

ALBINA DE LOS SANTOS, PETITIONER, VS. ALEJANDRO RODRIGUEZ, COMMISSIONER OF FISHERIES, AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-23170. January 31, 1968*

Ponente: CONCEPCION, C.J.

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Appeal by certiorari from a decision of the Court of Appeals.

The factual background, as found by said Court, is as follows: On August 11, 1931, the Director of Lands approved a homestead application of Albina de los Santos – hereinafter referred to as Santos – covering an unsurveyed portion of the public lands in Tagum, Davao. When said lands were surveyed on March 4, 1937, the portion applied for by Santos was designated as Lot No. 879, with an area of 15.8648 hectares. The order for the issuance of her patent was released on July 6, 1940 and Homestead Patent No. 67930, covering said lot, was issued on June 26, 1941. Transmitted to the Register of Deeds of Davao on November 7, 1941, the patent was lost and never registered on account of the war.

Seven (7) years later, or on August 12, 1948, Santos filed, with the Bureau of Lands, a petition for amendment of her patent to include therein an additional area of 8.44 hectares, to be taken from the adjoining Lot 880, so that her homestead may have an aggregate area of 24 hectares. Said adjoining lot, containing 15.8119 hectares, is close to Lot 1350, both of which were covered, however, by Bureau of Fisheries Application No. 2266, filed over six (6) months before, or on February 2, 1948, by Alejandro Rodriguez – hereinafter referred to as Rodriguez – to whom Ordinary Fishpond Permit F-639-D had, accordingly, been issued on July 6, 1948, or over a month prior to Santos' petition for amendment of her patent. As Rodriguez occupied said lots in October, 1948, and, upon the authority of said permit, started constructing thereon a fishpond, Santos filed her protest thereto with the Bureau of Fisheries, first on October 19, 1948, and then in July, 1949, alleging that Lot 880 was within the perimeter covered by her homestead application. In an order, dated February 16, 1950, the Director of Fisheries overruled the protest upon the ground that the homestead was limited to Lot 879, and did not include Lots Nos. 880 and 1350, which are within a mangrove reservation, as well as covered by the Fishpond Permit of Rodriguez.

On March 24, 1950, Santos moved for a reconsideration of this order, but the Bureau of Fisheries held in abeyance its action on the motion, because Santos had, on September 27, 1949 filed Civil Case No. 387 of the Court of First Instance of Davao – hereinafter referred to as the trial court – against Rodriguez, for a declaration to the effect that she had a better right to the possession of said Lots Nos. 880 and 1350. On December 9, 1955, the trial court rendered a decision dismissing the complaint, but said decision was, on appeal taken by Santos, reversed, on September 22, 1958, in CA-G.R. No. 18912-R of the Court of Appeals, which ordered Rodriguez to surrender to Santos the possession of the entire Lot 879 and 8.4365 hectares of Lot 880, in addition to paying damages and the costs.

Rodriguez sought a review on certiorari of the decision of the appellate court, but on February 19, 1959, the

Supreme Court, in G. R. No. L-14727, dismissed the petition for review upon the ground that it involved questions of fact and was without merit.

Meanwhile, the motion filed by Santos with the Bureau of Fisheries for a reconsideration of its order of February 16, 1950 – overruling her objection to the fishpond permit of Rodriguez, insofar as it included Lots Nos. 880 and 1350, upon the ground that the same are covered by her homestead patent – had not been resolved, in deference to the suit filed by Santos. Upon the conclusion of said litigation, or on February 24, 1959, the Director of Fisheries acted on said motion and denied the same, upon the ground that only Lot 879 was covered by the homestead patent of Santos, and that Lots Nos. 880 and 1350, are encompassed by the fishpond Permit of Rodriguez.

