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SECOND DIVISION

[G.R. No. L-29740. November 10, 1978]

TERESITA ROSAL ARRAZOLA, *petitioner-appellee, vs.* **PEDRO A. BERNAS and SOLEDAD BERNAS ALIVIO,** *oppositors-appellants.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; ADVERSE CLAIM; DEFINED. — Under section 110, Act 496, the adverse claimant must be one who claims any right or interest in registered land adverse to the registered owner, arising subsequent to the original registration. That interest is registerable as an adverse claim if no other provision is maed in Act 496 for its registration.

2. ID.; ID.; ID.; PURPOSE OF ANNOTATING ADVERSE CLAIM ON THE TITLE.— The purpose of annotating the adverse claim on the title of the disputed land is to apprise third persons that there is a controversy over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.

3. ID.; ID.; ID.; PROPRIETY OF ADVERSE CLAIM.— Where the adverse claim which was made in good faith, has some basis and semblance of plausibility and is not frivolous or vexatious, it is premature to order the cancellation thereof before it is finally determined by the courts that the titles of the registered owner to the disputed lots are indefeasible and that the adverse claim is devoid of merit.

4. ID.; ID.; ID.; ID. — The claim of a person, that in the deceased testator's will two lots were devised to him (claimant) and his sister and that he has hereditary rights in said lots which were "involuntarily, fictitiously and without consideration" conveyed by the deceased to an adopted daughter who was disinherited by the testator, is registerable as an adverse claim. And where such claim had been annotated, it is error for the court to order its cancellation on the ground that since the will had not yet been probated, the interest of the adverse claimant who are

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merely presumptive heirs is contingent, expectant and inchoate. Because of the will, the registered owner's title to the lots have become controversial. Section 110 of Act 496 gives the herein instituted heirs the remedy of causing to be annotated their adverse claim. If owner can transfer the lots to an innocent purchaser for value and, in that event, the unregistered adverse claim will be nullified or frustrated.

5. ID.; ID.; ID.; VALIDITY OF CLAIM. — The annotation of an adverse claim should not be confused with its validity which should be litigated in a proper proceeding. The registration of an invalid adverse claim is not as harmful as the non-registration of a valid one.

APPEARANCES OF COUNSEL

Venicio Escolin for petitioner-appellee.
Gellada & Gellada for oppositors-appellants.

D E C I S I O N

AQUINO, *J.*:

This case is about the cancellation of an adverse claim which was annotated on Transfer Certificates of Title Nos. T-6881 and T-6882 in the name of Teresita Rosal Bernas (Arrazola), covering Lots Nos. 371 and 373 of the Pilar, Capiz cadastre with a total area of 12,830 square meters.

Teresita was allegedly an adopted daughter of Elviro Bernas who on May 5, 1967, when he was 79 years old, executed in Iloilo City a notarized will wherein he disinherited Teresita and instituted his brother Pedro A. Bernas and his sister Soledad Bernas Alivio as heirs to all his properties, including Lots Nos. 371 and 373 which he had allegedly "involuntarily transferred" to Teresita.

A month later, or on June 5, 1967, Elviro Bernas died in Roxas City. His brother Pedro filed with the Court of First Instance of Capiz a petition dated September 6, 1967 for the probate of his will (Special Proceeding No. V-2965).

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On December 12, 1967, Pedro A. Bernas filed with the register of deeds of Capiz a verified notice of *adverse claim* which was recorded as follows:

"Entry No. 27222. Notice of adverse claim in favor of Pedro and Soledad, all surnamed Bernas. — Claiming ownership in the parcels of land described in T-6881 and T-6882 by virtue of the Last Will executed before Not. Public Reynaldo Gellada of Iloilo City on May 5, 1967, Doc. No. 4, page 2, Book 111, series of 1967: by Elviro Bernas. — Inscription — Dec. 12, 1967 at 8:20 a.m."

He alleged in that adverse claim that Lots Nos. 371 and 373 were conveyed by his brother Elviro to Teresita Rosal Bernas "involuntarily, fictitiously and without consideration" and that in Elviro's will the two lots were devised to him (Pedro) and his sister Soledad. A copy of the will was attached to the adverse claim.

After the register of deeds had annotated the adverse claim on TCT Nos. T-6881 and T-6882, Teresita R. Bernas Arrazola filed in the cadastral and probate proceedings a motion dated August 13, 1968 for the cancellation of the annotation of adverse claim. The motion was predicated on the grounds that she was not served with "prior notice" of the adverse claim and that there was "no petition for approval or justification" thereof filed with the court. Pedro A. Bernas and Soledad Bernas Alivio opposed the motion. The lower court in its order of August 20, 1968 granted it and ordered the register of deeds to cancel the annotation. The oppositors appealed.

The correctness of the lower court's order is to be passed upon in the light of Section 110 of Act No. 496 which reads:

"SEC. 110. 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 this 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

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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 be canceled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion."

Under Section 110, the adverse claimant must be one who claims any right or interest in registered land adverse to the registered owner, arising subsequent to the original registration. That interest is registerable as an adverse claim if no other provision is made in Act No. 496 for its registration.

Applying Section 110, it was held that a claim based on occurrences prior to the original registration is not registerable as an adverse claim (*De los Reyes vs. De los Reyes*, 91 Phil. 528).

A lease over a parcel of land for a ten-year period, which could not be registered because the owner's duplicate of the title was not surrendered, could be registered as an adverse claim and the owner could be compelled to surrender the owner's duplicate of the title so that the adverse claim could be annotated thereon. If the adverse claim turns out to be invalid, the owner could ask for its cancellation and, if found to be frivolous or vexatious, then double or treble costs may be adjudged against the adverse claimant. (*Register of Deeds of Manila vs. Tinoco Vda. de Cruz,* 95 Phil. 818).

