

LUZ CARO, HON. JUDGE UBALDO Y. ARANGEL, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF SORSOGON, AND HON. JUDGE PERFECTO QUICHO, PRESIDING JUDGE, BRANCH I OF THE COURT OF FIR...*G.R. No. L-31426. February 29, 1988*

Ponente: YAP, J.

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This is an appeal by certiorari from the decision of the Court of Appeals dated December 16, 1969, setting aside as null and void the order dated August 23, 1968 of the then Court of First Instance of Sorsogon and the order dated October 19, 1968 of the then Court of First Instance of Albay.

The record shows that Mario Benito, Alfredo Benito and Benjamin Benito were the registered co-owners pro-indiviso of a vast tract of land covered by Transfer Certificate of Title No. 610 of the Register of Deeds of Sorsogon, located at Cumadcad, Castilla, Sorsogon. On January 16, 1957, Mario Benito died intestate. His estate then became the subject matter of Special Proceedings No. 506 of the then Court of First Instance of Albay, entitled "In the Matter of the Intestate Estate of Mario A. Benito, Deceased. Basilia Lahorra, Petitioner. Saturnina Benito, Oppositor." In that proceedings, the decedent's wife, Basilia Lahorra Vda. de Benito and his father, Saturnino Benito, were appointed on April 12, 1957 co-administrators of the estate of the deceased.

On August 16, 1959, Benjamin Benito, one of the co-owners, sold his one-third (1/3) undivided share to petitioner Luz Caro. On September 15, 1960, Luz Caro filed before the defunct Court of First Instance of Sorsogon, acting as a land registration court, a petition to subdivide the land in controversy. The affidavits of the late Alfredo Benito, co-owner of the land in question, Saturnino Benito, co-administrator and principal heir of Mario Benito, and Josefina Duran, the mortgagee of the share of Alfredo Benito, consenting to the subdivision, were attached to the petition. On September 27, 1960, upon verbal motion of Luz Caro and for reasons known only to her, the consideration of the petition for subdivision was held in abeyance until further notice from her. Eight years later, on July 5, 1968, petitioner Luz Caro filed an ex-parte motion to set the case for hearing, and the trial court, without notifying anybody, proceeded on August 23, 1968, with the reception of petitioner's evidence ex-parte. On even date, the trial court issued an order directing the issuance of a separate title to Luz Caro, but holding in abeyance the issuance of certificates of title covering the shares of Mario Benito and Alfredo Benito, for the reason that both were then deceased and the court had not been informed as to who their legal heirs were.

In consonance with the order of August 23, 1968, the Register of Deeds of Sorsogon issued Transfer Certificate of Title No. 4978 to petitioner Luz Caro, covering her one-third (1/3) segregated portion identified as Lot No. 1-C, Psu 75542, Amd-2, with an area of about 163-65-06 hectares.

On the strength of her separate title, petitioner filed a motion in the then Court of First Instance of Albay trying Special Proceedings No. 508 and obtained an order dated October 19, 1968 directing the administratrix Basilia Lahorra Vda. de Benito (private respondent herein) to deliver to Luz Caro the possession of Lot No. 1-C, as well

as enjoining private respondent or her representatives from gathering the produce thereof.

Private respondent sought a reconsideration of said order of October 19, 1968, but the same was denied by the Court of First Instance of Albay. Her second motion for reconsideration was also denied.

On August 16, 1969, private respondent filed a special civil action for certiorari with the Court of Appeals, seeking the annulment of the order of the Court of First Instance of Sorsogon dated August 23, 1968 and the order of the Court of First Instance of Albay dated October 19, 1968. In its decision promulgated on December 16, 1969, the appellate court nullified both orders on the ground that said courts acted without jurisdiction and with grave abuse of discretion in issuing said orders.

On January 3, 1970, petitioner interposed this petition for review on certiorari. This Court denied the petition for lack of merit in its minute resolution dated January 8, 1970.

On January 17, 1970, petitioner filed an amended petition accompanied with a motion for admission, stating among others, that material facts were inadvertently omitted in the original petition. This Court admitted the amended petition, but denied the same for lack of merit in its resolution dated January 21, 1970.

On February 4, 1970, petitioner filed a motion for leave to file a motion for reconsideration of the resolution dated January 21, 1970, attaching thereto the said motion for reconsideration with a prayer that the amended petition be given due course.

