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FIRST DIVISION

[G.R. No. L-28529. April 30, 1979]

L. P. LEVISTE & COMPANY, INC., and NITA U. BERTHELSEN, *petitioners, vs.* **HON. ANTONIO H. NOBLEJAS, in his capacity as Land Registration Commissioner, THE REGISTER OF DEEDS OF RIZAL, and MARIA VILLANUEVA,** *respondents.*

SYLLABUS

1. ***CIVIL LAW; LAND REGISTRATION; ADVERSE CLAIM; PRIOR ADVERSE CLAIM COVERING A DIFFERENT PROPERTY CANNOT AFFECT A LATER ENTRY.*** — The rule is that between two involuntary documents, the earlier prevails. Ordinarily, therefore, a prior adverse claim is entitled to precedence over a later one. But an adverse claim, notwithstanding its prior registration, cannot affect an adverse claim on a different lot.

2. **ID.; ID.; AGREEMENT TO SELL MUST BE REGISTERED.** — Section 50 of Act 496 expressly provides that the act of registration shall be the operative act to convey and affect the land. And Section 55 of the same Act requires the presentation of the owner's duplicate certificate of title for the registration of any deed or voluntary instrument. An agreement to sell involving as it does an interest less than an estate in fee simple, the same should be registered by filing it with the Register of Deeds who, in turn, makes a brief memorandum thereof upon the original and owner's duplicate certificate of title.

3. **ID.; ID.; ID.; REASON FOR THE RULE.** — The reason for requiring the production of the owner's duplicate certificate in the registration of a voluntary instrument is that, being a wilful act of the registered owner, it is presumed that he is interested in registering the instrument and would willingly surrender, present or produce his duplicate certificate of title to the Register of Deeds in order to accomplish such registration.

4. **ID.; ID.; ID.; PROCEDURE WHERE OWNER REFUSES TO SURRENDER DUPLICATE CERTIFICATE.** — Where the owner refuses to surrender the duplicate certificate for the annotation

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of the voluntary instrument, the grantee may file with the Register of Deeds a statement setting forth his adverse claim, as provided for in Section 110 of Act 496. In such a case, the annotation of the instrument upon the entry book is sufficient to affect the real estate to which it relates, although Section 72 of Act 496 imposes upon the Register of Deeds the duty to require the production by the registered owner of his duplicate certificate for the inscription of the adverse claim.

5. **ID.; ID.; ADVERSE CLAIM; PURPOSE.** — The annotation of an adverse claim is a measure designed to protect the interest of a person over the piece of real property where the registration of such interest or right is not otherwise provided for by the land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof.

6. **ID.; ID.; ID.; WHEN SPECIAL REMEDY OF ADVERSE CLAIM CAN BE AVAILED OF.** — For the special remedy of adverse claim to be availed of, it must be shown that there is no other provision in the law for registration of the claimant's alleged right or interest in the property. As the Land Registration Act specifically prescribes the procedure for registration of the vendee's right on a registered property (Section 57), the filing of an adverse claim is ineffective for the purpose of protecting the vendee's right.

7. **ID.; ID.; ID.; WHEN INEFFECTIVE.** — Where it does not appear that the vendee registered the agreement to sell under Section 52 of Act 496 nor is it shown that the registered owner refused to surrender the duplicate certification or the annotation of said instrument; instead, the vendee merely filed an adverse claim based on said agreement to sell, the filing of the adverse claim is ineffective for protecting vendee's right or interest on the lot, considering that Section 52 of the Land Registration Act prescribes the procedure for registration of interest less than an estate in fee simple.

8. **ID.; ID.; ID.; AN INEFFECTIVE ADVERSE CLAIM CANNOT AFFECT SUBSEQUENT ENTRY.** — Where the adverse claim filed by the vendee is not valid the same does not have the effect of a conveyance of his right or interest on the lot and could not prejudice any right that may have arisen thereafter

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in favor of third parties. Consequently, the attachments subsequently entered are superior to that acquired by the vendee and will have to be carried over to the new title to be issued in vendee's favor.

APPEARANCES OF COUNSEL

Roberto E. Falgui for petitioners.
Felino S. Megino for private respondent.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

This is an appeal by *certiorari* from the Resolution of the Land Registration Commission in LRC Consulta No. 555 issued on October 20, 1967.

The property involved, situated in Parañaque, Rizal, has a total area of approximately 1.6 hectares and is covered by Transfer Certificate of Title No. 108425 of the Province of Rizal in the name of Z. Garcia Realty, Inc. (Garcia Realty, for short), a corporation duly organized and existing under our laws. On a date that does not appear of record, the property was converted into a subdivision called the Garville Subdivision. This subdivision has blocks and certain lots and the controversy in this case centers on *Lot 6, Block 4* (subsequently Lot 16, plan (LRC) Psd-56800).

