

## THIRD DIVISION

[ G.R. No. 174290, January 20, 2009 ]

**ST. MARY OF THE WOODS SCHOOL, INC. AND MARCIAL P. SORIANO, PETITIONERS, VS. OFFICE OF THE REGISTRY OF DEEDS OF MAKATI CITY AND HILARIO P. SORIANO, RESPONDENTS.**

**G.R. NO. 176116**

**ST. MARY OF THE WOODS SCHOOL, INC. AND MARCIAL P. SORIANO, PETITIONERS, VS. OFFICE OF THE REGISTRY OF DEEDS OF MAKATI CITY, NATIONAL BUREAU OF INVESTIGATION, AND HILARIO P. SORIANO, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court are two special civil actions for *Certiorari* and Prohibition under Rule 65 of the 1997 Revised Rules of Civil Procedure, which were consolidated per Resolution<sup>[1]</sup> dated 5 February 2007.

The petitioners in **G.R. No. 174290**, namely: St. Mary of the Woods School, Inc. (SMWSI) and Marcial P. Soriano, seek to annul and set aside on the ground of grave abuse of discretion tantamount to lack or excess of jurisdiction the Resolution<sup>[2]</sup> dated 18 August 2006 of the Court of Appeals in CA-G.R. CV No. 85561, which granted herein private respondent Hilario P. Soriano's Motion to Reinstate/Re-annotate the Notice of *Lis Pendens* over Transfer Certificates of Title (TCT) No. 175029,<sup>[3]</sup> 220977<sup>[4]</sup> and 220978,<sup>[5]</sup> of the Registry of Deeds of Makati City, all registered in the name of herein petitioner SMWSI.

The afore-named petitioners are the same petitioners in **G.R. No. 176116** in which they also seek to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the three Resolutions similarly rendered by the Court of Appeals in CA-G.R. CV No. 85561, to wit: (1) Resolution<sup>[6]</sup> dated 18 August 2006 denying petitioners' Motion to Dismiss Appeal of herein private respondent Hilario P. Soriano; (2) Resolution<sup>[7]</sup> dated 9 November 2006 denying for lack of merit petitioners' Motion for Reconsideration of the 18 August 2006 Resolution of the appellate court, as well as the supplement to the said motion; and (3) Resolution<sup>[8]</sup> dated 9 November 2006 requiring the Register of Deeds of Makati City to submit to the appellate court the original copies of the documents involved in Civil Case No. 03-954 so that they can be presented to the National Bureau of Investigation (NBI) for comparative analysis of the signatures of Tomas Q. Soriano.

Petitioner SMWSI is an educational institution incorporated and existing by virtue of

the laws of the Republic of the Philippines. It is the current registered owner of the three parcels of land (subject properties), located in Makati City and covered by TCTs No. 175029, No. 220977 and No. 220978. Petitioner Marcial P. Soriano is the President of petitioner SMWSI.

Private respondent Hilario P. Soriano, on the other hand, is one of the siblings of petitioner Marcial P. Soriano.

The consolidated cases presently before this Court originated from the Complaint<sup>[9]</sup> filed on 14 August 2003 by the private respondent with the Regional Trial Court (RTC) of Makati City, Branch 148, for Declaration of Nullity of Deed of Assignment, Deed of Sale and Cancellation of TCTs No. 156249, No. 156250, and No. 156251 of the Register of Deeds of Makati, Metro Manila,<sup>[10]</sup> registered in the name of Oro Development Corporation (ODC); and TCT No. 175029, registered in the name of petitioner SMWSI. Named defendants therein were the petitioners, together with ODC, Antonio P. Soriano, Aurelia P. Soriano-Hernandez, Rosario P. Soriano-Villasor, Eugenia Ma. P. Soriano-Lao and Josefina P. Soriano (hereinafter collectively referred to as petitioners, *et al.*). The Complaint was docketed as Civil Case No. 03-954.

In his Complaint, private respondent alleged that during the marriage of his parents, Tomas Q. Soriano and Josefina P. Soriano, the couple acquired both real and personal properties, including the subject properties, which were then covered by TCTs No. 169941,<sup>[11]</sup> No. 114408,<sup>[12]</sup> and No. 114409.<sup>[13]</sup> On 10 May 1988, the Soriano couple allegedly executed<sup>[14]</sup> a Deed of Assignment<sup>[15]</sup> in favor of ODC involving the subject properties to pay for Tomas Q. Soriano's subscription of stocks in the said corporation. On 14 June 1988, Tomas Q. Soriano died<sup>[16]</sup> intestate.

By virtue of the said Deed of Assignment, the ownership and title over the subject properties were transferred to ODC. Consequently, TCTs No. 169941, No. 114408 and No. 114409 were cancelled and the new TCTs No. 156249,<sup>[17]</sup> No. 156250<sup>[18]</sup> and No. 156251<sup>[19]</sup> were issued in the name of ODC.

