

## **SPECIAL FOURTEENTH DIVISION**

**[ CA-G.R. CV NO. 64926, August 02, 2006 ]**

**SERVANDO RAMOS, PETITIONER-APPELLANT, VS. ROSARIO  
JIMENEZ AND VICENTE V. ESGUERRA, RESPONDENTS-  
APPELLEES.**

### **D E C I S I O N**

**BATO, JR., J.:**

Before the Court is an appeal assailing the August 6, 1999 Decision<sup>[1]</sup> of the Regional Trial Court of Malolos, Bulacan, Branch 85, which ordered the dismissal of petitioner-appellant's petition for quieting of title and damages docketed as Civil Case No. 511-M-98.

The present case is an offshoot of a civil case for collection of sum of money docketed as Civil Case No. 772-M-92 (hereinafter referred to as the collection case) filed by respondents-appellees Rosario G. Jimenez and Vicente V. Esguerra against one Emiliana Espino on November 6, 1992 before the Regional Trial Court of Bulacan, Branch 9 (RTC-Branch 9). In accordance with the prayer in respondents-appellees' petition, the RTC-Branch 9 issued an order dated November 16, 1992 for the issuance of a writ of preliminary attachment. Consequently, Sheriff Donato C. Buenaventura issued a Notice of Levy on Attachment on November 23, 1992 and presented the same for registration to the Office of the Register of Deeds of Bulacan on November 24, 1992. The Notice of Levy on Attachment was entered as Entry No. 5693 in the Registry's Primary Entry Book on November 24, 1992 after respondents-appellees paid the requisite registration fees. One of the properties owned by Emiliana Espino that was levied was a parcel of land covered by OCT No. RO-334(0-726). However, for reasons not stated in the records, the Notice of Levy on Attachment although entered in the Primary Entry Book, was not annotated on OCT No. RO-334(0-726).

On August 31, 1992, while the collection case was in progress, Emiliana Espino executed a Deed of Real Estate Mortgage over the land covered by OCT No. RO-334(0-726) in favor of herein petitioner-appellant Servando Ramos. Said Deed of Real Estate Mortgage was registered in the Office of the Register of Deeds of Bulacan on August 5, 1993 under Entry No. 7165. Then on September 30, 1993, the Deed of Real Estate Mortgage was superceded by an instrument entitled Dation in Payment<sup>[2]</sup> which Emiliana Espino executed in favor of petitioner-appellant and involving the same parcel of land. On January 27, 1995, petitioner-appellant presented the Dation in Payment to the Office of the Register of Deeds of Bulacan for registration. Discovering that the Notice of Levy on Attachment which was entered in the Primary Entry Book on November 24, 1992 was not yet annotated on OCT No. O-334 (0-726), and due also to the opposition of the petitioner-appellant that the same be annotated belatedly, the Register of Deeds held in abeyance the registration of the Dation in Payment. The Register of Deeds referred the matter to

the Land Registration Authority (LRA) by way of *consulta* raising the question of whether or not the Notice of Levy on Attachment entered in the Primary Entry Book way back on November 24, 1992, may still be annotated on OCT No. O-334(0-726).

After notice and hearing, the LRA issued a Resolution denominated as Consulta No. 2314<sup>[3]</sup> dated May 18, 1995 wherein it ruled that the Notice of Levy on Attachment may still be annotated on OCT No. RO-334(0-726) and the memorandum of such instrument should bear the same date as reflected on the Primary Entry Book. On the other hand, the Dation in Payment may likewise be annotated on the said title provided that all other registration requirements are complied with.

In accordance with Consulta No. 2314, the Register of Deeds of Bulacan made the corresponding annotations on OCT No. RO-334 (0-726). The date of inscription of the Notice of Levy on Attachment was made to retroact on November 24, 1992, while that of the Dation in Payment was on January 27, 1995. Thereafter, petitioner-appellant was able to get TCT No. T-73142 in his name which in effect cancelled OCT No. R-334(0-726). But in view of the Resolution in Consulta No. 2314, the Register of Deeds of Bulacan carried over the annotations in OCT No. RO-334 (0-726) to TCT No. T-73142.