The following chronology will explain the controversy between the parties:

September 7, 1964 — Notice of *lis pendens* (Entry No. 7115), presented by Melecio B. Emata, noting the pendency of Civil Case No. 2489-P of the Court of First Instance of Rizal entitled *Vivencio R. de Guzman vs. Z. Garcia & Company* referring specifically to *Lot 3*, redesignated as *Lot 5* of the new subdivision plan. The block number was not indicated.

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It is to be noted that the *lis pendens* does not refer to *Lot 6, Block 4.*

April 28, 1966 — Affidavit of Adverse Claim (Entry No. 55209) covering *Lot 1, Block 5* presented by J. Antonio Leviste, Executive Vice-President of petitioner company, based on an assignment in his favor by one Leticia P. Ramos, buyer of said lot from Garcia Realty.

Also to be noted is that this has no reference to *Lot 6, Block 4.*

May 6, 1966 — Affidavit of Adverse Claim (Entry No. 55804) covering *Lot 6, Block 4* (subsequently Lot 16, plan (LRC) Psd-56800), consisting of 510 square meters presented by respondent Maria Villanueva based on an agreement to sell in her favor executed by García Realty.

This is the Disputed Lot.

July 19, 1966 — Attachment (Entry No. 62224) presented by petitioner Nita U. Berthelsen "affecting all rights, interests and participation of defendants Z. Garcia Realty, Inc. in the property described in this certificate of title in accordance with Notice of Attachment or Levy issued by the Provincial Sheriff of Rizal in Civil Case No. 59861 of the Court of First Instance of Manila, entitled *Nita U. Berthelsen versus Garcia Realty, Inc., etc.*"

The attachment covers the Disputed Lot.

July 25, 1966 — Attachment (Entry No. 62748) presented by Leviste & Co. "affecting all rights, interests and participation of the defendant Garcia Realty, Inc., in the property described in the certificate of title, in accordance with the Notice of

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Attachment or Levy issued by the Provincial Sheriff of Rizal, in Civil Case No. 9269 of the Court of First Instance of Rizal entitled *L. P. Leviste, Inc. versus Z. Garcia Realty, Inc.*"

This attachment also covers the Disputed Lot.

November 18, 1966 — Attachment (Entry No. 73465) "affecting all rights, interest and participation of the defendants, Z. Garcia & Co. in the property described herein, in accordance with the Notice of Attachment or Levy issued by the Provincial Sheriff of Rizal in Civil Case No. 2489-P of the Court of First Instance of Rizal, entitled *Vivencio R. de Guzman vs. Z. Garcia & Co.*"

Again, the attachment covers the Disputed Lot.

May 29, 1967 — Garcia Realty and respondent Villanueva consummated a contract of sale over the Disputed Lot.

Respondent Villanueva sought to have the sale registered and title issued in her favor, free of any encumbrance, but petitioners Leviste and Berthelsen objected alleging that they had registered adverse claims and attachments. The Register of Deeds refused to issue a new title to Villanueva without carrying over (A) the two annotations registered *prior* to Villanueva's adverse claim, namely, the notice of *lis pendens* (Entry No. 7115) made on September 7, 1964 referring to a pending Civil Case No. 2489-P in the Court of First Instance of Rizal entitled *Vivencio R. de Guzman vs. Z. Garcia Realty, Inc.*; and the adverse claim (Entry No. 55205) of J. Antonio Leviste registered on April 28, 1966 according to the deed of assignment in his favor executed by one Leticia P. Ramos; and (B) the attachments covering the entire property annotated on the title subsequent to Villanueva's adverse claim, namely, the Berthelsen attachment on July 19, 1966 (Entry No. 62224), the Leviste attachment on July 25, 1966 (Entry No. 62748),

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and the attachment issued in connection with Civil Case No. 2489-P of the Court of First Instance of Rizal on November 18, 1966 (Entry No. 73465).

The position taken by the Register of Deeds was predicated on the following reasons:

"1. A registered adverse claim is only a claim, and not a lien or encumbrance on the property. Hence, the superior rights of lienholder establish by law cannot be involved in this case.

"The case would have been otherwise, if the agreement itself were the one registered.

"2. From the annotations of the said attachments on Transfer Certificate of Title No. 108425, it appears clearly that the whole property known as Lot 1-E-2, described therein is being attached; therefore, it is no longer necessary to make any distinction."

