

APOLINAR S. FOJAS, PETITIONER-APPELLEE, VS. SATURNINA R. DE GREY, RESPONDENT-APPELLANT.*G.R. No. L-29613. September 18, 1984*

Ponente: CUEVAS, J.

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Appeal from the Order of the defunct Court of First Instance of Cavite, ordering respondent-appellant Saturnina R. de Grey, to surrender unto the Register of Deeds of Cavite province, her co-owner's duplicate copy of TCT No. T-2376 for registration of petitioner-appel-lee's lien.

The land involved in this litigation is Lot No. 2845 of the Sta. Cruz de Malabon Estate, situated in Quintana, Tanza, Cavite, which now falls within the territorial jurisdiction of Trece Martires City. The said lot, formerly a portion of the Friar Land Estates held by the Government, had been occupied by appellant Saturnina R. de Grey who had the preferential right to purchase from the Government. Before exercising her right to purchase, respondent-appellant executed on July 24, 1956 a notarized Deed of Assignment of her rights, interest and participation over one and one-half (1 1/2) hectares of the said Lot No. 2845 to Apolinar S. Fojas, petitioner-appellee, with the condition that he will pay the Bureau of Lands the corresponding price of the said portion together with other expenses necessary to obtain the Torrens Title thereof in his favor.

Sometime later, Saturnina R. de Grey, exer-cised her right to purchase Lot No. 2845, paying the Bureau of Lands P831.20 the full purchase price of the entire lot. On December 24, 1960, TCT No. T--2376 was issued in her name. When Apolinar S. Fojas learned of these developments, he requested the Bureau of Lands to compute the total amount paid by respondent-appellant and the amount ought to be paid by him for the 1 1/2 hectares portion of Lot No. 2845 assigned to him. Being informed that the port-ion assigned to him would cost P277.05, he offered to pay respondent-appellant the said amount and re-quested her to allow his right over the 1 1/2 hectares of said lot to be annotated in her owner's duplicate of TCT No. T-2376. She, however, refused to accept the offer. In view of said refusal, Apolinar Fojas caused the Deed of Assignment of Right in his favor to be entered in the records of the Register of Deeds of Cavite and requested the said office that his right over the 1 1/2 hectares of Lot No. 2845 be annotated in TCT No. T-2376. The Register of Deeds could not however make the annotation sought for because of the refusal of the respondent-appellant to surrender her owner's duplicate of TCT No. T-2376. Consequently, petitioner-appellee filed a petition under G.L.R. O. Rec. No. 6823 before the Court of First Instance of Cavite to compel respondent-appellant to surrender to the Register of Deeds of Cavite her owner's duplicate copy of TCT No. T-2376 so that the Deed of Assignment of Right executed by her in favor of petitioner-appel-lee may be annotated therein upon payment to her of P277.05. Petitioner also deposited with the Court the said amount for delivery to respondent-appellant as the price of 1 1/2 hectares portion of Lot No. 2845 pertaining to him.

The petition was then set for hearing but nei-ther respondent nor her counsel appeared despite ser-vice of the notice upon them. Hence the trial court received petitioner's evidence ex-parte. After re-ception of petitioner's evidence, judgment was rendered by the trial court directing respondent Saturnina de Grey to surrender her

owner's duplicate of TCT No. T-2376 within 10 days from receipt of the order. Respondent moved for reconsideration of the said order alleging, among other things, that the trial court has no jurisdiction over the subject matter of the petition and over the person of respondent. The motion was denied. Respondent appealed to the Court of Appeals but the case was certified to this Court when the appellate court found that only questions of law were raised.

Respondent-appellant maintains that the lower court erred: a) in taking cognizance of the instant petition for the surrender of TCT No. T-2376 issued by the Register of Deeds of Cavite; b) in ordering the respondent-appellant to surrender TCT No. T-2376 of the Register of Deeds of Cavite for annotation of petitioner-appellee's lien; and c) in considering the tender of payment by consignment undertaken by petitioner-appellee.

Respondent-appellant contends that the lower court acting as a land registration court, has but a limited jurisdiction ... that of registering title to the land. Since title to the lot has already been issued, the Court has no more power to act on subsequent matters affecting the land; and that the dispute should be decided in an independent civil action because specific performance of a contract is involved and not under Section 112 of the Land Registration Act upon which petitioner-appellee based his petition.

