

ANTONIO MAGALLANES, PETITIONER-APPELLANT, VS. HEIRS OF LEON SARITA, RESPONDENTS-APPELLEES.*G. R. No. L-22092. October 29, 1966*

Ponente: BENGZON, J.P., J.

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On October 23, 1934 Paulino Magallanes filed, with the Bureau of Lands, Sales Application No. 19302 for a piece of public land located in Cabasagan, Lala, Lanao, containing an area of approximately 100 hectares. The application having been approved, public auction was conducted and the land was awarded to Paulino Magallanes who was the highest bidder. In 1951 Paulino Magallanes died. Antonio Magallanes, his son, purchased from his co-heirs their right to the land.

Meanwhile, the Bureau of Lands surveyed the land applied for and subdivided it into Lots Nos. 807, 808, and 809. Lot No. 809 comprising 61.2089 hectares was allotted to Paulino Magallanes.

On October 22, 1951 the Director of Lands issued to Antonio Magallanes an order denominated "Succession and Issuance of Patent", the dispositive part of which reads:

"WHEREFORE, the survey of the land having been executed and there being no adverse claim still pending determination, IT IS HEREBY ORDERED, that patent be issued to Antonio Magallanes, x x x"

A month later Leon Sarita, thru Irene Sarita, filed B.L. Conflict No. 215(N) claiming one-half of Lot No. 809 and alleging that said Lot was originally applied for by one Vicente Constantino who sold his right thereon to Paulino Magallanes and Leon Sarita; that the two vendees agreed to divide the land equally between them, that is, the eastern half to Leon Sarita and the western portion to Paulino Magallanes; and that since 1934 they have been in possession of their respective portions.

Upon notice of Sarita's claim, Antonio Magallanes instituted an action to quiet title over Lot No. 809, in the Court of First Instance of Lanao, docketed as Civil Case No. 347-R. Said action resulted in a judgment in Antonio Magallanes¹ favor (Appendix B to Appellant's brief) but an appeal was taken therefrom to the Court of Appeals and is pending decision therein.

On July 10, 1954 the Director of Lands gave due course to Leon Sarita's claim. Antonio Magallanes appealed such action to the Secretary of Agriculture and Natural Resources who on June 17, 1955 sustained the decision of the Director of Lands. On October 11, 1955 Antonio Magallanes came to the Supreme Court on a petition for certiorari. We however dismissed the petition without prejudice to the filing of the proper action in the Court of First Instance.

Accordingly, on February 27, 1956 Antonio Magallanes commenced an action for prohibition against the Director of Lands and Leon Sarita. After answer, the petition for prohibition was amended to include the Secretary of Agriculture and Natural Resources as party respondent and to annex some documents. No further answer was filed by respondents who also failed to appear during the hearing of the case. The court then declared them in

default and allowed Antonio Magallanes to present his evidence.

On October 29, 1958 the trial court rendered the following judgment granting the petition for prohibition:

"WHEREFORE, for all the foregoing considerations, petitioner ANTONIO MAGALLANES is hereby declared the absolute owner and possessor of the land under Sales Application No. 19302, Lot 809, Pls-13, in Cabasagan, Municipality of Kolambugan (now Municipality of Lala), Lanao. It is further declared that respondent Director of Lands and the Secretary of Agriculture and Natural Resources had acted without and in excess of their authority and jurisdiction in issuing the decision on June 6, 1953, giving one-half to Leon Sarita of the land of Antonio Magallanes in S.A. No. 19302, Lot 809, Pls-13 (Exhibit 'M'), and in denying the motion for reconsideration and new trial on July 10, 1954 (Exhibit 'P'-), and in affirming the decision dated July 17, 1955 (Exhibit 'R'); and that said decisions are hereby declared NULL and VOID and of no force and effect. And, lastly, the respondents are hereby prohibited and enjoined from giving due course to the said decisions."

Leon Sarita appealed to the Court of Appeals but said court dismissed the appeal for failure to timely pay the docketing fee. The judgment having become final and executory, Antonio Magallanes moved for execution. Whereupon, the court issued an order dated February 27, 1963 granting the motion for execution and ordered the issuance of a writ of possession. This writ was served on the heirs of Leon Sarita but said heirs were reportedly still in possession of the land litigated. On June 18, 1963 Antonio Magallanes charged said heirs for contempt of court.