Inasmuch as eight (8) days prior thereto the Supreme Court had refused to review the decision of the Court of Appeals favorable to Santos, the latter asked the trial Court to issue the corresponding writ of execution. Despite the opposition thereto of Rodriguez and the Government, said Court issued the writ. Hence, on October 14, 1963, the Commissioner of Fisheries and Rodriguez commenced case CA-G. R. No. 32970-R, of the Court of Appeals, for "prohibition with preliminary injunction," to restrain the enforcement of the decision in CA-G. R. No. 18912-R. In due course, said appellate court rendered a decision treating the petition in said case CA-G. R. No. 32970-R as one for certiorari, and annulling the aforementioned writ of execution, "insofar only as it seeks to deliver now a portion of 8.4365 hectares of lot 880 from Alejandro Rodriguez to Albina de los Santos." The latter now seeks a review on certiorari of the last decision of the Court of Appeals.

Santos maintains that the appellate court had no jurisdiction over the present case, because its original jurisdiction is limited to auxiliary writs and processes in aid of its appellate jurisdiction, and there is, she claims, no case now pending in the trial court, so that there can be no appellate jurisdiction in connection therewith. It is true that there is no case pending decision on the merits in the trial court; but, there is therein a case pending execution of the decision therein rendered on the merits. Said court had to pass upon the issue – raised by the motion of Santos for execution of the decision in CA-G. R. No. 18912-R (recognizing her right to possess a portion of Lot 880, pending determination of the question whether or not the same is covered by her homestead patent) and the opposition of Rodriguez and the Government to said motion – whether or not it should order the execution of said decision. The complained writ or order of the trial Court, constituted its decision on that issue, for it settled the same in a manner that would become final and executory, unless appropriate steps were taken to prevent it. Rodriguez could have appealed from said order to the Court of Appeals, had he chosen to do so. He did not do so, however, because an appeal would not have been a plain, adequate and speedy remedy in the ordinary course of law.

We have already held,[1] that, for the Court of Appeals to have original jurisdiction, it is not necessary that the party initiating the case therein shall have actually appealed, or be about to appeal, from a decision of the court of first instance, and that it is enough if it appears that, had the petitioner wished to appeal from the action taken by the lower court, such appeal would have been within the jurisdiction of said appellate court.

What is more, it is settled that the fact that a decision or order of a court of first instance has become final does not negate the original jurisdiction of the Court of Appeals to issue writs of mandamus, prohibition or certiorari, in connection with orders or processes issued by the trial court incidentally to the execution of said final decision or order.[2] Indeed, otherwise, those adversely affected by action taken by the trial court would be left without any relief, even if its processes or orders had been issued improperly or erroneously.

It is next urged that the appellate court erred in taking into account, in the decision appealed from, the following documents, which, Santos alleges, have been neither marked nor presented as exhibits, namely: 1) an "alleged order of the Director of Fisheries, dated February 27, 1959;" 2) an "alleged letter" of the same officer, dated May

28, 1959; and 3) his alleged wire to District Fishery Office of Davao, dated October 7, 1959. Santos can not question the propriety of considering these documents in the case at bar, for it was she who cited them in her Memorandum in the appellate Court, dated March 4, 1964, and appended them thereto as Exhibits E, F and G.

Santos further impugns the decision of the appellate Court, in the present case, upon the ground: 1) that it nullifies its decision in CA-G.R. No. 18912-R; and 2) that the proper remedy for Rodriguez is "not a petition for prohibition but an ordinary action in the lower court for the recovery of possession by the Government after execution of the judgment sought to be annulled."

Viewed in the right perspective, there is no conflict, however, between the decision in CA-G. R. No. 18912-R and the ap-pealed decision in CA-G. R. No. 32970-R. The first settled the question as to who was entitled to the possession of the disputed portion of Lot 880, pending determination of the question whether the same part of the Homestead of Santos, or of the area cover-ed by the fishpond permit of Rodriguez, whereas CA-G.R. No. 32970-R enforced the subsequent decision of the proper adminis-trative authorities, holding that said portion is covered, not by the homestead patent, but by the fishpond permit, apart from referring to the right of possession after said question had been de-cided in favor of Rodriguez.

