

JOSE P. DANS, ETC., PETITIONER, VS. HONORABLE COURT OF APPEALS, ET AL., RESPONDENTS.

G. R. No. L-5432. July 31, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

In CA-G. R. No. 2098-R, Pedro Diamonon, plaintiff and appellee, vs. Donato Pangilinan, Maria de la Fuente, Paz Pangilinan, and Alejandro de la Fuente, defendants and appellants, the Court of Appeals rendered on January 10, 1949, a decision the dispositive part of which reads as follows:

"FOR THE FOREGOING CONSIDERATIONS, the judgment appealed from is hereby modified, and the Original Patent No. 44987 issued in the name of Paz Pangilinan (Exhibit 5) is hereby declared null and void and ordered cancelled, as well as the transfer certificate of title No. 21372 issued in the name of Alejandro de la Fuente (Exhibit 6). It is hereby also ordered that a new homestead patent be issued in the name of plaintiff Pedro Diamonon, and that defendants Donato Pangilinan and Maria de la Fuente deliver the possession of the land in question to plaintiff upon payment to them by the plaintiff, or upon deposit by the latter with the Clerk of Court of First Instance of Nueva Ecija, of the sum of P822. Costs shall be taxed against the appellants."

The decision of the Court of Appeals is published in the Official Gazette, Vol. 46, p. 6145, and as it had become final, a writ of execution was issued under date of March. 13, 1951 by the Court of First Instance of Nueva Ecija, commanding the City Sheriff of Cabanatuan "that the Director of Lands must cancel Original Patent No. 44987 issued in the name of Paz Pangilinan which is hereby declared null and void, as well as transfer certificate of title No. 21372 issued in the name of Alejandro de la Fuente and to issue a new Homestead Patent in the name of Pedro Diamonon, of legal age, married, and a resident of Baloc, Sto. Domingo, Nueva Ecija upon payment of the corresponding fees and to make return of your proceedings with this writ within sixty (60) days from date."

A copy of this writ of execution was sent by ordinary mail to and received by the Director of Lands on April 27, 1951. Contending that the Court of Appeals and the Court of First Instance of Nueva Ecija could not have acquired jurisdiction over the Director of Lands, who was not made a party in the case decided by the Court of Appeals, the Director of Lands instituted an original action for certiorari in this court under date of January 21, 1952, praying that judgment be rendered "annulling the aforementioned decision of respondent Honorable Court of Appeals and the order of execution of Honorable Mariano Nable as Judge of the Court of First Instance of Nueva Ecija, commanding the Director of Lands to cancel Homestead Patent No. 44987 in the name of Paz Pangilinan as well as the transfer certificate of title No. 21372 in the name of Alejandro de la Fuente and to issue in its place a new one in the name of Pedro Diamonon, and directing the respondents to pay the costs." The respondents in the petition are the Court of Appeals, Judge Mariano Nable of the Court of First Instance of Nueva Ecija, Pedro Diamonon, Donato Pangilinan, Maria de la Fuente and Alejandro de la Fuente. In the respondents' answer, in addition to other defenses not necessary to be mentioned for the purpose of this decision, it is pointed out that the petitioner had filed on October 19, 1951 in the Court of First Instance of Nueva Ecija a civil action (Special Proceeding No. 840, Republic of the Philippines vs. Pedro Diamonon, Paz Pangilinan, Alejandro de la

Fuente, and Register of Deeds), in which it is prayed that an order be issued "(1) directing that respondent Register of Deeds cancel transfer certificate of title No. 21372 in the name of Alejandro de la Fuente, (2) decreeing that, as original certificate of title No. 5517 issued in the name of Paz Pangilinan had already been cancelled by the said respondent Register of Deeds on August 30, 1945, the issuance of the Homestead Patent No. 44987 in the name of Paz Pangilinan by the Secretary of Agriculture and Natural Resources, acting for and in behalf of the President of the Philippines, is null and void, and (3) declaring the reversion of the homestead involved herein to the mass of the public domain under the administration of the Director of Lands." From this the respondents contend that the issues raised in the present petition for certiorari are, to all intents and purposes, the same as those ventilated in the special proceeding still pending trial in the Court of First Instance of Nueva Ecija.

Without discussing the question whether the respondent Judge acted without or in excess of his jurisdiction in issuing the writ of execution hereinabove referred to, we hold that the present petition in essence refers to the effectiveness, as against the petitioner, of the final decision of the Court of Appeals, which is necessarily involved in the separate special proceeding previously instituted by the Director of Lands in the Court of First Instance of Nueva Ecija, the same court from which the writ of execution in question emanated. For it is clear that, if the reversion of the homestead in dispute to the mass of public domain be decreed in said proceeding, it will have the effect of defeating or nullifying the decision of the Court of Appeals. It was and is more expedient for the petitioner to ask the Court of First Instance of Nueva Ecija to suspend its own order of execution, in view of the pendency before it of Special Proceeding No. 840. Indeed, even the petitioner considers his separate civil action as the proper remedy,

Wherefore, the petition will be as it is hereby dismissed without costs. So ordered.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Bautista Angelo and Labrador, JJ., concur.

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