

LEONARDO SANTOS, ET AL., PETITIONERS VS. HON. ANGEL H. MOJICA, ET AL., RESPONDENTS.*G.R. No. L-19618. February 28, 1964*

Ponente: BAUTISTA ANGELO, J.

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Teodorico Allanigue, et al, filed on March 19, 1959 before the Court of First Instance of Rizal an action for partition of a piece of residential land situated in Parañaque, Rizal. In that case, the court a quo found that the land was originally owned by Apolonio Allanigue who died sometime in 1932 leaving as heirs his children by his first and second marriages, together with his second wife, Rosa De Leon. Hence, the Court ordered that the property, which was owned in common, be partitioned among the twelve (12) heirs, giving one-twelfth share to each, by executing the proper deed of conveyance within thirty days from receipt of the decision, and that in case they are unable to agree on the partition, it would appoint commissioners to undertake the same.

This decision became final, and as the heirs failed to come to an amicable partition, the court appointed commissioners who undertook the partition in line with the decision. To one Lorenza Allanigue was awarded a portion having an area of 30 sq. m. situated at the southwestern portion of the land, which was ordered set off to what she was sentenced to pay as rentals in the amount of P990.00 and as she failed to pay such amount, a writ of execution was issued against her, as well as against those who derive interest from her.

When the sheriff tried to carry out the execution by ejecting Lorenza Allanigue, et al. from the premises, one Leonardo Santos gave notice to the sheriff stating that the writ could not be enforced against the property for the simple fact that the same is his property and as such could not be included in the partition subject of the case in litigation. As a result, the sheriff informed the court of the third-party claim of Leonardo Santos. Thereupon, the court a quo issued an order requiring the plaintiffs to file an indemnity bond if they wanted to continue with the execution. This the plaintiff did, and as the sheriff proceeded with the execution, Leonardo Santos filed a motion praying for the recall of the writ stating therein the reason he already advanced that he is the owner of the property against which the execution was being enforced by the sheriff. This motion was denied. Then the court gave Santos, as well as the other occupants of the land, 30 days within which to vacate the premises, and having refused to do so, the court set a date for hearing relative to the demolition of the houses standing on the land.

The occupants were Maria and Felicidad San Agustin and Lorenza Allanigue who opposed the motion for the issuance of the order of demolition. This opposition, however, was overruled, and the court ordered the demolition of the houses. Their motion for reconsideration having been denied, the oppositors interposed the present petition, together with Leonardo Santos, imputing grave abuse of discretion to the court a quo. This Court gave due course to the petition, but declined to grant the writ for preliminary injunction.

It appears that this special civil action stemmed from the complaint for partition filed by the heirs of the original owner of the land, Apolonio Allanigue, with the exception of Lorenza Allanigue, who, together with Maria and Felicidad San Agustin, the actual occupants of a portion of the land, were made defendants therein, wherein the

court a quo found that the only heirs who should be allowed to participate in the partition were the twelve children of the deceased by his first and second marriages, together with the second wife by the name of Rosa De Leon. And so the court a quo ordered that the property be partitioned among the twelve heirs stating that, if they could not do so amicably, it would appoint commissioners to undertake the partition. This the court did, and what was adjudicated to Lorenza Allanigue was a portion with an area of 30 sq. m. situated at the southwestern portion of the land in question. This decision became final for lack of appeal on the part of the defendants. It follows, therefore, that Lorenza Allanigue, as well as Maria and Felicidad San Agustin, who appear herein as co-petitioners, have no reason to complain against respondent court, nor allege grave abuse of discretion in ordering the enforcement of its decision, for they had an adequate and proper remedy in the course of law which they failed to avail of for reasons that do not appear clear in the record.

It is true that Leonardo Santos, another petitioner, was not a party in the partition case because apparently the plaintiffs did not know that he acquired a portion of the land from his parents Simeon Santos and Lorenza Allanigue, even if his right was merely derivative from that of his mother Lorenza, but the procedure followed by him in vindicating his right is not the one sanctioned by law for he should have filed a separate and independent action making parties therein the sheriff and the plaintiffs responsible for the execution. Apparently, this he failed to do. What he did was to file a motion in the partition case for the recall of the writ of execution, and when this was denied and the court proceeded with the demolition of the houses standing on the land, he interposed the present petition for certiorari, together with Lorenza Allanigue and Maria and Felicidad San Agustin. It can, therefore, be said that Leonardo Santos has also acted improperly in filing the present petition because his remedy was to file a separate and independent action to vindicate his ownership over the land.

Wherefore, petition is denied. No costs.

Bengzon, C. J., Padilla, Labrador, Concepción, Reyes, J. B. L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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