Upon the request of respondent Villanueva, the Register of Deeds elevated the matter *en consulta* to the Land Registration Commission, which, on October 20, 1967, issued its Resolution, the decretal portion of which is worded thus:

"IN VIEW OF THE FOREGOING, this Commission holds that the deed of sale may be registered; Transfer Certificate of Title No. 108425 may be partially cancelled; and a new transfer certificate of title covering Lot 16 of subdivision plan (LRC) Psd-56800 may be issued to Maria Villanueva free of any encumbrance.

"SO ORDERED."[1]

In so disposing of the *consulta*, the Commission opined:

"A registered notice of adverse claim takes priority over all subsequent encumbrances and becomes subject only to all annotations registered prior to it, except legal liens. While the notice of adverse claim of Maria Villanueva appears to be subject to the notice of *lis pendens* filed in connection with Civil Case No. 2489-P of the Court of First Instance of Rizal and to the notice of adverse claim of J. Antonio C. Leviste, both having been registered ahead, yet, as said notice of *lis pendens* and adverse claim refer to specific

[1] P. 35, Original Record.

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lots other than Lot 6, Block 4, sold to Maria Villanueva, her notice of adverse claim becomes free of any encumbrances, much less of the attachments subsequently annotated."

Petitioners' Motion for Reconsideration having been denied, they interposed this appeal by *certiorari*, with the following Assignments of Error:

"I

"THE HONORABLE COMMISSIONER ERRED IN NOT CONSIDERING THE FACT THAT RESPONDENT MARIA VILLANUEVA'S ADVERSE CLAIM HAS FOR ITS BASIS AN UNREGISTERED 'AGREEMENT TO SELL.' SAID ADVERSE CLAIM, THEREFORE, HAS NO FORCE AND EFFECT AND, HENCE, A NULLITY AS FAR AS PETITIONERS ARE CONCERNED.

"II

"THE HONORABLE COMMISSIONER ERRED IN NOT CONSIDERING THE FACT THAT RESPONDENT MARIA VILLANUEVA ACTED IN BAD FAITH WHEN SHE ENTERED INTO *A CONTRACT OF ABSOLUTE SALE WITH Z. GARCIA REALTY*, INC. AS REGARDS THAT PARCEL OF LAND (LOT 6, BLOCK 4, OF THE SCHEME PLAN OF GARVILLE SUBDIVISION AND COVERED BY TRANSFER CERTIFICATE OF TITLE NO. 108425).

"III

"THE HONORABLE COMMISSIONER ERRED IN NOT CONSIDERING THE FACT THAT RESPONDENT, MARIA VILLANUEVA, FAILED TO EXHAUST THE REMEDY OF REGISTERING THE 'AGREEMENT TO SELL' SHE EXECUTED WITH Z. GARCIA REALTY, INC."[2]

Petitioners take the position that:

"The registered adverse claim or lien of J. Antonio Leviste under Entry No. 55209 involving Lot 5 of Block 5 of the Garville Subdivision, according to the deed of assignment executed by Leticia Ramos is prior to and superior to that of petitioner Maria Villanueva (herein respondent). Hence, the lien annotated in favor of Leviste holds preference over that of Maria Villanueva.

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[2] pp. 6-7, Petitioner's Brief.

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"The agreement to sell in favor of Maria Villanueva was not registered. Hence, the rights of a lienholder established by law cannot be invoked in favor of petitioner (herein respondent)."

On the other hand, respondent Villanueva *contends that her* adverse claim is valid; that it conforms with the requirements of Section 110 of Act 496, and until found to be frivolous, vexatious or unmeritorious by a Court of competent jurisdiction, it is an interest or lien protected by law. Moreover, a registered adverse claim is a lien or encumbrance on the property, specifically on the particular portion which it covers. Furthermore, Section 110 of Act 496 does not require registration as the basis of the adverse claim, referring to the agreement to sell in this case, it being sufficient that a statement be made setting forth the basis of the claim.

The rule is that between two involuntary documents, the earlier entry prevails.[3] Ordinarily, therefore, the notice of *lis pendens* entered on September 7, 1964, and Leviste's adverse claim annotated on April 28, 1966, both registered prior to respondent Villanueva's adverse claim, which was entered on May 6, 1966, are entitled to precedence over the latter. However, inasmuch as the aforesaid *lis pendens* refers to *Lot 3* (redesignated as *Lot 5*) and Leviste's adverse claim to *Lot 1, Block 5*, notwithstanding their prior registration, they cannot affect Villanueva's adverse claim over *Lot 6, Block 4*. The aforesaid inscriptions, therefore, need not be carried over to the new title to be issued in Villanueva's favor.

The question to resolve is the priority between Villanueva's adverse claim and the attachments of Berthelsen, Leviste, and that in Civil Case No. 2489-P of the Court of First Instance of Rizal, all registered *subsequent* to Villanueva's adverse claim. *The answer would depend on whether* Villanueva's adverse claim is, in fact, registerable, and if so, whether it can be preferred over the attachments.

