

101 Phil. 62

[G. R. No. L-10288. April 15, 1957]

**DIONISIA PATINGO, PETITIONER, VS. HON. PANTALEON PELAYO, AS JUDGE,
COURT OF FIRST INSTANCE OF ILOILO, CELE-DONIA PATINGO, ET AL.,
RESPONDENTS.**

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to set aside certain orders of respondent Judge which direct the Register of Deeds to cancel a certificate of title and issue a new one in accordance with a previous order of the court.

On July 10, 1933, a motion was filed by Santiago Labrador, et.al., in Cadastral Case No. 21 of the Court of First Instance of Iloilo, praying for the subdivision of Lot No. 1873 in four portions in accordance with the subdivision plan submitted for the purpose, and on April 14, 1934 the court granted the motion ordering the Register of Deeds to cancel Original Certificate of Title No. 13630 and to issue four other certificates in lieu thereof, namely, one covering lot 1873-A in favor of Tiburcia Patingo; one covering lot 1873-B in favor of Dionisia Patingo; one covering lot 1873-C, divided in two halves, one-half in favor of Santiago Labrador and the other half in favor of the heirs of Bernabe Patingo, in equal shares; and one covering- lot 1873-D in favor of Celedonia Patingo. Acting on this order, the Register of Deeds issued Transfer Certificate of Title No. 13233 for lot 1873-C stating therein the following:

“IS REGISTERED IN ACCORDANCE WITH THE PROVISIONS OF THE LAND REGISTRATION Act in the name of: Santiago Labrador, a widow; Tibureia Patingo, single; Dionisia Patingo, the wife of Eusebio Defensor; and Celedonia Patingo, single; in the PROPORTION, of UNDIVIDED 1/2 share to the first named; and the remaining 1/2 share in undivided equal share to the last three, all of Pototan, Iloilo, P. I., as owners thereof in fee simple.”

Claiming that they are entitled to share in lot 1873-C, but were omitted from the new title by the Register of Deeds, the heirs of Bernabe Patingo filed an action for partition on June 23, 1953 in the Court of First Instance of Iloilo against Dionisia Patingo, et al., in an attempt to regain their interest in said lot (Civil Case No. 2865). Answering said complaint, Dionisia Patingo averred, among other things, that Certificate of Title No. 13233 is now final and conclusive and that the right of action of the plaintiffs, if any, has already prescribed.

On May 27, 1956, the court dismissed the case on the ground that, it involving a mistake committed by the Register of Deeds, the same cannot be resolved in an ordinary action. And following this suggestion, plaintiffs filed a petition in Cadastral Case No. 21 praying that the mistake above adverted to be corrected pursuant to Section 112 of Act No. 496. This petition was granted on July 9, 1955, the court ordering the Register of Deeds to cancel Certificate of Title No. 13233 and issue a new one in lieu thereof in accordance with the order of the court dated April 14, 1934.

Upon being informed of this order from a private source, Dionisia Patingo filed a motion for reconsideration alleging that she was never notified of the petition filed by the heirs of Bernabe Patingo which was granted by the court on July 9, 1955 for which reason she was deprived of her rights to be heard and to set up her defense against the petitioners, praying at the same time that said order be set aside for having been issued by the court without having jurisdiction' over the subject matter. Petitioners opposed this motion for reconsideration, and when this was denied, Dionisia Patingo filed the present petition for certiorari.

There is no dispute that the petition filed by the heirs of Bernabe Patingo which served as basis of the order of the trial court of July 9, 1955, was filed under section 112 of Act No. 496 in line with the suggestion of the court in its order dismissing Civil Case No. 2865. There is also no dispute that Dionisia Patingo, petitioner herein, was never notified of said petition as respondents expressly admitted in their opposition to the motion for reconsideration dated July 15, 1955, (Annex C). This admission was made because in their opinion such notice was not necessary to confer jurisdiction upon the court, since the petition was filed in the cadastral case which is already under the jurisdiction of the court. In other words, respondents are of the opinion that having presented their petition in the cadastral case and their purpose being merely to correct a clerical mistake committed by the Register of Deeds, there was no need on their part to notify the other interested parties.

This opinion is erroneous. While under Section 112 of Act 496 any registered owner or

person in interest may apply by petition to the court upon the ground that “an error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate”, however, the court can only act thereon after notice to all parties in interest, which may be served either by the petitioner or by order of the court. Such notice is necessary in order to give jurisdiction to the court over the petition. This is clearly inferred from the provisions of the law which says that “the court shall have jurisdiction to hear and determine the petition *after notice to all “parties in interest.”* That is the correct interpretation of the law as held by this Court in some recent decisions.

Thus, in *Lagula, et al. vs. Casimiro, et al.*,* G. R. No. L-7852, December 17, 1955, wherein one of the issues raised was “whether the court could acquire jurisdiction to hear the petition for the subdivision of the land without need of a previous notice to the movants”, this Court, in sustaining the affirmative, said:

“* * For one thing, there is no unanimity in the will of the owners as regards the subdivision, and for another, the owners themselves deemed it wise and expedient to” bring the matter to court under section 112 of the same Act. No, 496.. This fact appears acknowledged in the very order of the trial court wherein it is intimated that the petition was acted upon by virtue of section 44 of Act No. 496, as amended by Republic Act No. 440, *in relation to section 112 of said land Registration Act.*” If such is the situation in this case then the trial court was in error in holding that notice of hearing to the movants was not necessary for in said section 112 it is precisely provided that the court can only have jurisdiction to hear the petition after notice to all parties in interest.’ *It is evident that for lack of this requirement the court did not acquire jurisdiction over the case.*” (Italics supplied.)

It appearing that petitioner, who was one of the co-owners of the lot affected by the petition, was not notified by respondents as required by law, the contention that the lower court acted without jurisdiction is well taken.

Wherefore, petition is granted. The orders of the lower court dated July 9, 1955 and January 23, 1956 are hereby set aside. No costs.

Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ. concur.

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