

**CONSTANTINO TIRONA AND THE DIRECTOR OF LANDS,
PETITIONERS, VS. THE HONORABLE ARSENIO NAFTAWA, JUDGE OF
THE COURT OF FIRST INSTANCE OF LAGUNA AND MARIANO
RAYMUNDO, RESPONDENTS.**

G. R. No. L- 22107. September 30, 1967

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

This is a petition for certiorari and mandamus to set aside the order of respondent Judge Arsenio Nanawa, of the Court of First Instance of Laguna, dismissing Land Registration Case No. N-80 of said court and to compel said Judge to reinstate said case and to proceed in hearing and deciding the same on its merits.

Respondent Mariano Raymundo applied, on December 22, 1959, for the registration of a parcel of land with an area of about 133.6628 hectares, situated in the barrio of Anilao, Municipality of Pangil, Province of Laguna, described as Lot 487 of the Mabitac Cadastre (Plan Psu-28907), docketed as Land Registration Case No. N-80 (L.R.C. Record No. N18254) of the Court of First Instance of Laguna. In his application said respondent (applicant) invoked the provisions of the Land Registration Act (Act 496, as amended), or in case said Act was not applicable then the provisions of Chapter VIII of Commonwealth Act No. 141, as amended by Republic Act No. 1942. The application was opposed by herein petitioners, Constantino Tirona, who claimed private ownership of the land, subject of the application for registration, for having purchased the same from the government; and by the Director of Lands who claimed that the land is a public land.

The case was initially heard on April 18, 1960, and was set for hearing more than twenty-five times — most of the postponements having been at the instance of the applicant. At least eight actual hearings were held, during which hearings, testimony of the applicant was received, numerous documents were presented, identified, examined and marked as exhibits. The applicant was almost through with the presentation of evidence in support of his application. At the continuation of the hearing on September 9, 1963, respondent Mariano Raymundo presented a petition, praying the court that the hearing of the case be held in abeyance or that the case be archived in the meantime "pending clarification of the Land Reform Code and/or move on the part of the government authorities concerned towards the acquisition of this land under the Land Reform Code..."[1] This petition was opposed by the oppositors mainly upon the ground that the Land Reform Code did not in any way affect land registration proceedings pending in courts. On September 28, 1963, without any of the parties having asked for dismissal, the respondent Judge Arsenio Nanawa dismissed the case "without prejudice." Oppositor Tirona (now petitioner) moved for reconsideration, praying that the order of dismissal dated September 28, 1963 be set-aside, that the case be again set for hearing, and that oppositors be allowed to present their respective evidence. Oppositor Director of Lands (now the other petitioner) adopted and made his own oppositor Tirona's motion for reconsideration. The respondent Judge denied the motion for reconsideration on October 26, 1963.

Alleging that the dismissal of the registration case constituted grave abuse of discretion and the refusal to

reconsider the order of dismissal and to reinstate the case was neglect in the performance of a duty specifically enjoined by law, on the part of respondent Judge, the instant petition for certiorari and mandamus was filed jointly by the oppositors Constantino Tirona and the Director of Lands, praying that respondent Judge be ordered to reinstate the case and to proceed with the hearing on the merits until its termination.

In his answer, respondent Raymundo claims that even if he really wanted the case to be archived only, yet after considering the implications of the continuance of the proceedings, he believed that the dismissal was proper for the following reasons: (1) The land in question, being more than 100 hectares, the government in implementing the Agricultural Land Reform Code would certainly intervene and acquire the land; (2) petitioner Constantino Tirona, being merely an oppositor in the registration case, had no right to ask for the continuance of the case after the applicant himself had agreed to the dismissal without prejudice. Respondent Raymundo claimed, furthermore, that the instant petition for certiorari should be dismissed, there having been no grave abuse of discretion on the part of respondent Judge, and there are another adequate remedies available to herein petitioners among them, an appeal or the filing of an application for registration in his own name.

The issues raised in the present case are: (1) the propriety of the remedy availed of by petitioners; (2) whether the dismissal constituted grave abuse of discretion on the part of respondent Judge, and (3) whether respondent

Judge can be ordered to reinstate the registration case and proceed to hear and decide the same.

Respondent Raymundo's contention that certiorari is not the proper remedy has merit. Under Section 1 of Rule 65 of the Rules of Court, the writ of certiorari will not lie where an appeal may be taken. The proper remedy in this case, it being for the setting aside of the order of dismissal, is appeal and not certiorari. The order of dismissal in the instant case was a mere error of judgment, and was not a matter of lack or excess of jurisdiction.[2]

We hold the view, however, that respondent Judge erred when he ordered the dismissal of the registration case over the objection of the oppositors; and when he refused to reconsider the order of dismissal and reinstate the case he had neglected to perform an act which the law enjoins as a duty resulting from an office, and had thereby deprived the oppositors of a right to which they are entitled. The law governing the dismissal of a land registration case is Section 37 of Act No. 496, as amended by Act No. 3621, which in part provides as follows:

"SEC. 37. If in any case without adverse claim the court finds that the applicant has no proper title for registration, a decree shall be entered dismissing the application and such a decree may be ordered to be without prejudice. The applicant may withdraw his application at any time before final decree, upon terms to be fixed by the Court: Provided, however, That in a case where there is an adverse claim, the court shall determine the conflicting interests of the applicant and the adverse claimant, and after taking evidence shall dismiss the application if neither of them succeeds in showing that he has proper title for registration, or shall enter a decree awarding the land applied for, or any part thereof, to the person entitled thereto, and such decree, when final shall entitle to the issuance of an original certificate of title to such persons; ..." (Italics supplied).

