

## JOVITO R. RAGO, ET AL., PETITIONERS, VS. COURT OF APPEALS, AND FRANCISCO RAGO, ET AL., RESPONDENTS.

*G.R. No. L-7016. May 30, 1955*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals which orders defendants, now petitioners, to vacate the land in question and to deliver the same to plaintiffs, now respondents, and to pay' to the latter the rentals received by said defendants from Marcosa Sonoria, Flaviana Narciso and Quirino Catanales, from the filing of the complaint until the delivery of the land. It is likewise ordered that the court of origin re-open the case for the purpose of determining the value of the improvements made by Ponciana Rago on the land so that she may be adequately reimbursed therefor.

This appeal stems from an action for the recovery of a piece of land and damages instituted by plaintiffs, now respondents, before the Court of First Instance of Cebu. It is claimed that they are owners pro-indiviso of the land, known as Lot No. 4700 of the cadastral survey of Cebu city; that in 1945 defendants, without plaintiffs' consent, occupied the southern portion of said land and constructed thereon four houses and one camarin for rental purposes and gathered the products of ten coconut trees growing thereon and that, defendants having refused to vacate the portion they are occupying, they prayed that defendants be prdered to deliver its possession to them and to pay the costs and corresponding damages.

Defendants, in their last amended answer, alleged that Ponciana Rago has been in possession of a certain portion of Lot No. 4700 since 1917, the same having been purchased by her late rather Teodoro Rago from Mariano Abella and later donated, to her during her first marriage; that in the extra-judicial partition made by the late father of Ponciana, the northern portion of Lot No. 4700 was adjudicated to Ciriaco Rago, plaintiffs' father and Ponciana's brother, which portion was bought by the deceased from Sor Damiana; and that, Ponciana Rago being the owner of the sour them portion of said lot, defendants prayed that she:be declared the owner thereof and the complaint be dismissed.

After due trial, the lower court rendered decision dismissing tbje complaint as prayed for by the defendants, but when the case was taken on appeal to the Court of Appeals, the decision yas reversed and a new one was entered the dispositive part of which appears stated in the early part of this decision. Defendants interposed the present petition for review and in their brief they now impute eight errors to the appellate court.

The facts of this case, as found by the Court of Appeals, are as follows:

"The following facts are not disputed: Lot No. 4700, which is now in question, originally belonged to the deceased spouses Teodoro Rago and Macjaria Gabuya and was registered in their names. On October 28, 1919, the same spouses executed a deed of partition, dividing their properties among their children (Exh. 'A').

"On October 23, 1940, Ciriaco Rago one of the children of the aforementioned spouses and father of plaintiffs, presented a motion in the 'Expediente Cadastral1 No. 13, G.L.R.O. Record 9469, asking for the cancellation of

the original certificate of title No. 3338 of Lot No. 4700, which was in the name of the spouses Teodoro Rago and Macaria Gabuya, and in lieu of which to issue a new certificate of title in movant's favor, on the ground that said lot was adjudicated to him in the extra-judicial partition (Exh. 'A'). Acting upon this motion, the lower court issued on July 29, 1941, an order granting the; same (Exh 'B'). Consequently, on August 28,, 1941, Attys. Hipolito Alo and Filiberto Leonardo, in representation of Fortunata Rago, Fiilemon Rago and defendant Ponciana Rago filed a motion, which was sworn to by Filemon Rago, asking for the reconsideration of said order, for the reason that the parcel of land adjudicated in favor of Ciriaco Rago by virtue of the deed of partition (Exh. 'A') was only a portion of Lot. No. 4700 of the Cadastral survey of Cebu City, and not the entire lot (Exh. 'B').

"When the motion for reconsideration, which was denied by the court on September 6, 1941, was filed, Ponciana Rago was living in Nibonga and according to her she never authorized her brother, Filemon, to act in her name nor appear in court in connection with said motion. On September 17 of that year, aforementioned counsel appealed from the aforesaid order and, after the approval of the record on appeal (Exh. 'B'), the same was certified to the Court of Appeals which, on the ground of abandonment, dismissed the same (Exhs. 'C' & 'D').

"Alleging that his father, yiriaco Rago, died on June 21, 1945, Francisco Rago filed a motion on November 12, 1945, in phe aforesaid cadastral case No. 13 (Record No. 9469) praying that the original certificate of title No. 3^38 be cancelled and that a I new one be issueql in favor of the children of the deceased Ciriαιο. Acting upon this motion, the lower court on January 19,1946, ordered that a new certificate of title in the name of the heirs of Cifiaco Rago be issued. The record also shows that no title in plaintiff' name has as yet boen issued pursuant to the order of January 19, 1946 (Exh. 'J').

