

COSME OIDA FOLLOSCO, APPLICANT AND APPELLEE, VS. DIRECTOR OF LANDS, OPPOSITOR, CRESENCIA TUYAY ET ALS., PETITIONERS AND APPELLANTS.

G. R. No. L-4991. March 23, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Camarines Sur which denies the petition filed by appellants seeking to set aside the judgment rendered by said court on August 27, 1948, declaring the appellee owner of the land subject of registration and ordering that it be registered in the name of said appellee.

Cosme Oida Follosco filed an application for the registration of a parcel of land situated in the barrio Siramag, Nabua, Camarines Sur, in Registration Case No. R-98 (G. L. R. O. No. 984) pending in the Court of First Instance of said province.

At the initial hearing held on July 16, 1940, notice of which was published as required by law, the Director of Lands, one Jose Duran, and several public land applicants appeared to oppose the application. Hearing on the merits was held, but before a decision could be rendered, the war broke out and the record of the case was destroyed as a result of the invasion of the province by the enemy. After liberation the record was reconstituted at the instance of the applicant. Before the hearing, Jose Duran withdrew his opposition, thereby leaving the Director of Lands as the sole oppositor. Apparently, the Director of Lands appeared in his own behalf and in representation of the other public land applicants.

On August 27, 1948, the Court rendered decision declaring the applicant owner of the land subject to registration and ordering that it be registered in his name. From this decision, the Director of Lands appealed, but the Court of Appeals dismissed the appeal for failure on the part of the appellant to deposit the fees required by the stenographer to transcribe his notes.

On February 2, 1950, the court issued an order directing the chief of the General Land Registration Office to comply with section 21 of Act No. 2347, it appearing that the decision rendered in the case had already become final.

In obedience to the order of the court, the office of the General Land Registration issued in the name of the applicant on April 27, 1950, original certificate of title No. 178, and on July 5, 1950, the applicant filed a motion praying that a writ of possession be issued directing the sheriff to place him in possession of the land. This motion was granted on July 8, 1950.

On August 29, 1950, the applicant filed another motion with the court praying that an order be issued directing the sheriff to remove the houses of the oppositors, their tenants and their families from the land adjudicated to the applicant in order that the latter may enjoy full possession thereof, which motion was set for hearing on September 2, 1950. On the latter date, the court granted the motion ordering the sheriff to remove the houses

above-mentioned within thirty days from the date of the order.

On October 2, 1950, the oppositors, now appellants, filed a petition wherein they seek to set aside the judgment rendered on August 27, 1948, declaring the applicant owner of the land subject of registration, on the sole ground that they had been deprived of their day in court in that the trial court denied their oppositions and the appearance of their attorneys claiming that they had no interest in the case except as mere witnesses inasmuch as whatever rights they might have over the land was merely contingent upon the declaration of said land as part of the public domain, and for that matter they are already represented by the Director of Lands.

On October 9, 1950, the oppositors prayed for the suspension of the order directing the demolition of their houses pending resolution of their motion to set aside the judgment, which plea was granted on October 10, 1950. On October 25, 1950, the applicant objected to the motion to set aside the judgment. In reply, the oppositors reiterated their motion asserting for the first time that their claim is predicated on the provisions of section 2, Rule 38, of the Rules of Court. And on January 23, 1951, the court denied the motion to set aside the judgment for lack of merits and at the same time reviving its order to demolish the houses of the oppositors. From this order the oppositors appealed.

Appellants claim that the lower court erred in denying their motion to set aside the judgment rendered in this case on August 27, 1940, because in so doing it brushed aside their claim that they had been deprived of their day in court because during the trial the court disregarded their oppositions and the appearance of their attorneys on the sole ground that they had no interest in the case except as mere witnesses inasmuch as whatever rights they might have over the land was merely contingent upon the declaration of said land as part of the public domain and in that respect they are already represented by the Director of Lands. It is contended that the passive attitude of the oppositors, or of their counsel, in not taking any step to protect their rights in the face of the action taken by the lower court in depriving them of their day in court constitutes an excusable neglect which entitles them to relief under section 2, Rule 38, of the Rules of Court.

