitioner-appellant Pangilinan argues that: the dismissal by the lower court of the petition to cancel the notice of adverse claim without hearing violates Section 70 of P.D. No. 1529, as amended, which requires that a hearing be conducted in order to determine the validity of an adverse claim; it is the duty of the court to conduct a speedy hearing in order to determine the validity of oppositor-appellee Tinio's adverse claim which petitioner-appellant Pangilinan could refute; the hearing was not dispensed with by oppositor-appellee Tinio's allegation of fraud in her notice of adverse claim since the law does not qualify or impose any restriction as to the conduct of a hearing; in the case of *Sajonas vs. Court of Appeals*<sup>[8]</sup> cited by the lower court, the Supreme Court ruled that there is a need for hearing as required by law in order to determine the validity of the adverse claim; in this case, a hearing becomes even more necessary considering the following circumstances under which the notice of adverse claim was registered, to wit:

1. Oppositor-appellee Tinio does not have a concrete and firm legal interest in the subject property. While she claims to be one of the children of the late Anita Galang, the previous owner of the parcel of land covered by TCT No. 147028 and who died intestate in November 1998, there is no showing that the title to the subject property was derived therefrom and that the same is now covered by TCT No. N-313427. Granting that oppositor-appellee Tinio's

allegations were true, she could not *ipso facto* inherit from her mother because she must first show that her mother was still the owner of the subject property at the time of her death;

2. Even if oppositor-appellee Tinio's interests in the subject property subsists, her claim is now barred by prescription and laches, her notice of adverse claim having been filed only on June 24, 2010 or more than ten (10) years after the alleged death of her mother;
3. The allegation of fraud in the notice of adverse claim is a legal conclusion without any support at all in said notice. Oppositor-appellee Tinio merely alleged that the signature of her mother was forged without naming the forger, however, when the title was reconstituted, it was no longer in the name of her mother;
4. By its nature, the notice of adverse claim is only temporary in nature, its purpose being to put on notice the adverse interest of the claimant. It could not stay indefinitely on the title without being resolved, otherwise it would cause instability to the land title system as well as impede dealings on the properties with adverse claims. Thus, the need to resolve the validity of the adverse claim in a speedy hearing, as mandated by Section 70 of PD 1529, as amended;
5. Petitioner-appellant Pangilinan is a buyer in good faith and for value, as she had no knowledge of previous dealings on the subject property and she relied on the title which showed no liens and encumbrances thereon; and
6. It is well-settled in this jurisdiction that when loss or damage was caused to two individuals who both acted in good faith, but one is negligent, the loss or damage shall fall upon the one who acted negligently. In this case, petitioner Pangilinan exercised all the diligence and vigilance required of her, while oppositor-appellee Tinio and her predecessor-in-interest Anita Galang showed manifest and unjustified neglect to assert their claim on, let alone ownership of, the subject property for more than ten (10) years.

Incidentally, oppositor-appellee Tinio was not able to file her appellee's brief as her counsel who was served with copies of the appellant's brief through registered mail was said to have moved out of his office address without informing this Court or the opposing counsel of his change of address. Even the copies of this Court's minute resolutions sent to the counsel for oppositor-appellee Tinio were unclaimed and returned to this Court with the annotation "Moved Out." Thus, in a Resolution<sup>[9]</sup> dated December 5, 2014, this case was deemed submitted for decision without appellee's brief.

The sole issue in this case is whether or not the lower court erred in dismissing the petition for cancellation of notice of adverse claim without conducting a hearing, as required by Section 70 of P.D. 1529, as amended.