In the meantime, Leon Sarita moved to quash the writ of execution. His motion was denied. On motion for reconsideration, the court set aside the writ of possession by its order dated June 20, 1963. On June 28, 1963 said court denied the motion to hold Leon Sarita's heirs in contempt of court. On July 22, 1963 the court also denied the motion to reconsider the two aforesaid orders. Antonio Magallanes thereupon appealed "to this Court on questions purely of law.

The questions are: (1) Could Leon Sarita be heard to complain against the issuance of the writ of possession considering that he was previously adjudged in default? (2) Was it proper for the court to issue a writ of possession? (3) Were the heirs of Leon Sarita in contempt of court in continuing their possession over the land involved despite the service of the writ of possession?

Default

An answer filed before the amendment stands as answer to the amended complaint.[1][Accordingly, Leon Sarita's answer to the original petition for prohibition stood as his answer to the amended petition. His failure to present a new answer would not put him in default. Default in the Court of First Instance arises only upon failure to answer on time[2][not merely for failure to appear during the hearing.][3][Sarita][therefore did not lose his standing in court. Consequently, he had the right to appear in court and file a motion to quash the writ of possession.]

[Writ of Possession]

[Predicated on the judgment declaring Antonio Magallanes "absolute owner and possessor of the land", the lower court issued the writ of possession. We are faced with the question whether or not the lower court acted properly in issuing a writ of possession for the purpose of enforcing the aforesaid judgment.]

[Regardless of the lower court's pronouncement on the ownership of the land under litigation, the judgment itself would not justify the issuance of a writ of possession. Such writ may only be issued where an action is for the recovery of possession over real property.[4] The case brought by Antonio Magallanes in the Court of First Instance of Lanao was for prohibition, to forbid the Director of Lands and the Secretary of Agriculture and

Natural Resources from, to quote the prayer:]

["x x x accepting and giving due course to the sales application of respondent Leon Sarita, from giving force and effect or executing their decisions, Annex 'E' and 'J', from further proceeding in land conflict B. L. No. 215(N) and DANR No. 947 which are beyond their respective jurisdictions or in excess and/or abuse of their jurisdiction;"]

[A judgment in a special civil action for prohibition is enforced, pursuant to Section 9, Rule 67 and Section 9, Rule 39, of the Rules of Court, by serving a certified copy of the judgment upon the tribunal, corporation, board, officer, or person concerned. Chief Justice Moran has this to say on the point:]

["The execution of a final judgment in these special actions is similar to the execution of special judgments as provided in Rule 39, section 9. As a matter of fact, the judgments rendered in these special civil actions are classified as special under sec. 9 of Rule 39, because they require the doing of an act other than the payment of money or the sale or delivery of real or personal property. x x x"[5]]

[The procedure of execution is such because the function of prohibition is to prevent a power from being exercised without or in excess of jurisdiction.[6]An execution, e.g., writ of possession, contrary to the procedure set forth in Section 9 of Rule 67 abovementioned and for a purpose foreign to the stated function, would be void. The writ of possession in question suffers from the same fate.]

[Contempt]

[For alleged disobedience to the writ of possession mentioned above, the heirs of Leon Sarita were charged for contempt. The court however denied the motion for contempt. We see no error in the court's action. Needless to say, said heirs could not be bound by a void writ (Caluag v. Pecson, 82 Phil. 8).]

[WHEREFORE][, the order of June 20, 1963 setting aside the writ of possession; the order of June 28, 1963 denying the motion to hold the heirs of Leon Sarita in contempt of court; and, the order of July 22, 1963 denying the motion to reconsider the two aforementioned orders, are hereby affirmed. With costs against petitioner-appellant.]

[SO ORDERED.]

[Concepcion][, C.J., Reyes, J. B. L., Dizon, Regala, Makalintal, Zaldivar, Sanchez][and Ruiz Castro, JJ., concur.Barrera, J., on leave.]

[1][Section 3, Rule 9, now Section 3, Rule 11, Rules of Court.]

[2][Section 6, Rule 35, now Section 1, Rule 18, Rules of Court Evangelista v. Soriano, 92 Phil. 190, 193.]

[3][Rosario][, et al. v. Alonso, et al., G.R. No. L-17330,][June 29, 1963][.]

[4][Manlapas v. Llorente, 48 Phil. 298.]

[5][Comments on the Rules of Court, 1957 Edition, Vol. 2, p. 198.]

[6][Go Hap v. Rosales, 69 Phil. 343.]

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