The claim of appellants that they were deprived of their day in court by the lower court is disputed by counsel for the appellee in this instance who contends that the lower court never deprived them of the opportunity to appear and present their opposition the truth of the matter being that the herein appellants never filed any formal opposition to the application and that when the case was called for trial they merely appeared with their counsel to oppose the application claiming that they are public land applicants whereupon the court made the observation that, as they do not have any personality in the case, they would do well in joining hands with the Director of Lands. Counsel for appellee contends that the lower court never issued any formal order depriving the oppositors of their right to press their opposition.

The appellants brought this case to this Court undoubtedly upon the ground that the only issues to be raised by the parties would be purely legal in nature. It now develops that the parties are in material disagreement on a fact which can be said to be the crux of the appeal, a situation which would ordinarily place this case under the Court of Appeals. We believe, however, that for the purpose of this appeal the issues raised can be looked into by this Court even in the supposition that the statement of the situation as presented by the appellants is correct.

The petition of appellants to set aside the judgment rendered by the trial court on August 27, 1948, is predicated upon the ground of excusable neglect and this relief is invoked under the provisions of section 2, Rule 38, of the Rules of Court. Supposing that appellants may be considered as parties to the case in the legal sense, and as such can invoke the relief afforded by Rule 38 to a party, can they still invoke such relief under section 3, of Rule 38, considering the circumstances obtaining in this case?

Under section 8, of Rule 38, a petition for relief must be filed "within sixty days after the petitioner learns of the

judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken". Commenting on this provision, Chief Justice Moran says:

"There are, therefore, two periods of time to be taken into account. The first is sixty (60) days after petitioner learns of the judgment, order or proceeding complained of. And the second is six (6) months after such judgment, order or proceeding has taken place. The second period is a limitation to the first. The petition must be filed within 60 days after knowledge is acquired of the proceeding, provided it is not beyond six months after the proceeding has actually occurred" (I Moran, Comments on the Rules of Court, page 778, 1952 ed.).

The record shows that the decision sought to be set aside was rendered on August 27, 1948. The appeal interposed by the Director of Lands was dismissed by the Court of Appeals on October 13, 1949. On February 2, 1950, the lower court ordered the issuance of the final decree, and by virtue of this order original certificate of title No. 178 was issued to appellee on April 27, 1950. The petition for relief of appellants Crescenciana Tuyay, Toribia Lamagan, Bernardo Lanon and Tiburcio Daramay was not filed until October 2, 1950, and the petition of Bruno Montenegro for the same purpose was only filed on November 23, 1950. It appears, therefore, clear that whether we base the computation from the date the decision was entered, August 27, 1948, or from the date it has become final, October 13, 1949, or even from the date the court ordered the issuance of the final decree, February 2, 1950, the petitions for relief were filed long after the period of six months prescribed by section 3, of Rule 38 had expired. The claim of appellants that the period should be computed from the date they learned of the decision, or on September 10, 1950, is of no avail.

The other claim of appellants seems to be well taken. The record shows that on July 5, 1950, the appellee filed a motion for the issuance of a writ of possession on the ground that although the final decree had already been issued, the appellants refused to vacate the land. After due hearing, the court issued the writ prayed for. On August 20, 1950, the appellee filed another motion praying that the sheriff be directed to remove the house of the appellants in view of their failure to do so in spite of the notice given to them by the sheriff. Appellants were notified of this motion, and on September 2, 1950, the court issued an order directing the sheriff to remove said houses within 30 days from the date of the order. Later, this order was temporarily suspended, but was again enforced when the petition of appellants to set aside the decision was denied. At this writing, the sheriff had already demolished some twenty-four (24) houses belonging to appellants.

