

THIRD DIVISION

[G.R. No. 117108, November 05, 1997]

**DANIEL C. VILLANUEVA, PETITIONER, VS. COURT OF APPEALS,
LAND REGISTRATION AUTHORITY AND OO KIAN TIOK,
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

May the Register of Deeds refuse to register an application for a notice of lis pendens on the ground that the applicant does not have any title or right of possession over the subject properties?

The Case

Petitioner seeks reversal of the Decision^[1] of Respondent Court of Appeals^[2] promulgated on August 31, 1994 in CA-G.R. SP No. 34449, which answered the foregoing question in the affirmative:

"In view of the foregoing, the Lis Pendens in question is not registrable since it seeks to affect property not belonging to the defendant [petitioner herein], and the action of the Register of Deeds in denying the registration of the same is hereby sustained." ^[3]

The lis pendens sought to be registered is Civil Case No. 92-2358 pending before Branch 74 of the Regional Trial Court of Antipolo, Rizal.^[4]

The Facts

The assailed Decision fairly narrates the facts as follows: ^[5]

"Records show that TCT Nos. 262631; 273873 and 2777938 [sic] were issued in the name of Valiant Realty and Development Corporation and Filipinas Textile Mills, Inc. and the same were mortgaged in favor of Equitable Banking Corp. Upon failure of the mortgagors to comply with the terms and conditions of the mortgage, the bank foreclosed the mortgaged properties [and] sold the same to the Equitable Banking Corp. as the highest bidder at public auction sale. After the expiration of the redemption period, mortgagors did not exercise the right of redemption and as a consequence thereof, the mortgagee sold all its rights, interests and participation of said properties to the herein oppositor, Oo Kian Tiok.

Immediately after acquiring the rights, titles and interests of the bank in said properties, Oo Kian Tiok took possession up to the present time, except for a brief period of time when his possession was interrupted by the herein petitioner [who] together with armed goons, [and] without [any] court order swooped down on the properties and disarmed the security guards assigned therein and forcibly removed the 30 workers therefrom, which prompted Oo Kian Tiok to file Civil Case No. 92-2358 against Filipinas Textile Mills, Inc., [and] Daniel Villanueva, et als. for Recovery of Possession and Damages with Prayers for Writ of Preliminary Mandatory Injunction and/or Temporary Order.

As a consequence, the herein petitioner, being one of the defendants of the above-mentioned case, filed a formal request with the Office of the Register of Deeds to annotate a corresponding Notice of Lis Pendens of Civil Case No. 92-2358 in the respective Memorandum of Encumbrances of TCT Nos. 262631; 273873 and 277938 but the same was denied registration based on the following grounds, to wit:

'...that Mr. Villanueva is merely asserting possession of the property not on the title or right over the property. While it appears that Mr. Villanueva is an officer of the owner-corporation, Filipinas Textile Mills, Inc., the latter is no longer the owner thereof but plaintiff Oo Tian [sic] Tiok. Moreover, no Board Resolution has been submitted indicating that said Villanueva has been duly authorized by the former owner to file the notice of lis pendens'.

Hence, the petitioner elevated the matter on consulta [to Respondent Land Registration Authority] pursuant to Section 117 of P.D. 1529 on the grounds that the herein petitioner, together with his sister Terry Villanueva-Yap, Eden Villanueva, Susan Villanueva and his brother Frank Villanueva are the lawful owners of the 63% of the beneficial shares of Filipinas Textile Mills, Inc. and are not merely asserting possession but also ownership over the subject properties contrary to the conclusion submitted by the Register of Deeds. (Resolution, pp. 1-2)"

The consulta was decided against petitioner by Respondent Land Registration Authority and later, on appeal, by Respondent Court. Hence, this petition for review under Rule 45 of the Rules of Court.^[6]

The Issues

Petitioner assigns the following errors to Respondent Court: ^[7]

"A. Not appreciating petitioner's compliance with all the requirements set forth under the Land Registration Act and the Rules of Court;

B. Not finding that the petitioner duly raised the affirmative defense of ownership over the properties subject of Civil Case No. 92-2358;

C. Not finding that the Respondent Land Registration Authority erred in assuming jurisdiction to determine the issue of ownership over the properties subject of civil case no. 92-2358;

D. In affirming the resolution of the Respondent Land Registration Authority in Consulta No. 2131.”

The Solicitor General, as counsel for Respondent Land Registration Authority, summarizes the issue:^[8]

“Whether or not the notice of lis pendens requested by petitioner to be annotated in the respective memorandum of encumbrances at the back of TCT Nos. 262631, 273873 and 277938 is registrable.”

Stated simply, the issue is whether petitioner’s application for registration of the notice of lis pendens should be rejected on the ground that it affects a property which does not belong to him personally, but is merely claimed by a corporation, the majority (63%) of which is owned by him and his brothers and sisters.