Thereafter, on 26 April 1991, ODC executed<sup>[20]</sup> in favor of petitioner SMWSI a Deed of Sale<sup>[21]</sup> over the subject property covered by TCT No. 156249. By virtue of the sale, petitioner SMWSI acquired ownership and title over the particular property. Thus, TCT No. 156249 was cancelled and the new TCT No. 175209 was issued in the name of petitioner SMWSI.

Private respondent claimed that several years after his father Tomas Q. Soriano's death, he discovered that the latter's signature in the Deed of Assignment of 10 May 1988 in favor of ODC was a forgery. Being very familiar with his father's signature, private respondent compared Tomas Q. Soriano's purported signature in the Deed of Assignment of 10 May 1988 with Tomas Q. Soriano's genuine signature in another document captioned Second Amendment of Credit Agreement.<sup>[22]</sup> Private respondent also presented a Certification<sup>[23]</sup> from the Records Management and Archives Office which stated that the forged Deed of Assignment dated 10 May 1988 was not available in the files of the Office.

Meanwhile, by reason of the pendency of Civil Case No. 03-954, a Notice of *Lis Pendens* was annotated on TCTs No. 156249, No. 156250, and No. 156251, in the

name of ODC. With the subsequent cancellation of TCT No. 156249 and the issuance of TCT No. 175209 in the name of petitioner SMWSI, the Notice of *Lis Pendens* was carried over to the new certificate of title.

In a Joint Affidavit<sup>[24]</sup> dated 18 July 1990 executed by petitioner Marcial P. Soriano, it appears that the other individual defendants in Civil Case No. 03-954, and private respondent, recognized and acknowledged the validity, legality and propriety of the transfer of the subject properties from Tomas Q. Soriano to ODC. On this basis, defendants filed with the RTC a Motion to Dismiss<sup>[25]</sup> Civil Case No. 03-954 on the grounds that: (1) the Complaint states no cause of action; (2) the claim set forth in the Complaint has been paid, waived, abandoned or otherwise extinguished; (3) the Complaint is barred by estoppel or laches; (4) the Complaint is barred by prescription; (5) the titles to the subject properties are incontestable and can no longer be annulled; and (6) a condition precedent for filing the claim has not been complied with, *i.e.*, the compromise agreement failed despite earnest efforts towards that end.

On 17 January 2005, the RTC issued an Order<sup>[26]</sup> dismissing the private respondent's Complaint. The RTC ratiocinated in this manner:

A careful reading of the <sup>[14]</sup> August 2003 Complaint filed by [herein private respondent] Hilario P. Soriano would suffice that he indeed failed to state that he has a right over the [subject properties] and that the [herein petitioners, *et al.*] have the obligation to observe such right. Assuming for the sake of argument that the signature was forged, the [private respondent] did not state that he was deprived of his share in the legitime of the deceased. Thus, his right over the [subject properties which were] assigned by the deceased was not clearly defined and stated in the [C]omplaint filed.

x x x x

x x x. Also, the [private respondent] must comply with the provision of the Civil Code of [the] Philippines, to wit:

"Article 222<sup>[27]</sup> - No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035."

x x x. There is no showing in the allegations in the [C]omplaint of the [private respondent] that he complied with the requirement of the law. Thus, the Court finds merit in the position of the [petitioners, *et al.*]

x x x x

x x x. Clearly, the act of the [private respondent] in acknowledging the legality, validity and genuineness of the [D]eed of [A]ssignment in the [J]oint [A]ffidavit placed him in no better position to question the validity of the subject document. [Private respondent] never questioned the distribution of the properties among the heirs of Tomas Soriano. [Private

respondent] even accepted the conveyance of a parcel of land covered by TCT No. 156253. By accepting said property as his share in the estate of his late father, [private respondent] is now deemed to have been paid or compensated because there was delivery of his share in the estate of the deceased. It can now be conclusively presumed that his share in the legitime of deceased Tomas Soriano was fully awarded to [private respondent]. He is now estopped in questioning the validity of the [D]eed of [A]ssignment by Tomas Q. Soriano in favor of [ODC]. Accordingly, all subsequent conveyances involving the subject properties can no longer be questioned by [private respondent] Hilario P. Soriano.<sup>[28]</sup>

Accordingly, the RTC decreed:

WHEREFORE, finding merits on the [M]otion to [D]ismiss filed by [herein petitioners, *et al.*] and in the prayer set forth in the [A]nswer of defendants Josefina P. Soriano and Rosario P. Soriano-Villasor, the dismissal of this case is hereby GRANTED. Accordingly, the Complaint filed by [private respondent] Hilario P. Soriano is dismissed because it asserts no cause of action and the claim or demand set forth in the [private respondent's] pleading has been waived, abandoned, or otherwise extinguished, and that a condition precedent for filing the claim has not been complied with.<sup>[29]</sup>

In the interim, the subject properties covered by TCTs No. 156250 and No. 156251 in the name of ODC were also transferred to petitioner SMWSI by virtue of a Deed of Sale dated 3 February 2005. TCTs No. 156250 and No. 156251 in the name of ODC were then cancelled and the new TCTs No. 220977 and No. 220978 were issued in the name of petitioner SMWSI. The Notice of *Lis Pendens* annotated on the cancelled TCTs was copied into the new TCTs in the name of petitioner SMWSI.