Pursuant to the abovequoted provision a dismissal without prejudice, such as the one issued: by the respondent Judge, is conditioned upon the absence of an adverse claimant. In the present case, there was an adverse claimant; it was, therefore, incumbent and mandatory upon the court to determine the conflicting interests of the adverse claimants and the applicant. The adverse claimants must be given an opportunity to prove their claim, and in the event that oppositor Tirona proved that he had the proper title for registration, the court must order the land registered in his name. This the lower court (respondent Judge) failed and refused to do; but instead it dismissed the case over the objection of the oppositors, and even though the applicant himself did not ask for the dismissal. Such dismissal is not in accordance with law and the jurisprudence on the matter. In the case of *Ng Sam Bok vs. Director of Lands*, 104 Phil. 965, *Ng Sam Bok* applied for the registration of certain lots. The application was opposed by the Director of Lands. After the parties had presented their respective evidences, and while the case

was pending decision, the applicant filed a motion for dismissal without prejudice, which the court granted over the opposition of the provincial fiscal who was representing the Director of Lands. On Appeal, this Court, after quoting Section 37 of Act No. 496, said:

"As the Director of Lands has registered herein an adverse claim, the lower court was bound to determine the conflicting interests of said claimant and the applicant-appellee"

and accordingly reversed the order of dismissal appealed 'from.

The passage and possible implementation of Republic Act 3844, known as the Agricultural Land Reform Code, was not a valid ground for the dismissal of the registration proceedings. The Agricultural Land Reform Code does not affect the land registration proceedings. It is, as a matter of fact, in consonance with said Code that the rights of landholders holding unregistered property should be resolved as soon as possible, and to this end the Code directs the Bureau of Lands

"to undertake an expanded cadastral survey and land registration program commencing within three months from the passage of this Code." (Sec. 133, Rep. Act No. 3844).

Respondent Raymundo's contention, that the petitioners herein — being merely oppositors in the registration proceedings — had no right to ask for the continuance of the proceedings after the applicant himself had agreed to the dismissal thereof, is untenable in the light of the provisions of Section 37 of the Land Registration Act (Act No. 496) as amended, and in the light of the rulings of this Court in decided cases applying and interpreting said section as amended.[3]

And so, even if We have said at the earlier part of this opinion that the remedy that the petitioners should have availed of is "appeal and not certiorari, because the order of respondent Judge dismissing the land registration case is patently wrong, in the interest of justice, We are not going to decide this case simply on procedural grounds. For this Court to dismiss the petition in this case is to leave the petitioners without an adequate remedy to relieve them — specially petitioner Tirona — from the prejudicial effects of the order of dismissal of the land registration case in the court below. It is obvious that the petitioners can no longer appeal from the order of dismissal — the same having become final. It would not be just to leave petitioner Tirona to file a new application for registration — and cause him to incur expenses for publication, and undergo all the troubles and burdens attendant to instituting a new proceeding in court, after he had already spent time, efforts and money in connection with the proceedings before respondent Judge issued the order of dismissal when his rights to the land that is the subject of the registration proceedings can very well be decided in the registration case which was ordered dismissed. The petitioners have a clear right under Section 37 of the Land Registration Act which was violated by the order of dismissal.

We have before Us a situation where this Court is called upon to construe a particular provision of the Rules of Court in a manner that would assist a party in a proceeding obtain a just, speedy and inexpensive determination of his rights.[4] Many instances there have been when this Court granted a petition for a writ of certiorari even if appeal is the proper remedy, when the broader interests of justice require an exception to the rule that the writ of certiorari would not be granted if the remedy of appeal is available.[5] The case now before Us affords circumstances that justify this Court to relax the rigidity of the rule just mentioned.

Wherefore, the writ prayed for is granted. The order of respondent Judge of September 28, 1963 dismissing Land Registration Case No. N80 of the Court of First Instance of Laguna is set aside; and respondent Judge Arsenio Nanawa, or whoever is the presiding judge of the branch of the Court of First Instance of Laguna to where Land Registration Case No. N80 is assigned, is ordered to reinstate said registration case and to proceed in hearing and deciding the same. No pronouncement as to costs.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Writ granted.

[1] As quoted from the "Petition to Archive Case." The Land Reform Code (Rep. Act 3844) took effect on August 8, 1963, while the registration case was pending.

[2] Alfonso vs. Yatco, 80 Phil. 407, 410; Santos vs. Pecsori, et al., No. L1122, Sept. 17, 1947 (79 O.G. 261).

[3] Nicolas vs. Pre, 97 Phil. 766.

[4] Sec. 2, Rule 1 of the Rules of Court.

[5] Rocha vs. Crossfiled, 6 Phil., 355; Leung Ben vs. O'Brien, 38 Phil. 183; Dimayuga vs. Fajardo, 43 Phil. 304; Yu Chong Eng vs. Trinidad, 47 Phil. 385; Dais vs. Court of First Instance, 51 Phil. 396; Arevalo vs. Nepumuceno, 63 Phil. 627, Mañingal vs. Castillo, 75 Phil. 532; People vs. Zulueta, 89 Phil. 752; Pineda and Ampil Mfg. Co. vs. Bartolome, 95 Phil. 930; and Pachero vs. Tumangday, 108 Phil. 238.

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