

AMADO SOROÑGON AND MIGUEL MERCADO, PETITIONERS, VS. QUERUBE MAKALINTAL, VICTORINO SALCEDO, AND FELIX JESENA, RESPONDENTS.*G.R. No. L-1692. February 24, 1948*

Ponente: FERIA, J.

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This is a petition for certiorari and prohibition filed against the Judge of the Court of First Instance of Iloilo et al., on the ground that the respondent judge acted without or in excess of his jurisdiction in issuing a writ of possession of lot No. 2, plan PSU-103496, against the petitioners and in favor, of the other respondent Salcedo et al. who were declared owners of said property in a registration proceeding.

The reasons advanced by the petitioners in support of their contention are: First that they were not parties in the registration proceeding, and had not been served with summons notwithstanding the fact that they were "in actual possession of the land in question since 1933, before the survey of the land in 1937, and continued to be in actual possession as owners thereof after the issuance of the decree in July 1941 up to the present time;" and second, that after the respondent judge had granted on September 30, 1947, the petition for a writ of possession, the petitioners filed on October 3, 1947, an ordinary action to set aside the decree of registration on the ground of fraud.

It is the law and a well settled doctrine in this jurisdiction that a writ of possession must be issued within the same period of time in which a judgment in ordinary civil actions may be summarily executed (section 17, Act No. 496, as amended), upon the petition of the registered owner or his successor in interest and against all parties who claim a right to or interest in the land registered prior to the registration proceeding. This is a proceeding in rem, and therefore the decree of registration is binding upon and conclusive against all persons including the Government and its branches, irrespective of whether or not they were personally notified of the filing of the application for registration or have appeared and filed an answer to said application, because all interested parties are considered as notified by the publication required by law. "Every decree of registration shall bind the land and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government, and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description 'to all whom it may concern'." (Section 38, Act No. 496.)

This Court in *Grey Alba vs. De la Cruz* (17 Phil., 49, 56), held the following, applicable to the present case: "Although the appellee, occupying the two small parcels of land in question under the circumstances as we have set forth, was not served with notice, he was made a party defendant by publication; and the entering of a decree on the 12th of February, 1908, must be held to be conclusive against all persons, including the appellee, whether his (appellee's) name is mentioned in the application, notice, or citation."

The cases cited by the petitioners in support of their contention are not applicable to the present. In *Locsin and De Guzman vs. Diaz* (42 Phil., 22), the petition for a writ of possession was denied, for the reason that prior thereto

one had already been issued, and the new possessors were not a party to the registration proceeding, that is, their claim and interest arose or accrued after said proceeding. And in *Pasay Estate Co. vs. Del Rosario* (11 Phil., 391), the words "served with process" used in the decision means the process or notice by publication, and for that reason this Court sustained the demurrer filed by the petitioner *Pasay Estate Co.* to the answer filed by the respondent judge in which the latter alleged as defense that he had power to issue a writ of possession,' not against those who, having been made parties by publication, did not appear and answered, but only against those persons who being parties in the former proceeding had appeared therein and answered the application for registration.

If a decree of registration has been obtained by fraud the aggrieved party may file, within one year from the date of issuance and entry of the decree of registration, a petition for review of the proceeding with the Court of Land Registration that issued the decree in order to have the latter set aside. But it cannot be collaterally attacked by persons claiming title to or interest in the land prior to the registration proceeding. Therefore, the fact that the petitioners have instituted, more than one year after the decree of registration had been issued, an ordinary action with the Court of First Instance attacking the validity of the decree on the ground of fraud, is not a bar to the issuance of the writ of possession applied for by the registered owners.

In view of all the foregoing, it is plain that the respondent judge did not act without or in excess of the jurisdiction of the court presided by him, in issuing the writ of possession under consideration.

Petition is therefore denied, with costs against the petitioners. So ordered.

Moran, C.J., Pablo, Bengzon, and Padilla, JJ., concur.

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