

JUSTINA EQUIO, IN BEHALF OF HER SEVEN MINOR CHILDREN, AND PABLITA VALENCIA, IN BEHALF OF HER TWO MINOR CHILDREN, PETITIONERS, VS. COURT OF FIRST INSTANCE OF NEGROS ORIENTAL AND ...

G.R. No. L-6047. April 27, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

In his lifetime, Nicomedes Infante was married twice: first to Pilar Alcazar and later, after her death, to Felisa Conjuico. His children with Pilar were Narciso, Antonio, Abraham, Jorge and Porfirio; Felisa gave him Jose, Filemon, Corazon, Arsenio and Aquiles.

Nicomedes and Pilar acquired during their marriage certain lands known as Lots Nos. 862, 713, 4035, 4036 and 4037 of the Dumaguete, Oriental Negros Cadastre. While married to Felisa, Nicomedes Infante conveyed the said five lots[1] to Felix Barot, who subsequently obtained the corresponding transfer certificates of title to three lots, the other two continuing to be registered in the name of the conjugal partnership of Nicomedes Infante and Pilar Alcazar.

Two years after the death of Nicomedes Infante, i.e., in October 1939, Felix Barot conveyed[2] to the children of Nicomedes and Pilar, namely Narciso, Antonio, Abraham and Jorge (Porfirio's whereabouts being unknown since 1934) the above-mentioned five lots, by a duly notarized document. Afterwards, Abraham and Jorge having died single, Justina Equio and Pablita Valencia, representing their minor children with their deceased husbands Narciso Infante and Antonio Infante, filed in the corresponding Cadastral expedientes, a motion alleging they were the only heirs of the four brothers Narciso, Antonio, Abraham and Jorge, who had purchased the five lots from Felix Barot, and praying for the cancellation of the original certificates of title of the conjugal partnership of Nicomedes Infante and Pilar Alcazar, plus the transfer certificates of title in the name of Felix Barot, and for the issuance thereafter of separate transfer certificates of title in the names of their minor children. That was in May, 1951.

Advised of the above petition, Nicomedes' second wife and her children voiced their opposition, claiming the lots were conjugal properties of the first marriage, and that as legitimate wife and children of Nicomedes Infante, they were also heirs not only of Nicomedes but of the latter's dead sons Abraham, Jorge and Porfirio.

After hearing both sides, the Hon. Juan O. Reyes, Judge, promulgated an order dated Jan. 30, 1952, recognizing the oppositor's rights to participate in the realty, and directing the Register of Deeds of Oriental Negros to cancel the certificates of title and to issue transfer certificates of title to movants and oppositors, in proportions which are immaterial to the litigation pending before us.

A motion for reconsideration filed by the movants was denied on April 19, 1952. On July 20, 1952, movants' new attorneys made a motion to vacate the orders of Jan. 30, and April 19, all of 1952, asserting lack of jurisdiction. Acting thereon, Judge Reyes ruled as follows:

"Without expressly deciding the question of jurisdiction, this Court feels that it is now powerless to vacate said orders of January 30 and April 19, 1952, because said orders had already become final and executory. The second order amending the first order was served upon all the parties, thru their attorneys including Attys. Eleccion and Sindiong who were the attorneys of record of the original petitioners, on April 21, 1952. The motion to vacate was only filed on July 30, 1952, or more than 3 months from the date the attorneys of the petitioners were duly notified of the last order of this court of April 19, 1952. WHEREFORE, said motion to vacate said orders is hereby DENIED."

Consequently petitioners instituted here the instant petition grounded on their proposition that the lower court "transcended its jurisdiction": (a) in "ignoring" the transfer of said lots by Nicomedes Infante to Felix Barot and (b) in impairing the "unqualified right" of Felix Barot to transfer his registered rights over the three lots to Narciso, Antonio, Abraham and Jorge.

It will be seen that the two grounds of this special civil action for certiorari rest upon the allegation that the two deeds of conveyance, one by Nicomedes Infante to Felix Barot and another by Felix Barot to Narciso and his three brothers, were true and veritable contracts of sale. But the answer asserts, that they merely represented a mortgage in the form of "pacto de retro" and redemption subsequently effected by Narciso Infante for the benefit of all the heirs of Nicomedes Infante. This allegation of fact in the answer, not having been traversed by petitioners must be accepted at its face value, specially because as may be gathered in the challenged orders, "there was no question of fact" and the issues in the court below centered around the proportion of the shares to be awarded to the heirs of the Infante brothers and their half-brothers, it being admitted that all (including Felisa Conjuico) had rights to the said lots formerly belonging to the conjugal partnership of Nicomedes Infante and Pilar Alcazar. Now, even if the trial judge had made a mistake in the mathematical apportionment[3] - a point not decided here - the mistake by itself could not, and did not amount to excess of jurisdiction. It was mere error, if any, corrigible by appeal in due time.[4]

And this consideration brings out another reason why this petition may not be granted: the petitioners had another remedy by appeal [5]. The circumstance that, at the beginning of this certiorari proceeding, the period for such appeal had already lapsed, does not usually modify the principle[6]. Otherwise parties who thru negligence or other circumstances failed to appeal on time will resort to these special remedies to accomplish the revision of executory judicial decisions.

In connection with the second ground of their petition, petitioners assert that the court ignored the unqualified privilege of Felix Barot to transfer his registered rights, thereby contravening Sec. 112 of Art. 496 under which the proceedings in the lower court were initiated. Said section provides in part:

". Provided, however, that this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, of his heirs or assigns, without his or their written consent."

Petitioners assert that Barot's rights had been impaired. Yet they have shown no authority to litigate for Barot, and defend his privileges. And as the assignees of Barot, they can not complain because, having started the proceedings in the lower court, they had practically given "written consent" within the meaning of the above-quoted statutory provision.

Anyway, and again, the error, if any, was corrigible by appeal and could not amount to excess of jurisdiction.

Petition denied, with costs in favor of respondents. So ordered.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] According to herein petitioners he "sold" them; according to respondents he merely "mortgaged." [2] It was mere redemption, according to respondents.

[3] Which seems to be the motive of this suit. [4] Cf. Cuyugan v. Syquia 24 Phil. 567. [5] Silvestre v. Torres 57 Phil. 885.

[6] Profeta v. Gutierrez David 71 Phil. 582; Govt. of U. S. v. Judge 49 Phil. 495.

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