It was right and just that the possession of Santos be respected prior to said determination or decision, for she was the first to hold the disputed portion. One of the conditions contained in her own homestead application therefor was, however, that she agreed to "future delimitations and survey" and would "accept a grant for such area as may be determined by the survey and final grant to be suitable for the purposes of the application, or which could be put by the applicant into beneficial use and cultivation." Consistently with this provision of her application, a survey was made and the disputed portion was not included in the area covered by the homestead patent issued to her, said portion being deemed more suitable for fishpond purposes.

At the time of the rendition of the decision in CA-G. R. No. 18912-R, the question whether or not said portion was to be part of her homestead had not as yet been definitely settled. Accordingly, it became necessary to determine in that case who shall meanwhile be in possession. The aforementioned question was finally decided in favor of Rodriguez, in the order of the Director of Fisheries, dated February 27, 1959. Thereafter he is, therefore, the party entitled to said possession. In other words, the decision in CA-G.R. 18912-R may no longer be executed, not because the decision in CA-G.R. 32970-R has annulled it, but because of events subsequent to the first decision, which events have changed materially the situation between the parties. Thus, in *Hernandez vs. Clapis*,^[3] this Court, speaking through then Chief Justice Paras, said:

"In our opinion the present appeal is merito-rious. While the decision in the forcible entry and detainer case is final, it can no longer be executed at least in so far as the possession of the land in question is concerned, because, under section 4 of Commonwealth Act No. 141, the Director of Lands has direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact are conclusive when approved by the Secretary of Agriculture; and because the latter had already cancelled the right of plaintiff Maria L. Hernandez to administer the land in question and rejected both her sales application and that of her husband, plain-tiff Antonio Hernandez, at the same time giving the defendants the preferential right to apply for said land in virtue of the provisions of Republic Act No. 65. The correctness of the final decision of the Secretary of Agriculture is not herein involved, but it is valid and binding until reversed in a proper proceeding by the court. The situation is not that the judgment in the forcible entry and detainer case has lost its virtuality, but that the plaintiffs had subsequently ceased to be entitled to the relief awarded by said judgment." (Underscoring supplied.)

As early as *Molina vs. De la Riva*^[4] the principle has been laid down that, when, after judgment has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may

ask the court to modify or alter the judgment to harmonize the same with justice and the facts.

For this reason, in *Amor vs. Judge Jose*,^[5] we used the following language:

"The Court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or order its stay, for, as a general rule, parties will not be allowed, after final judgment, to object to the execution by raising new issues of fact or of law, except when there had been a change in the situation of the parties which makes such execution inequitable; or when it appears that the controversy has never been submitted to the judgment of the court; or when it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that judgment debt has been paid or otherwise satisfied; or when the writ has been issued without authority."

Since, events posterior to the rendition of the decision in CA-G.R. 18912-R have reversed the legal position of the parties therein, the trial Court committed a grave abuse of discretion, amounting to excess of jurisdiction in issuing the writ of execution complained of, insofar as Lot 880 is concerned. Rodriguez committed, therefore, no error in commencing the present action in the Court of Appeals, which properly considered it as one for certiorari.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner herein.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Dizon, J., did not take part.

[1] *Caneda vs. Court of Appeals*, G. R. No. L-18076, August 31, 1962.

[2] *Victoriano vs. Brias*, 79 Phil., 771.

[3] 98 Phil., 687.

[4] 8 Phil. 569 – See, also, *Behn Meyer & Co. vs. McMicking*, 11 Phil. 276; *Warner, Barnes & Co. vs. Jaucian*, 13 Phil. 4; *Espino vs. Crossfield and Guash*, 14 Phil. 588; *Flor Mata vs. Lichauco and Salinas*, 36 Phil. 809; *De la Costa vs. Celofax*, 67 Phil. 685.

[5] 77 Phil., 703.

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