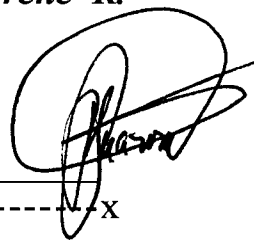


SECOND DIVISION

G.R. No. 195295 (*Republic of the Philippines vs. Sandiganbayan, Fourth Division, Ferdinand "Bongbong" R. Marcos, Jr., Ma. Imelda "Imee" R. Marcos-Manotoc, Gregorio Ma. Araneta III, and Irene R. Marcos Araneta*)

Promulgated:

05 OCT 2016



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X

DISSENTING OPINION

VELASCO, JR., J.:

I respectfully register my dissent.

I cannot agree with the conclusion made by the *ponencia* that the Sandiganbayan committed grave abuse of discretion in cancelling the notice of *lis pendens* over the subject property in Cabuyao, Laguna, covered by TCT No. T-85026 (Cabuyao property).

The basic rule on *lis pendens* is found in Rule 13, Section 14 of the Rules of Court, which provides:

Section 14. Notice of *lis pendens*. — In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated notice of the pendency of the action. x x x

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. (24a, R-14)

As early as *Diaz v. Perez*,¹ this Court had already recognized that the effect of an annotation of *lis pendens* is to:

x x x charge the stranger with notice of the particular litigations referred to in the notice; and if the notice is effective, a third party who acquires the property affected by the *lis pendens* takes subject to the eventually of the litigations.

And its purpose is "to hold property within the jurisdiction and control of the court pending determination of the controversy, thereby preventing third persons from acquiring such interests therein as would preclude giving effect to the judgment.

¹ No. L-12053, May 30, 1958.



From a plain reading of the above-quoted provision, it can easily be inferred that due to the burden imposed on the property by the notice of *lis pendens*, the property subjected to the notice must be the very same property covered by the main action. Otherwise, the notice of *lis pendens* would unduly subject a property to a burden even if it is not involved in the pending litigation. In fact, in *Sps. Lim v. Vera Cruz*,² the Court had already clarified that “only the particular property subject of litigation is covered by the notice of *lis pendens*.” Conversely, properties not subject of litigation should not be covered by a notice of *lis pendens*.


It goes without saying, therefore, that before a court can order the annotation of a notice of *lis pendens* over a property subject of litigation, the plaintiff must first show in the complaint the nexus between the nature of the action, which must be an action involving title to or possession of real property, on the one hand, and the real property sought to be annotated, on the other. Absent such nexus, the annotation of *lis pendens* is not only ineffective to protect the rights of the plaintiff, it also amounts to deprivation of property without due process of law.

In the case here, there is no contest that the Cabuyao property was not specifically included in the original Complaint up to the Third Amended Complaint. The Cabuyao property was only specifically included in the Annex to the Fourth Amended Complaint. It is also undisputed that the Sandiganbayan denied the admission of the Fourth Amended Complaint, and that the denial of the motion for leave to admit the Fourth Amended Complaint was not questioned by the petitioner in the same or in another proceeding. In fact, the following observation in the *ponencia* is very well taken:

The foregoing issue could have been averted had the Sandiganbayan granted petitioner’s Motion for Leave to Admit Fourth Amended Complaint. Unfortunately, petitioner inexplicably did not file a motion for reconsideration seeking reversal of the Sandiganbayan’s denial, and did not raise the issue in a petition for *certiorari*.

The fact remains that the Fourth Amended Complaint was not duly admitted by the Sandiganbayan, and such denial is no longer subject to review by this Court. The *ponencia*, therefore, should have stopped at that observation, and it need not have unduly addressed the issue of whether the Fourth Amended Complaint should have been admitted by the Sandiganbayan. That issue had been laid to rest when the petitioner did not file a motion for reconsideration or a petition for *certiorari* against the order denying the motion for leave. All the more, the present petition should not serve to revive an issue the resolution of which had already long been rendered final. This Court cannot rule on an issue which the petitioner chose not to elevate to this Court.

² G.R. No. 143646, April 4, 2001.



The *ponencia*, however, inexplicably delved into the issue of the Sandiganbayan's reasons for denying the motion for leave, and even went on to observe that the denial was a result of an oversight so palpable that it can reasonably be interpreted as grave and inexcusable arbitrariness on the part of the Sandiganyan.³ The *ponencia* only stopped short of annulling the denial of the motion for leave.

To my mind, the *ponencia's obiter* on the issue of the propriety of the denial of the motion for leave is incorrect. Such an issue is already beyond the scope of review of the Court. The Court cannot, in the present case, resurrect the issue, much less imply that the Sandiganbayan exceeded its jurisdiction in denying the motion.

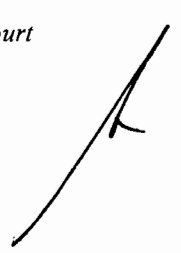
Instead, I believe a more rational ruling can be had if the Court were to take judicial notice of the fact that the Fourth Amended Complaint was not, as it remains, admitted. Hence, whatever the allegations there are in the Fourth Amended Complaint, including the annexes therein, are considered not pleaded. In effect, the Sandiganbayan did not acquire jurisdiction over whatever issues or allegations were raised in the Fourth Amended Complaint, except those that were also impleaded in the Third Amended Complaint.