As to the collection case, an amicable settlement<sup>[4]</sup> was executed by the parties therein on January 31, 1994, whereby Emiliana Espino bound herself to pay a portion of the amount claimed by herein respondents-appellees. Accordingly, the RTC-Branch 9 rendered Judgment<sup>[5]</sup> on February 14, 2004 in accordance with the stipulations contained in the amicable settlement. But Emiliana Espino failed to pay her obligation. Thus, the RTC-Branch 9 issued a writ of execution ordering the sale at public auction of Emiliana Espino's real properties including the lot covered by OCT No. RO-334(0-726). Respondent-appellee Rosario Jimenez was the highest bidder of the lot covered by OCT No. RO-334(0-726). Thereafter, the Sheriff of RTC-Branch 9 issued a certificate of sale in favor of respondents-appellees Rosario Jimenez and Vicente Esguerra on May 29, 1995. On the same day, the said instrument was annotated on TCT No. T-73142 as Entry No. 74551. Then on June 25, 1996, a final deed of sale was issued in favor of respondent-appellee Rosario Jimenez. Consequently, respondents-appellees filed a motion to order the surrender of titles, including OCT No. RO-334(0-726) and TCT No. T-73142. With leave of court, petitioner-appellant filed on January 28, 1997 an Opposition in Intervention<sup>[6]</sup> contesting respondents-appellees' motion to surrender TCT No. T-73142.

Guided by the LRA's Resolution in Consulta No. 2314, the RTC-Branch 9 issued an Order<sup>[7]</sup> dated August 11, 1997 which ordered petitioner-appellant to surrender within fifteen days TCT No. T-73142 to the Register of Deeds in order that the final deed of sale executed by the sheriff in favor of the respondents-appellees may be registered. In ruling that petitioner-appellant's opposition in intervention was devoid of merit, the RTC-Branch 9, ruled as follows:

"It must be emphasized that, although dated August 31, 1992, the real estate mortgage executed by herein defendant Emiliana A. Espino in favor of herein oppositor-in-intervention and the latter's spouse was actually inscribed or annotated in OCT No. RO-334 (Exh. A) only on August 5, 1993; whereas, the Notice Of Levy On Attachment issued in favor of herein plaintiffs was inscribed or annotated, pursuant to the LRA

Resolution (Exh. C) in OCT No. RO-334 (Exh. A) on November 24, 1992 (Exh. A-3). In brief, the registration of the notice of levy on attachment preceded the registration of the real estate mortgage relied upon by herein oppositor-in-intervention. Perforce, the said notice of levy on execution prevails over the real estate mortgage executed by defendant Emiliana A. Espino in favor of oppositor-in-intervention Servando D. Ramos; conversely, the real estate mortgage is subordinate and subject to the notice of levy on attachment.”<sup>[8]</sup> *[emphasis supplied]*

From the aforequoted order, petitioner-appellant filed a motion for reconsideration on September 17, 1997 but the RTC-Branch 9 denied the same in an Order dated October 22, 1997. Subsequently, petitioner-appellant filed a Notice of Appeal on November 4, 1997 which was also not favorably acted upon by the RTC-Branch 9. In denying due course to petitioner-appellant’s notice of appeal, the RTC-Branch 9 ruled that its February 14, 1994 judgment has already become final and executory, thence, the proper remedy of petitioner-appellant pursuant to Section 1, Rule 41 of the Rules of Court is not an appeal but an appropriate special civil action under Rule 65.

On January 28, 1998, petitioner-appellant elevated the matter to this Court via a petition for mandamus<sup>[9]</sup> docketed as CA-G.R. SP. No. 46637. Petitioner-appellant prayed therein that respondent Judge be ordered to give due course to his appeal with respect to the August 11, 1997 Order in the collection case. On December 1, 2000, the former 10th division of this Court dismissed petitioner-appellant’s petition for mandamus for lack of merit.<sup>[10]</sup>

But before this Court could decide petitioner-appellant’s petition for mandamus, petitioner-appellant filed the instant case for quieting of title and damages on June 24, 1998. In his complaint, petitioner-appellant prayed that judgment be rendered: 1) canceling the annotated Levy on Attachment dated November 24, 1992 on TCT No. T-73142; 2) annulling the Deed of Sale dated June 25, 1996 executed in favor of Rosario Jimenez; 3) affirming his ownership over the parcel of land covered by TCT No. T-73142; and 4) ordering respondents to pay moral and exemplary damages, attorney’s fees and costs of suit.

At the pre-trial conference, the parties agreed that the only issues to be resolved are as follows: 1) who has a right to the property or more specifically, whether the annotation of the levy on attachment and execution of the deed of sale constitute clouds upon TCT No. T-73142; and 2) whether the annotation of the notice of levy on attachment should be cancelled and the deed be annulled.<sup>[11]</sup>

As stated at the outset hereof, the court *a quo* dismissed petitioner-appellant’s petition for quieting of title and damages. The court *a quo* based its decision on the pronouncement of the Supreme Court in the case of *DBP vs. Actg. Register of Deeds of Nueva Ecija*<sup>[12]</sup> that entry alone in the Primary Entry Book produces the effect of registration, whether the transaction entered is a voluntary or an involuntary one, so long as the registrant has complied with all that is required of him for purposes of entry and annotation, and nothing more remains to be done but a duty incumbent solely on the register of deeds.