Respondent Court’s Ruling

In dismissing petitioner’s appeal, Respondent Court ruled:^[9]

“Even if the petitioner were able to comply with all the requirements (referring to the formalities) for the annotation of a notice of lis pendens, it does not necessarily follow that he would ipso facto be entitled to such annotation. There is need for him to show that he owns the subject property or that he has right or interest vis-à-vis its possession. The mere possession of a property does not give rise to the right to annotate. Without such title or interest, whence would his right to annotate come from?

The petitioner contends that the determination of registrability of a notice of lis pendens is ministerial as far as the Register of Deeds is concerned. On the basis of the evidence on record, this is exactly what the Register of Deeds of Rizal did - he refused to annotate because it clearly appears from the documents submitted (specifically, T.C.T. Nos. 262631, 273873 and 277938) that the subject parcels of land are registered not in the name of Villanueva but in the name of Valiant Realty and Development Corporation and co-defendant Filipinas Textile Mills, Inc. The Register of Deeds did not attempt to go beyond what clearly appears in the aforementioned Transfer Certificates of Title. He did not attempt, as the petitioner would imply, to inquire into and try to resolve conflicting allegations of the claimants of the aforesaid property.

The Land Registration Authority in its assailed resolution had aptly pointed out that petitioner Villanueva had not produced a board resolution of Filipinas Textile Mills, Inc. authorizing him to take possession of the litigated property. Hence, although it may be conceded that Villanueva is in possession thereof, it would appear that his possession is illegal which would not result in vesting in him any right or interest over the above-cited property. As far as the said property is concerned, Villanueva is a third person, a stranger. There could be no dispute as to the fact that Filipinas Textile Mills, Inc. (in the name of

which the contested parcels of land are registered) and Villanueva are, before the law, two separate and distinct persons. Indubitably Villanueva is not Filipinas Textiles Mills, Inc.”

The Court’s Ruling

The petition is meritorious.

Sole Issue: Registration of Lis Pendens

Who May Register Notice of Lis Pendens?

Petitioner contends that a notice of lis pendens may be filed in relation to actions “affecting the title to or possession of real property.” In the instant petition, defendants in Civil Case No. 92-2358, among whom is petitioner, “repeatedly and emphatically” allege that it is Filipinas Textile Mills, Inc. (FTMI), of which petitioner is a stockholder, which owns the properties in question. Thus, an affirmative relief of ownership is prayed for in the answer which sanctions registration of the notice of lis pendens.^[10]

Private Respondent Oo Kian Tiok counters¹⁰ that the errors and arguments raised in the petition at bar are “mere repetitions of those already discussed in [the] petition for review” submitted before Respondent Court, “which the latter had already considered, weighed and resolved adversely to the herein petitioner.”^[11]

The Solicitor General, on the other hand, asserts:^[12]

“Based on the incontrovertible facts, the notice of lis pendens requested by petitioner to be annotated on the back of the aforesaid certificates of title is not registrable, because the registration will affect the property obviously not belonging to petitioner, who is one of the defendants in Civil Case No. 92-2358 filed before the Regional Trial Court of Antipolo, Branch 74. It has been consistently held by public respondent LRA, as in Consulta No. 430, Pedro del Rosario, petitioner versus the Register of Deeds of Quezon City, respondent, and in Consulta No. 146, the Register of Deeds of Sorsogon, petitioner, that a notice of lis pendens is not registrable if it seeks to affect property not belonging to the defendant.”

The notice of lis pendens is an announcement to the whole world that a particular real property is in litigation, and serves 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.^[13] The registration of a notice of lis pendens is governed by Section 24, Rule 14 of the Rules of Court:^[14]

“Sec. 24. Notice of lis pendens. In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the registrar of deeds of province in which the property is situated a notice of the pendency of the action, containing the

names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. From the time only of filing such notice for record shall a purchaser, or incumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

The notice of lis pendens hereinabove mentioned may be cancelled only 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 recorded."

In *Magdalena Homeowners Association, Inc. vs. Court of Appeals*,^[15] this Court enumerated the cases where a notice of lis pendens is proper:

"According to Section 24, Rule 14 of the Rules of Court and Section 76 of Presidential Decree No. 1529, a notice of lis pendens is proper in the following cases, viz.:

- a) An action to recover possession of real estate;
- b) An action to quiet title thereto;
- c) An action to remove clouds thereon;
- d) An action for partition; and
- e) Any other proceedings of any kind in Court directly affecting the title to the land or the use or occupation thereof or the buildings thereon.

The notice of lis pendens--i.e., that real property is involved in an action--is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary action transaction are subject to the results of the action, and may well be inferior and subordinate to those which may finally be determined and laid down therein. The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. And its continuance or removal--like the continuance or removal of a preliminary attachment or injunction--is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof."

To annotate a notice of lis pendens, the following elements must be present: (a) the property must be of such character as to be subject to the rule; (b) the court must have jurisdiction both over the person and the res; and (c) the property or res involved must be sufficiently described in the pleadings.^[16]

Only the first requisite is at issue in this case; the second and the third requisites