"Similarly, there is no dispute that in the year 1947, Surveyor Leon U. Gonzaga made a relocation of the questioned1, Lot No. 4700, preparing a plan thereof (Exh. 'A'); that during the relocation, one of the sons of the defendants appeared and claimed, in the name of Ms mother, the southern portion of said Lot No. 4700, which portion is indicated by letter 'A' on the plan Exhibit 'E', having an area of 2,076 square meters; and that the portion indicated by letter 'B' with an area of 1,838 square meters was not claimed by the defendants.

'Defendants' evidence also shows that before the cadastral survey of Lot No. 4700 in 1912, according to Hermogenes Enriquez, said lot consisted of two parcels of land, independent from each other, which are parcels 'A' and 'B' mentioned above. Parcel 'A' was purchased by Teodoro Rago from Mariano Abella, while parcel 'B' was acquired frdan Sor Damiana Veloso. And during the cadastral survey, these parcels were consolidated into ajsingle lot which is Lot No. 4700, as they are contiguous to each other and belonged to one person. In 1917, according to Ponciana Rago, her father donated parcel 'A' to her in consideration of marriage, where she built a residential house which was rebuilt later on (Exh. '8-A') and until now it is still existing thereon. No deed of donation was, however, presented, the same having been allegedly lost during the war. In 1920, Ponciana Rago planted about twenty-five coconut trees on this parcel of land, some of which serve as boundary line between parcels 'A' and 'B'.

"On the other hand, plaintiffs contend that the whole lot No. 4700 was adjudicated to their deceased father Ciriaco Rago pursuant to the deed of partition (Exh. 'A') which claim was confirmed by the lower court on July 29, 1941, and lately on January 19, 1946."

It appears that Lot No. 4700, now in litigation, originally belonged to the deceased spouses Teodoro Rago and Macaria Gabuya and was registered in their names. On October 28, 1919, said spouses executed a deed of partition wherein they divided their properties among their children. On October 23, 1940, Ciriaco Rago, one of the children, filed a motion in the cadastral case "No. 13, G.L.R.O. Record 9469" asking for the cancellation of the Original Certificate of Title No. 3338 covering Lot No. 4700 which was issued in the name of the spouses Teodoro Rago and Macaria Gabuya and for the issuance in lieu thereof of a new certificate of title in the name of

the movant, on the ground that said lot was adjudicated to him in the extra-judicial partition. Acting on said motion, the court issued on July 29, 1941 an order granting the same. Later, on August 28, 1941, Attys. Hipolito Alo and Filiberto Leonardo, in representation of Fortunata Rago, Filemon Rago and Ponciana Rago filed in turn a motion asking for the reconsideration of said order for the reason that the parcel of land that was adjudicated in favor of Ciriaco Rago by virtue of the deed of partition was only a portion of Lot No. 4700 and not the entire lot. This motion was denied in an order of September 6, 1941. September 17, the aforesaid counsel appealed from said order and, after the approval of the record on appeal, the same was elevated to the Court of Appeals, but the appeal was later dismissed on the ground of abandonment or lack of interest on the part of appellants. Ciriaco Rago died on June 21, 1945, and on November 12, 1945, his son, Francisco Rago, filed a motion in the same cadastral case praying that the Original Certificate of Title No. 3338 be cancelled and that a new one be issued in favor of the children of the late Ciriaco Rago. This motion was granted in an order issued on January 19, 1946, but, apparently, no title in the names of said heirs has as yet been issued pursuant to the aforesaid order.

One of the issues raised on which the Court of Appeals laid stress in deciding the case in favor of respondents refers to the order of the cadastral court issued on July 29, 1941 which granted the motion of Ciriaco Rago that Original Certificate of Title No. 3338 covering Lot No. 4700 which was issued in the name of his deceased parents be cancelled and a new one issued in his name on the ground that Lot No. 4700 has been adjudicated to him in the extra-judicial partition executed by said parents among their children. It was contended that said order was null and void and without any legal effect because the movant failed to give the required notice to the adverse parties, especially to Ponciana Rago, and as such said motion was but a mere piece of paper which could not confer jurisdiction upon the cadastral court. This contention was brushed aside by the Court of Appeals and this is now assigned as error.