Under section 13, Rule 39, the officer called upon to enforce a final judgment involving delivery or restitution of property may do so by placing the plaintiff in possession of such property, but "the officer shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property, except by special order of the court, which order may only issue upon petition of the plaintiff after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court". The safeguard accorded to the defendant by the above provision has not been followed. While the motion of the appellee for the removal of the houses was set for hearing after due notice given to the appellants, the court ordered the sheriff to remove said houses within a period of 30 days but without giving them a reasonable time within which to do so as required by said section 13. This requirement is not an empty gesture. This safeguard is necessary to give the defendant an opportunity to protect his interest. The lower court erred in issuing the order of demolition without giving a reasonable time to the appellants.

Wherefore, the order appealed from is hereby affirmed, without pronouncement as to costs. But the order of demolition dated September 2, 1950 is hereby set aside.

Paras, C. J., Bengzon, Padilla, Tuason, Reyes, Jugo and Labrador, JJ., concur.

DISIDENTE

PABLO, M.,

En mi opinion, la decision dictada en esta causa en 27 de agosto de 1948 debe ser revocada y que se de oportunidad a los recurrentes de ser oidos.

El decreto se expidio el 2 de febrero de 1950; por tanto, los recurrentes tienen derecho a pedir la revision hasta el 2 de febrero de 1951, de acuerdo con el articulo 38 de la Ley del Registro de la Propiedad, tal como fue enmendado por la Ley No. 3630. El hecho de que los recurrentes hayan invocado la Regla 38 en vez de dicho articulo 38 de la Ley del Registro, no es razon para que este Tribunal no aplique dicho articulo y haga caso omiso del sentido de justicia. La primera de los recurrentes, Cresenciana Tuyay, tomo posesion de su homestead en 1924, y los cuatro, Toribia Lamagan, Bernardo Lanon, Tiburcio Daramay y Bruno Montenegro se posesionaron de sus respectivos homesteads en 1927, todos con permiso de la Oficina de Terrenos. Desde que tomaron posesion de sus respectivas porciones hasta el 15 de abril de 1940 (pag. 4, Record on Appeal) en que el solicitante presento su solicitud de registro, los recurrentes las estuvieron roturando y cultivando abierta, publica, continua, exclusiva y adversamente y contra todo el mundo en concepto de homesteaders, y asi se les permitio presentar prueba final para la concesion definitiva de una patente de homestead.

La posesion de Cresenciana Tuyay llega a 16 anos, y la de los cuatro a 13 años, suficiente motivo para que adquieran derecho de propiedad por prescripcion aun en el supuesto de que el solicitante hubiese sido dueño de los terrenos. Por otra parte, la accion del solicitante ha quedado ya prescrita.

"Diez años de posesion adversa por parte de cualquier persona que pretendiere ser dueña durante ese tiempo de un terreno, o de un derecho sobre el, que por dicho periodo haya continuado sin interrupcion, por ocupacion, herencia, concesion, o de otra suerte, sea cual fuere el modo como comenzo dicha ocupacion, invertira al ocupante actual o poseedor de dicho terreno de titulo perfecto, * * * " (Art. 41, Cod. Proc. Civ.)

Por haber quedado desierta la apelacion de la Oficina de Terrenos, la decision quedo firme. Como resultado, la primera de los recurrentes ha perdido el producto de su trabajo de 16 años, y los cuatro, de 13 años, y los terrenos roturados por tan largo tiempo y regados con el sudor de su frente pasaran a ser de la propiedad del solicitante; los hogares de los recurrentes construidos en sus homesteads seran demolidos: todo eso, en mi concepto, es un verdadero despojo judicial. No puedo convencerme, por mucho que me esfuerce, de que eso pueda llamarse justicia; puede ser justicia reglamentaria porque esta de acuerdo con el reglamento; pero es justicia ilegal porque no esta de acuerdo con la Ley del Registro. No puede ser justicia substancial porque despoja a los pobres homesteaders de los terrenos que cultivaron por mas de trece años, sin darles oportunidad de ser oidos.

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