

**ESTEBAN LAGULA, ET AL., PETITIONERS AND APPELLEES, VS.
SERGIO CASIMIRO, ET AL., MOVANTS AND APPELLANTS.***G.R. No. L-7852. December 17, 1955*

Ponente: BAUTISTA ANGELO, J.

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On November 6, 1952, Esteban Lagula, et al., filed in G. L. R. O. Record No. 16400 of the Court of First Instance of Pangasinan a petition praying that a parcel of land covered by Transfer Certificate of Title No. 4250 be subdivided in accordance with the subdivision plan and technical description attached to the petition and that, after payment of the corresponding fees, a new transfer certificate be issued in the name of petitioners, or their successors-in-interest, as prayed for.

In an order entered on November 12, 1952, the court directed that the subdivision plan and technical description, together with Transfer Certificate of Title No. 4250, be referred to the Chief of the General Land Registration Office for verification and approval in accordance with section 44 of Act No. 496, as amended. On January 12, 1953, the Chief of the General Land Registration Office submitted his report recommending approval of the subdivision plan and technical description and requesting that, in the event the petition is granted, petitioners be required to pay the fees to the Register of Deeds.

On February 6, 1953, petitioners filed an amended petition wherein they introduced certain changes in the partition by including the heirs of Felipe Lagula and Apolinario Casimiro and the share of one heir named Elias Sonaco. On February 11, 1953, the court issued an order approving the petition as amended and ordering the Register of Deeds, upon payment of the legal fees, to cancel Transfer Certificate of Title No. 4250 and issue, in lieu thereof, the corresponding transfer certificates of title in the name of petitioners. It should be noted that the order does not make any adjudication in favor of the heirs of Apolinario Casimiro. Because of certain clerical error that had been committed, the order was modified on July 30, 1953 upon motion of petitioners.

On January 27, 1954, Sergio Casimiro, et al., heirs of the late Apolinario Casimiro, a co-owner of the land, filed a motion for reconsideration praying that the order of February 11, 1953, as amended, directing the cancellation of Transfer Certificate of Title No. 4250 and the issuance of new transfer certificates of titles in the name of petitioners, be set aside on the ground that they have not agreed to the subdivision plan as submitted to the court nor were they notified of the petition as required by law with the result that they were not given their day in court. They further contended that, since the issue raised by the petition is controversial, the court could not entertain the petition under section 112 of Act No. 496 but it should be threshed out in an ordinary independent action. This motion met the vigorous objection of petitioners who contended that the step taken by the movants to set aside the order is contrary to the procedure prescribed in Rule 38 of the Rules of Court. On March 10, 1954, the court, upholding this view, denied the motion. Hence, this appeal.

The trial court, in acting on the motion for reconsideration, took into account two important questions, to wit: (1) whether the court could acquire jurisdiction to hear the petition for the subdivision of the land without need of a

previous notice to the movants; and (2) whether the movants could still ask for the setting aside of the order of the court granting the petition, it appearing that more than 10 months had elapsed from its issuance on February 11, 1953. The court resolved the first question in the affirmative and the second in the negative and this ruling is now assigned as error.

It is not disputed that appellants were never notified of the petition which initiated these proceedings although they were mentioned therein as co-owners of the land to be subdivided. The court, however, expressed the opinion that such notice was not necessary because the purpose of the petition was merely to subdivide a parcel of land which is already covered by a certificate of title among its new owners and that this can be done by merely filing with the Chief of the General Land Registration Office a subdivision plan and that, once the plan is approved, the Register of Deeds may issue new certificates of title in pursuance of section 44 of Act No. 496, as amended by Republic Act No. 440. The court expressed the view that notice of hearing is only necessary if there are streets or passageways included in the subdivision in which case a petition shall be filed by the registered owner and the court shall not act thereon "after notice and hearing as required by law. In the present case, the court intimated, no such street or passageway is involved and so notice of hearing unnecessary.

The reasoning of the trial court would be correct if we were to consider the present petition as strictly filed in accordance with section 44 of Act No. 496, as amended by Republic Act No. 440, for under that section there would indeed be no need of bringing the matter to court. The subdivision of the land could be made even administratively by merely submitting a subdivision plan to the General Land Registration Office for approval and requesting the Register of Deeds for the issuance of a new certificate of title if there are no streets or passageways included in the subdivision. But the case at hand does not come within the import of said section. For one thing, there is no unanimity in the will of the owners as regards the subdivision, and for another, the owners themselves deemed it wise and expedient to bring the matter to court under section 112 of the same Act No. 496. This fact appears acknowledged in the very order of the trial court wherein it is intimated that the petition was acted upon "by virtue of section 44 of Act No. 496, as amended by Republic Act No. 440, in relation to section 112 of said Land Registration Act." If such is the situation in this case, then the trial court (was in error in holding, that notice of hearing to the movants was not necessary for in said section 112 it is precisely provided that the court can only have jurisdiction to hear the petition "after notice to all parties in interest." It is evident that for lack of this requirement the court did not acquire jurisdiction over the case.

Another question that should be considered is the lack of unanimity in the will of the owners as regards the subdivision plan. While there is no dispute as to the pro-indiviso interest of the different owners of the land, there is however some divergence of opinion or disagreement as to the lots actually adjudicated to some of the heirs. This is precisely the bone of contention of the movants. They do not entirely agree to the subdivision and so they want to be heard. In fact, this is another ground by which they disputed the jurisdiction of the court. On this score the movants are not devoid of reason for it has been held that relief under section 112, Act No. 496 "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 controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs." [Tanganan, et al., vs. Republic of the Philippines, 94 Phil., 171, promulgated December 29, 1953; See also Jimenez vs. De Castro, 40 Off. Gaz. (No. 3), 1st Supp., p. 80; Government of the Philippines vs. Jalandoni, 44 Off. Gaz., 1837.]

Another point touched upon by the trial court is the application of Rule 38 of the Rules of Court relative to motions for relief on the ground of fraud, accident, mistake, or excusable negligence. The court reached the conclusion that the movants have already lost their right to ask for the setting aside of the order of the court of February 11, 1953 because they had allowed more than 10 months to elapse before filing their motion for

reconsideration. This is also assigned as error by appellants who contend that the aforesaid rule is inapplicable to them for the pimple reason that they had never been made parties to the proceedings. This contention is also well-taken for that rule only applies when the one deprived of his right is a party to the case (section 1, Rule 38). The rule does not apply to one who, like the herein appellants, was never made a party for lack of the requisite notice. The application of said rule is therefore improper and unwarranted.

Wherefore, the order appealed from is revoked, and, as a consequence, the court sets aside the orders of the trial court dated February 11, 1953 and July 30, 1953, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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