

CESAREO PEREZ AND MAMERTA ALCANTARA, PLAINTIFFS AND APPELLANTS, VS. VICENTE EVITE, AND SUSANA MANIGBAS, DEFENDANTS AND APPELLEES.

G.R. No. L-16003. March 29, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

In an action to quiet title brought by the spouses Cesareo Perez and Mamerta Alcantara against Vicente Evite and Susana Manigbas (Civil Case No. 643), involving a parcel of land 11 meters wide and 37 meters long, or with a total area of 407 square meters, the Court of First Instance of Batangas rendered judgment dated November 9, 1955, the dispositive portion of which reads as follows:

"Wherefore, judgment is hereby rendered as follows:

"(1) Dismissing the complain of the plaintiffs; and

"(2) Declaring the defendants the owners of the land in question; that is, the are measured 8.92 meters westward from the cacawate tree standing on the northwestern corner of the land (which cacawate tree is 35.11 meters from the edge of the land bordering the provincial road) by 11 meters southward to the point on the southwestern corner which is also 35.11 meters from the edge of the land bordering the provincial road on the east.

"Without pronouncement as to costs."

On appeal by therein plaintiffs, the Court of Appeals, on March 31, 1958, affirmed the decision in toto.

The decision having become final, the court of origin, upon application by the defendants, ordered its execution. The writ of execution, actually issued on February 25, 1959, commanded the Provincial Sheriff of Batangas "to deliver the ownership of the portion of the land in litigation to the defendant Vicente Evite, of Rosario, Batangas, pursuant to the terms and conditions contained in the above-quoted decision."

Plaintiffs moved to quash the aforesaid writ on the ground that, as the decision sought to be executed merely declared defendants owners of the property, and did not order its delivery to said parties, the writ putting them in possession thereof was at variance with the decision and consequently, null and void.

This motion was denied by order of the court of February 28, 1959. Plaintiffs then filed an urgent ex-parte motion "for clarification and/or to declare null and void the Sheriff's execution", complaining that notwithstanding the filing of their motion to quash, the Clerk of Court and the Provincial Sheriff placed defendants in possession of the property. After hearing the motion, during which the complained officials testified and explained their actuations, the court declared the same with legal effect and valid, and dismissed plaintiffs' motion.

This incident was followed by defendants' praying the court to declare plaintiffs in contempt for resisting its lawful order (to deliver possession of the land), which precipitated the issuance of an order, dated June 30, 1959,

allowing defendants "to surround their property with a fence and any act or acts by other persons or parties including the plaintiffs to intervene may be considered as an act of contempt."

Plaintiffs moved to set aside the above order. The same having been denied on July 11, 1959, plaintiffs instituted the instant appeal assailing the legality of the orders of June 30 (ordering the fencing of the lot) and July 11, 1959 (denying their motion to set aside said previous order).

Plaintiffs-appellants, in resisting the trial court's orders upon the theory that the adjudication of ownership does not include possession of the property, rely upon two (2) cases decided by this Court. The first is *Talens vs. Garcia* (87 Phil., 173), where, after quoting Section 45 of Rule 39, the Court said:

"It may be admitted that the judgment absolving defendant Talens was in effect a declaration that the sale to him was valid. It may also be admitted, though with some reluctance or reservation, that it was a declaration of ownership of the lot. But it is doubtful whether it also included a direction to surrender it to him. Although it is true that the owner is generally entitled to possession, it is equally true that there may be cases where the actual possessor has some rights which must be respected or defined. A lessee is not the owner; yet a declaration of ownership in another person does not necessarily mean his ouster."

In the second case (*Jabon, et al., vs. Alo, et al.*, 91 Phil., 750; 48 Off. Gaz., 3348), the following pronouncement is found:

"* * *. In the absence of any other declaration, can we consider a mere declaration of ownership as necessarily including the possession of the property adjudicated? We do not believe so, for ownership is different from possession. A person may be declared owner, but he may not be entitled to possession. The possession may be in the hands of another either as a lessee or a tenant. A person may have improvements thereon of which he may not be deprived without due hearing. He may have other valid defenses to resist surrender of possession. We, therefore, hold that a judgment for ownership, does not necessarily include possession as a necessary incident."

It may be observed that in both decisions, this Court underscored the possibility that the actual possessor has some rights which must be respected and defined. It is thus evident that the pronouncement was made having in mind cases wherein the actual possessor has a valid right over the property enforceable even against the owner thereof. As example, we gave the cases of tenants and lessees. However, it is our view that the above doctrines may not be invoked in instances where no such right may be appreciated in favor of the possessor. In the instant case there appears in the appealed order of June 30, 1959, the specific finding of the trial court that "the plaintiffs have not given any reason why they are retaining the possession of the property", (p. 57, Record on Appeal.) This factual finding can not be reviewed in this instance as the appeal has been taken to us directly only on a question of law. (p. 72, Record on Appeal.)

Under Section 45 of Rule 39, Rules of Court, which reads:

"Sec. 45. What is deemed to have been adjudged.—That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto," (*Italics supplied*)

a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto. Thus, in a land registration case^[1] wherein ownership was adjudged, we allowed the issuance of a writ of demolition (to remove the improvement existing on the land), for being necessarily included in the judgment. Considering that herein plaintiffs-appellants have no other claim to possession of the property apart from their claim of ownership which was rejected by the lower court and, consequently, has no right to remain thereon after such ownership was adjudged to defendants-appellees, the delivery of possession of the land

should be considered included in the decision. Indeed, it would be defeating the ends of justice should we require that for herein appellees to obtain possession of the property duly adjudged to be theirs, from those who have no right to remain therein, they must submit to court litigation anew. Thus, in the Mencias case, *supra*, we said:

"Apparently, respondent Judge, in refusing to issue the writ of demolition to petitioner, was of the belief that the latter has another remedy, namely, by resorting to ordinary civil actions in the regular courts, such as that of forcible entry and detainer, or the recovery of possession, in which instants, said courts would then be competent to issue said writ. Such a situation, in our opinion, could not have been intended by the law. To require a successful litigant in a hind registration case to institute another action for the purpose of obtaining possession of the land adjudged to him, would be a cumbersome process. It would foster unnecessary and expensive litigations and result in multiplying of suits, which our judicial system abhors.

* * * * *

"* * *. Pursuant to the provision just quoted (Sec. 6, Rule 124), respondent Judge has the power to issue all auxiliary writs, including the writ of demolition sought by petitioner, processes and other means necessary to carry into effect the jurisdiction conferred upon it by law in land registration cases to issue a writ of possession to the successful litigant, the petitioner herein." (*Italics supplied.*)

In view of the foregoing considerations, the orders appealed from are hereby affirmed, with costs against appellants. So ordered.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

[1] *Marcelo vs. Mencias*, 107 Phil., 1071.

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