While it appears that of the motion filed by Ciriaco Rago as above adverted to no notice was given to the adverse parties, however, it likewise appears that the court, upon granting said motion, ordered that said adverse parties, among them, Fortunata Rago, Ponciana Rago and Filemon Rago, be notified of its order of July 29, 1941, which granted the motion, and the record shows that they were accordingly notified thereof so much so that, within the statutory period, the sane persons, through their counsel, filed a motion for the reconsideration of said order. It further appears that when this motion for reconsideration was denied, the movants appealed from the order of denial to the Court of Appeals but, unfortunately, the appeal was dismissed on the ground of abandonment or lack of interest on the part of appellants. Consequently, the order became final and executory and became binding upon the petitioners. Had they not abandoned their appeal perhaps they would have been able to obtain relief from what they claimed was a procedural defect, but they failed. The Court of Appeals did not therefore err in setting up the doctrine of res adjudicata against them. .

Petitioners, as children of Ponciana Rago, contend that even supposing that she was duly represented when the motion for reconsideration was filed to dispute the order of July 29, 1941, still the cadastral court could not have acquired jurisdiction over the motion filed by Ciriaco Rago in view of the fact that, Lot No. 4700 being in dispute, the motion became controversial and cannot be looked into by a cadastral court, but that the same should be litigated in an ordinary civil action, for the reason that under Section 112 of Act No. 496, cadastral proceedings are summary in nature. While a cadastral court, under section 112, has no jurisdiction to act on a motion which involves a controversial question of ownership, the claim of petitioners has no factual basis, since it does not appear that Ponciana Rago, their predecessor-in-interest, has impugned the jurisdiction of the court on that ground. Apparently, the cadastral court acted on the motion having in mind the doctrine laid down in the case of *Government of P. I. v. Serafica*, 61 Phil., 93, wherein this Court held that "when the land registered under either of the two systems is subdivided by the new owners or co-heirs, and they file a petition in accordance with Section 112 of Act No. 496 for the cancellation of the old certificate of title and the issuance of new certificates

corresponding to the portions into which the land has been subdivided, these petitioners are entitled to the remedy invoked by them without the necessity of a previous declaration of heirs nor of the institution of intestate proceedings of the original owners thereof who have died." The facts covered by the motion of Ciriaco Rago come within the purview of this doctrine.

It is indeed intriguing why the cadastral court did not entertain the motion for reconsideration if it is true that the movants set forth good reasons showing that the order of the court was issued on a fraudulent representation made by Ciriaco Rago. But the record furnishes some clues that may serve to justify the action taken by the court. Thus, according to the Court of Appeals, said motion did not allege the ground now invoked that the court was without jurisdiction to entertain the motion. Neither did they allege that a portion of the land claimed by Ciriaco Rago was donated to Ponciano Rago by her father in consideration of her first marriage, as her heirs now claim, but it was alleged instead that it belonged to the other heirs of the deceased spouses. The motion may have been predicated mainly on the fact 'that there was lack of notice of the motion of Ciriaco Rago and that it was merely a piece of paper,, which the court must have considered trivial considering that substantially they had been notified of said motion by order of the court. If such was the only ground on which said motion was predicated, the court cannot be blamed for having disregarded it.

The remaining question to be considered is that involved in the third and fourth assignments of error which refers to the action of the Court of Appeals in granting to counsel for respondents two extensions of time within which to submit his brief, one for 30 days, and another for 15 days, which, it is claimed, is in violation of its own resolution entered on June 27, 1951 and of Section 13, Article VII, of our Constitution, which confers upon the Supreme Court the exclusive power to promulgate rules of court.

Indeed, the Court of Appeals promulgated on June 27, 1951 a resolution of the following tenor:

"The Court RESOLVED that as a matter of policy only one (1) extension of not more than thirty (30) days for the filing of briefs should be allowed: Provided, however, that proper publicity be given this policy, and during the first months of its enforcement parties or their counsel should be informed thereof."

while, on the other hand, the same court granted counsel for respondents a total period of forty-five (45) days within which to submit his brief, for which reason counsel for petitioners interposed a vigorous objection to such extension and move for the dismissal of the appeal, but the court, making use of its discretion, ignored the opposition and denied the motion to dismiss. Does this constitute an abuse of discretion?

Under Section 16, Rule 48, extensions of time for the filing of briefs are not generally allowed, except for good and sufficient cause. This rule applied both to the Court of Appeals and the Supreme Court. This rule provides that extensions of time for the filing of briefs may be given for good and sufficient cause, which indicates that the court may grant as many extensions as may be asked if good reasons are shown. While the Court of Appeals adopted as a matter of policy that only one extension of not more than thirty days would be allowed for the filing of briefs, that cannot be considered as mandatory. It being merely directory, its application can be liberalized when circumstances so warrant. As it appears that the Court of Appeals has not made an improper use of its discretion, we hold that the errors assigned are not well taken.

Finding no error in the decision appealed from, the same is hereby affirmed, without pronouncement as to costs.

Pablo, Bengzon, Montemayor, Reyes, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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