But where the vendee of a parcel of land may register the deed of sale in his favor, as provided for in Section 57 of Act No. 496, he is not entitled to cause that sale to be annotated as an adverse claim on the vendor's title (*Register of Deeds of Quezon City vs. Nicandro,* 111 Phil, 989, 997).

An example of a baseless adverse claim is when the possessor of land already registered in the name of another person claims the land on the basis of prescription and adverse possession.

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That claim is not registerable as an adverse claim (*Estella vs. Register of Deeds of Rizal*, 106 Phil. 911).

However, the claim of a person that she has hereditary rights in the land fraudulently registered in her sister's name, because the land belonged to their mother, whose estate is pending settlement in a special proceeding, is registerable as an adverse claim (*Gabriel vs. Register of Deeds of Rizal,* 118 Phil. 980).

In the instant case, the lower court ordered the cancellation of the adverse claim because the will of Elviro Bernas had not yet been probated. It reasoned out that before the probate Pedro A. Bernas and Soledad Bernas Alivio are merely presumptive heirs with a "contingent, expectant and inchoate" interest in the two lots.

We hold that the lower court erred in ordering the cancellation of the adverse claim. It is true that the will of Elviro Bernas has not yet been probated but the fact is that there is a pending proceeding for its probate. And in that will the testator transmitted to his surviving brother and sister, the herein oppositors-appellants or adverse claimants, the right to secure a declaration as to the invalidity of his conveyance of Lots Nos. 371 and 373 to Teresita Rosal Arrazola.

Because of that will, Teresita's title to the two lots have become controversial. To alert third persons, or for that matter the whole world, to the fact that Pedro A. Bernas and Soledad Bernas Alivio have an adverse claim on the two lots, Section 110 of Act No. 496 gives them the remedy of causing to be annotated their adverse claim on the titles of the two lots. If that remedy is not given to them, then the registered owner can transfer the lots to an innocent purchaser for value and, in that event, the unregistered adverse claim will be nullified or frustrated. (See *Reyes vs. Court of Appeals,* 95 Phil. 952 as to the right of an heir to sue for the annulment of a conveyance made in fraud of the deceased.)

The purpose of annotating the adverse claim on the title of the disputed land is to apprise third persons that there is a controversy over the ownership of the land and to preserve

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and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.

Appellants' adverse claim, which was made in good faith, has some basis and semblance of plausibility and is not palpably frivolous or vexatious. Hence, it is premature to order the cancellation of the annotation thereof before it is finally determined by the courts that the titles of Teresita Rosal Arrazola to the disputed lots are indefeasible and that appellants' claim is devoid of merit.

The instant case has some similarity to *Ty Sin Tei vs. Dy Piao*, 103 Phil. 858, where the testator, Dy Lac, in 1940 purchased houses and a lot located at Zurbaran Street, Manila, and placed the title thereof, Transfer Certificate of Title No. 58652, in the name of his maidservant and concubine named Paz Ty Sin Tei. After the testator's death in 1948, Paz filed a petition for the probate of his will. Lee Dy Piao and Uy Cho, the respective legitimate son and widow of Dy Lac, acting pursuant to Section 110 of Act No. 496, caused their claim, as heirs of Dy Lac, to be annotated on the back of TCT No. 58652 pending the determination of their hereditary rights in the testamentary proceeding.

On March 23, 1955, Paz Ty Sin Tei filed a petition in the land registration record of TCT No. 58652 for the cancellation of the adverse claim. The Court of First Instance of Manila cancelled it over Lee Dy Piao's opposition. On appeal, this Court set aside the order of cancellation and further held that the adverse claim could subsist concurrently with a subsequent annotation of a notice of *lis pendens* which referred to a case filed by Lee Dy Piao, involving the same right or interest covered by the adverse claim.

In further support of our holding that the lower court erred in ordering the cancellation of the annotation of the adverse claim, it is also relevant to cite the holding that where a guardianship proceeding was instituted for an octogenarian woman, it was proper to annotate on the title of her land the

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pendency of such a proceeding by means of a notice of *lis pendens* for the purpose of alerting anyone who might wish to buy the land that his purchase might be questioned later on (*Diaz vs. Hon. Perez*, 103 Phil. 1023). An adverse claim and a notice of *lis pendens* have the same purpose.

In this case, the trial court relied on the ruling of the Court of Appeals that the contingent, expectant and inchoate hereditary rights of the children of a *living* parent do not constitute an adverse claim during his lifetime which could be annotated on the titles covering the parent's land (*Diaz vs. Santos Diaz*, CA 54 O. G. 8082). That is an illustration of a frivolous or vexatious adverse claim.

That ruling is not applicable to this case because in the *Diaz* case the hereditary rights had not yet accrued, since the parent was still alive. In the instant case, the testator is dead and there is a proceeding for the probate of his will, which is the basis of appellants' adverse claim. Hence, they are entitled to announce to third persons, by means of a notice of adverse claim annotated on the titles of the two lots, that they are contesting the validity of those titles.

It has been said that the annotation of an adverse claim should not be confused with its validity which should be litigated in a proper proceeding and that the registration of an invalid adverse claim is not as harmful as the non-registration of a valid one (*Gabriel vs. Register of Deeds of Rizal*, 118 Phil. 980).

WHEREFORE, the lower court's order of August 20, 1968, ordering the cancellation of appellants' adverse claim on TCT Nos. T-6881 and T-6882, is reversed and set aside. Costs against the petitioner-appellee.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.