

**PABLO S. HAMOY, PLAINTIFF, VS. PAMBAYA BATINGOLO, ET AL.,
DEFENDANTS. MACAINDIG RANGAR, MOVANT AND APPELLANT, VS.
PABLO S. HAMOY, ET AL., RESPONDENTS AND APPELLEES.**

G.R. No. L-18119. August 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Pablo S. Hamoy filed on January 4, 1952 before the Court of First Instance of Lanao an action against Pam-baya Batingolo and four other Moros to eject them from a parcel of land located in Kauswagan, Lanao. This parcel of land was also the subject of an administrative investigation between the same parties before the Bureau of Lands wherein the director of said office on November 24, 1953 rendered decision ordering Pablo S. Hamoy to be placed in its possession. This decision was confirmed by the Secretary of Agriculture and Natural Resources on June 14, 1954.

The court a quo, after trial, rendered judgment in favor of Pablo S. Hamoy and against defendants ordering the latter to vacate the land since they have no title nor right or interest of any kind over the same nor over its improvements. Defendants were further ordered to pay plaintiff the sum of P107,100.00 as damages.

Of the defendants only Pambaya Batingolo gave notice of his intention to appeal the decision, and so plaintiff Hamoy asked for execution of the judgment pending appeal which was granted on January 4, 1959. The same was carried out by the sheriff who placed plaintiff, or his representative, in possession of the land in litigation. It turned out that the land was then in possession of one Macaindig Rangar who, notwithstanding his claim or ownership, was forcibly ejected therefrom by the sheriff and so he filed an urgent motion on May 11, 1959 complain, ing to the court about the sheriff's action and praying that his possession be restored and respected.

Hamoy filed an opposition thereto, and thereafter the «ourt set both the motion and opposition for hearing during which both movant and oppositor presented evidence. But before the hearing could be completed, the court issued an order dismissing the motion upon the ground that it had already lost jurisdiction over the case it appearing that the record on appeal and appeal bond had already been approved, even if the record has not yet been forwarded to the appellate court. The court a quo has intimated that the correct procedure for Macaindig Rangar to follow if he wanted to be restored to the possession of the land was to bring a separate action against all interested parties and not to intervene herein in the form of a motion as he has dona. His motion for reconsideration having been denied, Rangar took this appeal before this Court on purely questions of law.

There is merit in the appeal. The court a quo, in reaching the conclusion that it can no longer act on the motion of Rangar because it has already lost jurisdiction over the case, made the following comment:

"Upon an examination of the records, it was found out that on January 26, 1959, and on previous notice to the parties, the record on appeal and appeal bond of the defendant Pambaya Batingolo was already approved (787873; 904 of the records). Under the circumstance the court had to give due course to the appeal (Secs. 9, 10, 11, 12, Rule 41 of the Rules of Court). To continue hearing the claims of Macaindig Rangar when the

Court had already approved the record on appeal and the appeal bond as above stated thereby losing jurisdiction over the case, is believed improper and out of the question."

We disagree with the foregoing conclusion for the reason that although the record on appeal and appeal bond had already been approved the fact however remains that the record of the case has not as yet been forwarded to the appellate court and as such it was still within the control of the court a quo. And even if because of such approval the appeal is deemed to have already been perfected, nevertheless, under Section 9, Rule 41, the trial court could still issue an order for the protection and preservation of the rights of the parties which are not involved in the matter litigated in the appeal, as well as "to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court." The issue raised in the motion of Rangar is not involved in the appeal for it concerns a right which he claims over the property which has not so far been litigated for the reason that he was not made a party to the case either as plaintiff or as defendant. He only came to know of the litigation when he was forced out of the property by the sheriff, and so he filed the present motion to be heard and prove his title to the property. This he has the right to do as the most expeditious manner to protect his interest, instead of filing a separate action which generally is long, tedious and protracted. This is the procedure laid down by this Court in *Omana, et al. vs. Gatulayao, et al.*, 73 Phil., 66, which is on all fours to the present case.