Aggrieved by the RTC Order dated 17 January 2005, private respondent moved for its reconsideration, but the RTC denied the same in an Order<sup>[30]</sup> dated 26 April 2005.

On 16 May 2005, petitioners, *et al.*, filed with the RTC a Motion to Cancel Notice of *Lis Pendens*<sup>[31]</sup> annotated on the titles covering the subject properties, which Motion was opposed by the private respondent.

The very next day, 17 May 2005, private respondent filed a Notice of Appeal stating his intention to elevate the RTC Orders dated 17 January 2005 and 26 April 2005 to the Court of Appeals. Private respondent's appeal before the Court of Appeals was docketed as CA-G.R. CV No. 85561.

Meanwhile, the RTC issued its Order<sup>[32]</sup> dated 20 June 2005 granting the Motion to Cancel Notice of *Lis Pendens* filed by petitioners, *et al.*, and ordering the Registrar of Deeds of Makati City to cancel the Notice of *Lis Pendens* annotated on TCTs No. 156249, No. 156250, No. 156251 in the name of ODC and TCT No. 175029 in the name of petitioner SMWSI. The RTC justified its latest Order as follows:

As mentioned in the case, the notice of *lis pendens* can be cancelled if it is not necessary to protect the interest of the party who caused it to be recorded. In this case, the [herein private respondent's] interest should

be considered on whether the notice of *lis pendens* should be cancelled or not. As it is the Court believes that the cancellation is proper in this case. First, the Court still has jurisdiction of the case considering that the Notice of Appeal was only filed on [17 May 2005], while the Motion to cancel Notice of *Lis Pendens* was filed on [16 May 2005]. Second, [private respondent] Hilario P. Soriano has no interest to be protected insofar as the subject properties are concerned because of his acknowledgment that he already received his share in the estate of Tomas Soriano. Lastly, the contention of the [private respondent] that the motion is premature is not tenable. The authority of the Court to Cancel Notice of *Lis Pendens* is even evident in the Comment/Opposition of the [private respondent] which states that "While it may be true that the cancellation of a notice of *lis pendens* may be ordered at any given time even before final judgment, x x x."<sup>[33]</sup>

On 4 July 2005, the petitioners, *et al.*, filed with the RTC a Motion for Issuance of Supplement to Order Cancelling Notice of *Lis Pendens*<sup>[34]</sup> to clarify that TCTs No. 156249, No. 156250, and No. 156251 in the name of ODC were already cancelled and replaced with TCTs No. 175209, No. 220977, and No. 220978 all registered in the name of petitioner SMWSI in which the Notice of *Lis Pendens* was carried over. The private respondent, on the other hand, filed a Motion for Reconsideration of the RTC Order dated 20 June 2005 with Comment on the petitioners, *et al.*'s, Motion for Issuance of Supplement to the same RTC Order.

On 15 July 2005, the RTC issued another Order<sup>[35]</sup> by way of supplement to its Order dated 20 June 2005, directing anew the Registrar of Deeds of Makati City to cancel the Notice of *Lis Pendens* annotated on TCTs No. 175029, No. 220977 and No. 220978 in the name of petitioner SMWSI.

In a subsequent Order<sup>[36]</sup> dated 15 August 2005, the RTC denied for lack of merit private respondent's Motion for Reconsideration of the RTC Order dated 20 June 2005.

On 28 September 2005, private respondent received a directive from the Court of Appeals dated 20 September 2005 requiring him to file his Appellant's Brief pursuant to his Notice of Appeal dated 17 May 2005. In compliance therewith, private respondent submitted his Appellant's Brief to the Court of Appeals with the following assignment of errors:

1. The lower court erred in dismissing the [C]omplaint on the ground that no certificate from a signature expert was attached to affirm the conclusion of the [herein private respondent] that the signature of Tomas Q. Soriano in the [D]eed of [A]ssignment was forged and on the ground that neither can the certificate issued by the Records Management and Archive Office support such allegation and that the [herein petitioners, *et al.*] cannot shoulder the burden caused by the Notary Public in failing to file the notarized documents, if he indeed failed.
2. The lower court erred in dismissing the [C]omplaint on the ground that the [private respondent] failed to state that he has a right over the subject properties and that the [petitioners, *et al.*] have the