Section 112 of the Land Registration Act reads in part as follows:

"x x x Any registered owner or other person in interest may at any time apply by petition to the Court, upon the ground that registered interests of any description, whether vested, contingent expectant or inchoate, have terminated or ceased; or that new interest have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the registered owner has been married; x x x or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper; x x x

Any petition filed under this section and all petitions and motions filed under the provision of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered."

The aforequoted provision of the Land Registration Act was relied upon by appellant Apolinar Fojas in petitioning the court a quo for the annotation of the Deed of Assignment. However, while he had the right to have the said Deed annotated in the owner's duplicate of TCT No. T-2376, the serious objection of Saturnina de Grey to the same raises a substantial controversy between the parties.

In a long line of decisions dealing with proceedings under Section 112 of the Land Registration Act, it has been held that summary relief under Section 112 of Land Registration Act can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes contentious and controversial which should be threshed out in an ordinary action or in the case where the incident properly belongs.[1] Lack of unanimity among the parties in interest, manifestly demonstrated by appellant's express objection to the annotation of the Deed of Assignment in TCT No. T-2376, removes the petition of appellee from the scope of Section 112 of Act 496. Proceedings under the Land Registration are summary in nature and hence inadequate for the resolution of issues which properly pertain to the case where the incident belongs.[2]

In the case at bar, while it is true that petitioner's primary objective is the issuance of an Order requiring respondent to surrender to the Register of Deeds the latter's owner's duplicate of TCT No. T-2376, he likewise seeks to compel respondent-appellant to accept the sum of P277.05 which is apparently one of the terms and

conditions provided for in the questioned Deed of Assignment which is sought to be registered. Acceptance of the said amount, however, had been refused by respondent-appellant which is evident from the following pertinent portion of the petition -

"6. That on October 16, 1962, petitioner offered to pay respondent the said amount of P277.05 and requested her to allow petitioner's right over the 1 1/2 hectares of said Lot No. 2845 to be annotated in the title;

7. That said respondent has ignored and refused to accept the said offer until the present time." [3]

Appellant furthermore raised the issue of the validity of the questioned Deed of Assignment [4] contending that under the Friar Lands Act enforced at the time said deed was executed, any friar land sold to a qualified person may not again be sold, transferred or conveyed or in any other way disposed of within five (5) years from the date of said sale, transfer or conveyance. This condition appeared annotated in TCT No. T-2376 covering the lot in dispute and upon which appellant anchors her claim that the Deed of Assignment sought to be registered is contrary to law and cannot therefore be the basis of petitioner's claim of ownership over the land in question. Appellee on the other hand, argues that what is prohibited by law is the sale, transfer or conveyance of the lot itself and not an assignment of rights over the said land. Clearly then the litigation on hand is a contentious one not falling within the Court of First Instance's land registration jurisdiction.

While it is true that Courts of First Instance are courts of general jurisdiction and may therefore take cognizance of this case pursuant to such jurisdiction, yet the court a quo did not do so in that capacity but proceeded to take cognizance of the case as a land registration court which was timely and correctly objected to by the respondent-appellant. Considering, however, that the remedies sought by the petitioner-appellee could be availed of only through an ordinary action, the trial court was therefore in error in proceeding with the case without respondent-appellant being properly summoned for purposes of acquiring jurisdiction over her person.

It clearly appearing that the court a quo has no jurisdiction over the subject matter of the case and person of the respondent-appellant, the assailed Order issued by way of disposing said case is therefore null and void.

IN VIEW THEREOF, the Order appealed from is hereby declared NULL AND VOID and the same is hereby SET ASIDE with costs against petitioner-appellee.

SO ORDERED.

Makasiar, (Chairman), Aquino, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., and Guerrero, JJ., on leave.

[1] Taugunan vs. Rep. of the Phils., 94 Phil. 171, 175 and cases cited; Vicente vs. Delos Santos, 27 SCRA 1; Lamera vs. Callanga, 54 SCRA 20; Hu Chou Sunpongco vs. Heirs of Nicolas Ronquillo, 36 SCRA 395.

[2] Arcillas vs. Montojo, 26 SCRA 197; Dangalang, Sr. vs. Caingat, 25 SCRA 180.

[3] Pars. 6 & 7 - Petition.

[4] Exhibit "A"

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