

HEIRS OF MARCIANA G. AVILA, PETITIONERS, VS. HON. COURT OF APPEALS, AND ALADINO CH. BACARRISAS, RESPONDENTS.

G.R. No. L-45255. November 14, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the October 6, 1976 Decision of the Court of Appeals in CA-G.R. No. SP-05598 (Aladino Ch. Bacarrisas vs. Hon. Benjamin K. Gorospe, et al.), granting certiorari and setting aside the Order of respondent Judge dated May 24, 1976.

In 1939, the Court of First Instance of Misamis Oriental, as a cadastral court, adjudicated Lots 594 and 828 of the Castral Survey of Cagayan to Paz Chavez. But because Paz Chavez failed to pay the property taxes of Lot 594, the government offered the same for sale at a public auction. Marciana G. Avila, a teacher, wife of Leonardo Avila and the mother of the herein petitioners, participated in and won the bidding. Despite the provision of Section 579 of the Revised Administrative Code prohibiting public school teachers from buying delinquent properties, nobody, not even the government questioned her participation in said auction sale. In fact on February 20, 1940, after the expiration of the redemption period, the Provincial Treasurer executed in her favor the final bill of sale. (Rollo, pp. 10-11).

Sometime in 1947, OCT Nos. 100 and 101, covering said Lots 594 and 828, were issued in favor of Paz Chavez. In opposition thereto, private respondents filed a petition for review of the decrees on August 25, 1947 at the Court of First Instance of Misamis Oriental, Branch II, in Cadastral Case No. 17, Lot No. 594 entitled "The Director of Lands, Applicant v. Atanacia Abalde, et al., Claimants in Re: Petition for Review of Decree, Marciana G. Avila, Petitioner vs. Paz Chavez, Respondents". After hearing on the merits, the Cadastral Court promulgated a Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered SETTING ASIDE the decision of this Court of December 13, 1940, which adjudicated the lots in question in favor of respondent Paz Chavez, and declaring NULL and VOID Decrees Nos. 433 and 434 issued by the Chief of Land Registration Office on June 19, 1947 as well as the certification of title covering Lots Nos. 594 and 828 of the Cadastral Survey of Cagayan issued by the Register of Deeds. Judgment is also hereby rendered adjudicating said Lot No. 594 to the heirs of the late Marciana G. Avila, namely: x x x, all residents of Malaybalay, Bukidnon, and Lot 828 of the same cadastre to Leonardo Avila, Sr., also of Malaybalay, subject to whatever RIGHTS OF WAY or EASEMENTS which the government of the Philippines or any of its instrumentalities may have acquire over said Lots.

"The Clerk of Court is hereby directed to send copies of this decision to the Chief of the Land Registration Commission, the Provincial Fiscal, the Provincial Treasurer, and the Director of Lands. Once this decision has become final, the Chief of Land Registration Commission shall issue the corresponding decrees and certificate of title in favor of the above-mentioned heirs of Marciana G. Avila and in favor of Leonardo Avila, Sr."

Paz Chavez appealed the said decision with the Court of Appeals, docketed therein as CA-G.R. No. 38129-R. The Court of Appeals rendered a Decision on March 20, 1974, the pertinent portion of which, reads:

"The legal prohibition cited, there-fore, would taint the title of Marciana G. Avila over Lot 594, with a flaw sufficient to make said title not proper for registration, specially as against the government, who has not (sic) impleaded in the proceedings, on the petition for review of the decree, to be heard as to whether it would re-sist the registration of said lot in favor of Marciana G. Avila.

"In view of the foregoing, judgment is hereby rendered modifying the decision appealed from by disallowing the registration of Lot No. 594 in the name of Marciana G. Avila, but affirming said decision in all other respects, with costs against appellant. Let a copy of this decision be furnished the Solicitor General and the Provincial Fiscal of Misamis Oriental for their information and guidance." (Rollo, pp. 11-12).

Upon remand of the records to the Court below, Avila moved for execution, and a writ of possession which was opposed by Paz Chavez, who was succeeded by the herein private respondent Aladino Ch. Bacarrisas on the alleged ground that he has the actual and physical possession of Lot 594 where his residential house has stood since 1946.