Section 110 of Act 496 provides:

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[3] see *Santos vs. Robledo*, 28 Phil. 245; *Co-Trongco vs. Co-Gura*, 1 Phil. 210.

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"Whoever claims any right or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in the Land Registration Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall he cancelled. If in any case the court after notice and hearing finds that claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion."

The basis of respondent Villanueva's adverse claim was an agreement to sell executed in her favor by Garcia Realty. An agreement to sell is a voluntary instrument as it is a wilful act of the registered owner. As such voluntary instrument, Section 50 of Act No. 496 expressly provides that the act of registration shall be the operative act to convey and affect the land. And Section 55 of the same Act requires the presentation of the owner's duplicate certificate of title for the registration of any deed or voluntary instrument. As the agreement to sell involves an interest less than an estate in fee simple, the same should have been registered by filing it with the Register of Deeds who, in turn, makes a brief memorandum thereof upon the original and owner's duplicate certificate of title.[4] The reason for requiring the production of the owner's duplicate certificate in the registration of a voluntary instrument is that, being a wilful act of the registered owner, it is to be presumed that he is interested in registering the instrument and would willingly surrender, present or produce his duplicate certificate of title

[4] Section 52, Act No. 496.

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to the Register of Deeds in order to accomplish such registration.[5] However, where the owner refuses to surrender the duplicate certificate for the annotation of the voluntary instrument, the grantee may file with the Register of Deeds a statement setting forth his adverse claim, as provided for in Section 110 of Act No. 496.[6] In such a case, the annotation of the instrument upon the entry book is sufficient to affect the real estate to which it relates, although Section 72 of Act No. 496 imposes upon the Register of Deeds the duty to require the production by the Registered owner of his duplicate certificate for the inscription of the adverse claim.[7] The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof.[8]

In *Register of Deeds of Quezon City vs. Nicandro* (1 SCRA 1334 [1961]), it was held that for the special remedy of adverse claim to be availed of, it must be shown that there is no other provision in the law for registration of the claimant's alleged right or interest in the property. In said case, the basis of the adverse claim was a perfected contract of sale. As the Land Registration Act specifically prescribes the procedure for registration of the vendee's right on a registered property (Section 57), the filing of an adverse claim was held ineffective for the purpose of protecting the vendee's right.

In the case at bar, it does not appear that Villanueva attempted to register the agreement to sell under Section 52 of Act No. 496 and that the registered owner, Garcia Realty, refused to surrender the duplicate certificate for the annotation of said

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[5] *Ramirez vs. Causin*, 101 Phil. 1009 (1957); *Villasor vs. Camon*, 89 Phil. 404, 412 [1951].

[6] *Register of Deeds of Manila vs. Tinoco*, 95 Phil. 818 [1954].

[7] *Villasor vs. Camon, supra.*

[8] *Ty Sin Tei vs. Lee Dy Piao*, 103 Phil. (1958).

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instrument. Instead, Villanueva merely filed an adverse claim based on said agreement to sell. Considering that Section 52 of the Land Registration Act prescribes the procedure for the registration of Villanueva's interest less than an estate in fee simple on the disputed lot and there being no showing of her inability to produce the owner's duplicate certificate, the remedy provided in Section 110 of Act 496, which was resorted to by Villanueva, is, therefore, ineffective for the purpose of protecting her right or interest on the disputed lot.

Inasmuch as the adverse claim filed by Villanueva was not valid, the same did not have the effect of a conveyance of her right or interest on the disputed lot and could not prejudice any right that may have arisen thereafter in favor of third parties. Consequently, the attachments of Berthelsen, Leviste, and that in Civil Case No. 2489-P of the Court of First Instance of Rizal covering the disputed lot are superior to that acquired by Villanueva and will have to be carried over to the new title to be issued in her favor. Thus, Section of Act 496 provides that:

"If at the time of any transfer there appear upon the registration book encumbrances or claims adverse to the title of the registered owner, they shall be stated in the new certificate or certificates, except so far as they may be simultaneously released or discharged."

WHEREFORE, the Resolution of the Land Registration Commission in LRC Consulta No. 555 decreeing the issuance of a new transfer certificate of title covering Lot 16 of subdivision plan (LRC) Psd-56800 in the name of Maria Villanueva free of any encumbrance is hereby set aside. The attachments of Nita U. Berthelsen (Entry No. 62224), Leviste & Co. (Entry No. 62748) and that in Civil Case No. 2489-P of the Court of First Instance of Rizal (Entry No. 73465), must have to be carried over to the new transfer certificate of title to be issued to respondent Maria Villanueva.

No pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.