Thus, the facts in the *Omana* case are:

"In a reivindicatory action instituted by plaintiffs Macario Omana and others against Fidel Gatulayao, Domingo Reyos, Victorio Mejia and Mariano Cruz, said plaintiffs were declared owners of a parcel of land situated in the barrio of Santolan, Pasig, Rizal, and the judgment to this effect was, on appeal, affirmed by this court. On September 24, 1931, the provincial sheriff of Rizal sought to enforce the writ of possession issued in favor of the plaintiffs but found the land in the actual possession of the appellants here, Victorio Javier and others, who claimed ownership thereof in common with the other inhabitants of the barrios of Rosario and Maybuñga, Rizal.

On September 29, 1931, plaintiffs filed a petition ex parte praying that the provincial sheriff be provided with constabulary soldiers to effect the forcible ejectment of Javier and his companions from the land in question, alleging, in support of this petition, that said Javier and others were merely hired by the defendants to prevent plaintiffs from obtaining the possession of the land. The court below granted this petition. Ejected, Javier and others filed on October 12, 1931, a motion praying that the provincial sheriff and the plaintiffs be ordered to return to them the possession of the land. This motion was acceded to by the trial court, through Judge Mapa, in its order of December 15, 1931. Plaintiffs whereupon filed a motion for reconsideration of this order, and as an alternative remedy prayed that in case of denial of the motion for reconsideration, the parties be ordered to adduce evidence on the matter of the possession and the identity of the land. The lower court, without setting aside its order of December 15, 1931, directed the parties to present evidence on the character of their possession. Movants Javier and others, pursuant to this order, presented their evidence. Finally, on July 8, 1938, upon petition of the movants, the then presiding Judge De la Costa set the date for the presentation of respondents' evidence on August 9th. On said date, the parties appeared and the presiding judge, now Judge Leopoldo Rovira, was apprised of the antecedents of the case. On August 4, 1938, an order was issued by the said judge quashing the motion presented by Javier and his companions and annulling all the proceedings, which were taken in relation thereto, with reservation to them to file a separate independent action for the vindication of their claims. This order is now sought to be reviewed in this appeal."

In reversing the ruling of the Court a quo and annulling all the proceedings already taken to give to the movants an opportunity to prove the character of their possession and their title to the property, this Court, thru Mr. Justice Moran, held:

"It is not disputed that movants-appellants were never made parties to the proceeding wherein *Omania* and others were adjudged owners of the land in question nor do they sustain any relation of privity with said

parties, or any of them. They cannot, therefore, be bound by the judgment rendered therein in favor of said plaintiffs, and the enforcement of said judgment against them is in excess of jurisdiction. Judgment rendered in actions in personam, as in the instant case, are enforceable only between the parties and their successors in interest, but not against strangers thereto. (Sec. 306, par. 2, of Act No. 190, now Rule 39, sec. 44(b), Rules of Court.) There may be cases when the actual possessor may be claimed to be a privy to any of the parties to the action, or his bona-fide possession may be disputed, or where it is alleged, as in the instant case, that such possession has been taken in connivance with the defeated litigant with a view to frustrating the judgment. In any of these events, the proper procedure would be to order a hearing on the matter of such possession and to deny or accede to the enforcement of a writ of possession as the finding shall warrant. But in the absence of any such hearing or any proceeding of similar character, every person in the actual possession of the land has a right to be respected therein (art. 446, Civil Code) and his ejectment would constitute a deprivation of a property right without due process of law."

Since, according to this Court, the proper procedure for a person deprived of possession of his property as a result of a writ of execution is to invoke the aid of the court who has cognizance of the case so that it may set the incident for hearing to determine the character of his possession and that to deny him such hearing would constitute a deprivation of his property without due process of law, it is evident that the court a quo committed an error in annulling the proceeding auspiciously started by movant Rangar to allow him to present evidence to prove the character of his possession of the property in litigation upon the mistaken belief that the proper procedure for him to follow was to file a separate action for the vindication of his right over the property.

Wherefore, the order appealed from is set aside. The case is remanded to the court a quo for further proceedings. No costs.

Bengzon, C. J., Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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