Going back to the issue on the propriety of the issuance of the notice of *lis pendens* over the Cabuyao property, I am of the view that the issue should be resolved taking into mind that the Cabuyao property was not specifically mentioned in the Complaint, as admitted by the Sandiganbayan. The fact that the Cabuyao property was already included in the Fourth Amended Complaint should have no bearing in the resolution of the issue, except in highlighting the fact that the property was included in the unadmitted Fourth Amended Complaint and not in the original Complaint, nor in the admitted amended Complaints.

Absent any specific reference to the Cabuyao property in all the admitted Complaints, the Sandiganbayan could not have acquired jurisdiction over the subject property. It is a long-standing rule that a court can only acquire jurisdiction over the *res* by: (1) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (2) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.⁴ In the present case for resolution, it is beyond cavil that the Sandiganbayan did not acquire jurisdiction over the Cabuyao property through the first mode. As to the second mode, it also cannot be said that the plaintiff, herein petitioners, instituted legal proceedings over the Cabuyao property, seeing as it were that no specific reference to the Cabuyao property was mentioned in the complaint. The reasonable inference, therefore, is that the Sandiganbayan did not acquire jurisdiction over the Cabuyao property.

³ *Ponencia*, p. 11.

⁴ *Biacó v. Philippine Countryside Rural Bank*, G.R. No. 161417, February 8; citing *Alba v. Court of Appeals*, G.R. No. 164041, July 29, 2005.



That being the case, there is no reason why the Sandiganbayan included the Cabuyao property among those properties over which notices of *lis pendens* were issued. Thus, while the Omnibus Motion dated June 5, 1997 prayed for the cancellation of the notice of *lis pendens*, the cancellation prayed for should not be interpreted as the same cancellation referred to in Rule 14, Sec. 13, par. 2 of the Rules of Court.⁵ Instead, it should be interpreted as one raising a question of propriety of issuance of a notice of *lis pendens*, for the simple reason that the property was wrongfully subjected to the burden even if it is not included in the present litigation. If a notice of *lis pendens* may be cancelled when the annotation is not necessary to protect the title of the party who caused it to be recorded,⁶ with more reason should it be cancelled if the property subjected to the notice is beyond the jurisdiction of the court.

Hence, I also cannot agree with the *ponencia's* ruling that Executive Order No. 14⁷ should be applied, and that technical rules of procedure and evidence need not be applied strictly to the case here.⁸ On the contrary, I find that the provision in Executive Order No. 14 is not applicable to the case at bar, because what is involved is a question of jurisdiction, and not technical rules on procedure and evidence.

The only issue presented is whether a notice of *lis pendens* may be annotated to the TCT covering the Cabuyao property despite the fact that the Sandiganbayan did not acquire jurisdiction over the Cabuyao property. To me, the only reasonable conclusion is that the Sandiganbayan did not acquire jurisdiction over the Cabuyao property because of the failure to include the property in the Complaint, as admitted, and consequently, no notice of *lis pendens* may be annotated in its title, insofar as the present case is involved.

In so ruling, the Court is not in any way precluding the inclusion of the Cabuyao property in further court proceedings. Neither is the Court making a determination of whether the Cabuyao property is ill-gotten or not, for the precise reason that such a determination is premature. What the Court would, in effect, uphold is the ruling that the notice of *lis pendens* must be cancelled, for the sole reason that the Sandiganbayan, in Civil Case No. 0002, has not acquired jurisdiction over the Cabuyao property. Therefore, the Sandiganbayan exceeds its jurisdiction when it issues any order covering the Cabuyao property.

⁵ 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.

⁶ *Reyes-Muegas v. Reyes*, G.R. No. 174835, March 22, 2010.

⁷ Section 3. Civil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil actions under the Civil Code or other existing laws, in connection with Executive Order No. 1 dated February 28, 1986 and Executive Order No. 2 dated March 12, 1986, may be filed separately from and proceed independently of any criminal proceedings and may be proved by a preponderance of evidence.

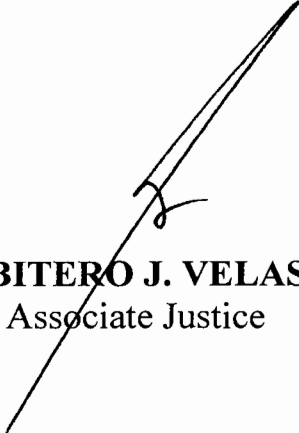
The technical rules of procedure and evidence shall not be strictly applied to the civil cases filed hereunder.

⁸ *Ponencia*, p. 8.



Given the foregoing, I find that the cancellation of the notice of *lis pendens* over the Cabuyao property is proper.

I vote that the present Petition for Certiorari be **DISMISSED** for failing to show grave abuse discretion amounting to lack or excess of jurisdiction on the part of the respondent Sandiganbayan.



PRESBITERO J. VELASCO, JR.
Associate Justice