Private respondent's Urgent Motion for Correction of Writ of Execution having been denied, a certiorari and mandamus with preliminary injunction suit was filed with the Court of Appeals, which was docketed therein as CA-SP-05598, alleging, among other things, that inasmuch as the Court of Appeals in CA-G.R. No. 38129-R modified the trial court's decision by disallowing the registration of Lot 594 in favor of the Avilas, the latter have no interest, right, claims, title or participation in Lot No. 594 to which they could claim possession. (Petitioner's Brief, Rollo, pp. 61-63). On said petition, the Court of Appeals, in a Decision dated October 6, 1976, declared:

"CONSIDERING: That decision of cadastral court adjudicating Lot 594 was 'disallowed' by this Court of Appeals, the fact that said decision had also annulled the decree and title of Chavez to the same in the petition for review, in the mind of this Court, did not produce the effect of adjudicating, in categorical terms, the possession of Lot 594 in favor of Avila, there is nothing in the dispositive part nor even in the body of the decision of this CA-G.R. No. 38129-R that says that, and since the question here presented is whether or not cadastral court should place Avila in possession thru a writ of execution, and since the writ of execution is nothing more, nothing less, than a writ of possession, and since that writ is given only to the party in the land registration or cadastral case in whose favor decree had been issued, *Manlapas v. Llorente*, 48 Phil. 298, or if not a decree, at least, a judgment of confirmation of title, *Director of Lands v. CFI Tarlac*, 51 Phil. 806, - this must mean that when respondent Court herein issued the writ of execution as to Lot 594, there really was no legal basis for the same; for Avila had not secured a decree, nor a judgment of confirmation of title over said Lot 594, since from the fact that this Court of Appeals had affirmed the decision of cadastral court annulling Chavez (Bacarrisas) to Lot 594, it would not follow that this Court of Appeals had decreed, or in the least, adjudged, that it was Avila who was the owner entitled to its possession, the conclusion can not follow from the premise; therefore the writ of execution as to Lot 594 has to be ruled to have been improvidently issued, and there being no other adequate relief available unto Bacarrisas, the remedy of certiorari by him chosen was correct.

"IN VIEW WHEREOF, this Court is cons-trained to grant as it now grants certiorari, order sought to be annulled is set aside, with costs against respondent Avila." (Rollo, pp. 27-28).

Petitioners filed a motion for reconsideration but the same was denied by the Court of Appeals in a Resolution dated November 29, 1976.

Hence, this petition. (Rollo, pp. 9-22).

Respondent filed his Comment on February 28, 1977 (*Ibid.*, pp. 34-37) in compliance with the resolution of the First Division of this Court dated January 31, 1977 (*Ibid.*, p. 33).

In a Resolution dated March 7, 1977, the First Division of this Court resolved to give due course to the petition

(Ibid., p. 43).

On March 20, 1977, petitioners filed their Brief (Ibid., pp. 58-72) while respondent filed his Brief on July 6, 1977 (Ibid., pp. 83-92) and petitioners their Reply Brief on August 17, 1977 (Ibid., pp. 100-107).

In a Resolution dated August 29, 1977, the First Division of this Court resolved to declare this case submitted for decision (Ibid., p. 110).

The petitioners assigned the following alleged errors of the Court of Appeals -

- THE HON. COURT OF APPEALS IN CA-G.R. SP-05598, OCTOBER 6, 1976, the QUESTIONED DECISION, ERRED BECAUSE, WHEREAS SAID COURT PREVIOUSLY IN CA-G.R. No. L-38129-R, MARCH, 1974, MODIFIED THE DECISION OF THE COURT OF FIRST INSTANCE OF MISAMIS ORIENTAL BY DISALLOWING ONLY THE REGISTRATION OF LOT 594 BUT AFFIRMED THE ADJUDICATION THEREOF TO THE PETITIONERS, IN THE PRESENT QUESTIONED DECISION SAID COURT VIRTUALLY MODIFIED FURTHER THE PREVIOUS DECISION WHICH HAD LONG BECOME FINAL BY DISALLOWING BOTH THE REGISTRATION AND ADJUDICATION OF LOT 594;

- THE HON. COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONERS ARE NOT ENTITLED TO POSSESSION OF LOT 594 BECAUSE, SINCE PETITIONERS' TITLE WAS RECOGNIZED BY SAID COURT PREVIOUSLY IN CA-G.R. No. L-38129-R, MARCH, 1974, IT FOLLOWS THAT THEY ARE ENTITLED TO POSSESS LOT 594;

- THE HON. COURT OF APPEALS ERRED IN THAT TO DENY POSSESSION OF LOT 594 TO THE PETITIONERS WHO WON IN CADASTRAL CASE NO. 17 OF THE COURT OF FIRST INSTANCE OF MISAMIS ORIENTAL, IS TO MAKE THE LOSERS IN SAID CASE THE PREDECESSOR-IN-INTEREST OF PRIVATE RESPONDENT WHOSE DECREES NOS. 433 and 434 COVERING LOTS 594 AND 828 WERE ORDERED CANCELLED FOR BEING NULL AND VOID, AS THE WINNER, A SITUATION MOST UNJUST AND UNFAIR; AND

- THE HON. COURT OF APPEALS ERRED IN HOLDING THAT PRIVATE RESPONDENT CORRECTLY CHOSE THE REMEDY OF CERTIORARI FOR THE REASON THAT THERE IS NOTHING AT ALL IN THE RECORDS TO SHOW AN EXERCISE OF GRAVE ABUSE OF DISCRETION OR WHIMSICAL AND ARBITRARY EXERCISE THEREOF.

The pivotal issue in this case is who has the right of possession of the land in question.

Petitioners seek to distinguish between registration and adjudication of land under the Torrens System, claiming that in the March 20, 1974 Decision of the Court of Appeals in CA-G.R. No. 38129-R, registration of Lot No. 594 in favor of the late Marciana G. Avila was disallowed, but the adjudication thereof in her favor, was affirmed. In effect, it is their view that ownership and possession are separated in aforesaid decision, so that they assert that they are entitled to the possession of Lot 594, although they are not entitled to its registration in their names.

Such contention is without merit.

While it is true that Marciana Avila, their mother and predecessor-in-interest, purchased the questioned property at a public auction conducted by the government; paid the purchase price; and was issued a final bill of sale after the expiration of the redemption period, it is however undisputed that such purchase was prohibited under Section 579 of the Revised Administrative Code, as amended, which provides:

"Section 579. Inhibition against purchase of property at tax sale. - Officials and employees of the Government of the Republic of the Philippines are prohibited from purchasing, directly or indirectly, from the Government,

any property sold by the Government for the non-payment of any public tax. Any such purchase by a public official or employee shall be void.

Thus, the sale to her of Lot 594 is void.

On the other hand, under Article 1409 of the Civil Code, a void contract is inexistent from the beginning. It cannot be ratified neither can the right to set up the defense of its illegality be waived. (*Arsenal, et al. vs. The Intermediate Appellate Court, et al.*, G.R. No. 66696, July 14, 1986). Moreover, Marciana Avila was a party to an illegal transaction, and therefore, under Art. 1412 of the Civil Code, she cannot recover what she has given by reason of the contract or ask for the fulfillment of what has been promised her.

Furthermore, in a registration case, the judgment confirming the title of the applicant and ordering its registration in his name necessarily carries with it the delivery of possession which is an inherent element of the right of ownership. (*Abulocion et al. v. CFI of Iloilo, et al.*, 100 Phil. 553 [1956]). Hence, a writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone unlawfully and adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree. It is the duty of the registration court to issue said writ when asked for by the successful claimant. (*Demorar v. Ibañez, etc., et al.*, 97 Phil. 72 [1955]; *Abulocion et al. v. CFI of Iloilo, et al.*, supra).

Under the circumstances, possession cannot be claimed by petitioners, because their predecessor-in-interest besides being at fault is not the successful claimant in the registration proceedings and hence not entitled to a writ of possession. As correctly stated by the Court of Appeals when respondent Court issued the writ of execution as to Lot 594, there really was no legal basis for the same, for Avila had not secured a decree, nor a judgment of confirmation of title over said lot.

Much less can possession be claimed by private respondents as it is undisputed that the land in question has been the subject of a tax sale of delinquent property with a final bill of sale.

Neither did the government file any claim for possession; nor appear to be impleaded in any of the actions or petitions before the Courts. Its only interest in the land in question appears to be in the collection of taxes.

Consequently, the situation is evidently one of failure of ownership because of the violation of Section 579 of the Administrative Code. Otherwise stated, the property apparently has no owner.

Under the principle that the State is the ultimate proprietor of land within its jurisdiction, subject land may be escheated in favor of the government upon filing of appropriate actions for reversion or escheat under Section 5, Rule 91 of the Rules of Court relative to properties alienated in violation of any statute.

As to the last issue, it has already been ruled that certiorari is proper where the trial court has already issued a writ of execution of the questioned judgment, the issuance being a question of law. (*Vda. de Sayman vs. Court of Appeals*, 121 SCRA 650).

PREMISES CONSIDERED, the October 6, 1976 Decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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