On February 9, 1970, the Court reconsidered its previous resolution and gave due course to the petition. On June 17, 1970, the Court issued a writ of preliminary injunction restraining the enforcement of the injunction issued by the Court of Appeals on August 16, 1969.

The two issues in this petition are: (1) whether or not the Courts of First Instance of Sorsogon and Albay had the jurisdiction to issue the orders subject matter of this petition; and (2) whether certiorari is the appropriate remedy to question the validity of the aforestated orders of the lower court.

On the issue as to whether or not the CFI of Sorsogon has the power and authority to issue the order of August 23, 1968 directing the issuance of a separate title to Luz Caro, we agree with the ruling of the respondent appellate court that said order was issued without jurisdiction. The court a quo did not acquire jurisdiction over the petition and/or the land sought to be subdivided for lack of notice to all the parties in interest, as required under Section 112 of Act No. 496. Notice as required by the above-cited statute is jurisdictional and the lack of it deprives the court of the authority to make a valid decree.[1]

Petitioners claim that such notice was unnecessary since the parties affected by the subdivision proceedings manifested their conformity thereto. The registered co-owner, Alfredo Benito, together with Josefina Duran, the mortgagee of the share of Benjamin Benito, executed an affidavit of consent to the subdivision. Likewise, Saturnino Benito, an heir who was also appointed co-administrator of the estate of Mario Benito, the other registered co-owner, executed an affidavit of conformity. According to petitioners, Saturnino Benito's affidavit is binding not only upon the estate but also upon the administratrix, Basilia Lahorra Vda. de Benito.

We do not agree with the petitioner. The records do not show that the required notice was given to all the parties in interest. One of the indispensable parties, respondent Basilia Lahorra Vda. de Benito who was the co-administratrix of the estate of the deceased Mario Benito, was not given any notice, nor did she give her conformity to the partition.

For the court to validly acquire jurisdiction to hear and determine the petition, the mode and manner of service of notice is governed by Section 113 of Act No. 496, viz:

"All notices required by or given in pursuance of the provisions of this Act by the clerk or any register of deeds, after original registration, shall be sent by mail to the person to be notified at his residence and post-office address as stated in the certificate of title, or in any registered instrument under which he claims an interest in the office of the clerk or register of deeds, relating to the parcel of land in question.

All notices and citations directed by special order of the court under the provisions of this Act, after original registration, may be served in the manner above stated, and the certificate of the clerk shall be conclusive of such service; Provided, however, That the court may in any case order different or further service, by publication or otherwise, and shall in all cases do so when the interests of justice require such section."

The order of the CFI of Sorsogon being void is no order at all. It confers no right nor does it impose any duty. "It neither binds nor bars any one." [2] All acts performed under a void order or judgments and all claims flowing out of it are also void, for like the spring that cannot rise above its source, a void order cannot create a valid and legally enforceable right. A fortiori the order of October 19, 1968 of the CFI of Albay directing private respondent to deliver the possession and enjoyment of Lot No. 1-C to Luz Caro, is also void.

On the second issue as to whether a special civil action for certiorari is the proper remedy to question the validity of the aforestated orders, we likewise agree with respondent appellate court. An order or judgment rendered by a court without jurisdiction is without legal effect, hence, it may be impugned at any time and in any proceedings by a party against whom it is sought to be enforced. [3]

Petitioner's argument is correct if the order or judgment in question was issued with grave abuse of discretion or in excess of jurisdiction or if mere errors of judgment were committed, for in such cases the court at the outset has jurisdiction, but not in the instant case where the court from the very beginning has not acquired the power and authority to hear and determine the petition.

As held in *Crisostomo v. Endencia* (66 Phil. 1, 8) "the remedy by certiorari may be successfully invoked both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or without the appellant's negligence, the court has no jurisdiction to issue the order or decision which is the subject matter of the remedy."

WHEREFORE, the petition is DISMISSED for lack of merit. The preliminary injunction issued by the Court on June 7, 1970 is hereby lifted. Costs against petitioner.

This decision is immediately executory.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] *C.F. Yangco vs. CFI of Manila*, 29 Phil. 183; *Patingo v. Pelayo, et al.*, 101 Phil. 65.

[2] *Freeman on Judgments*, Sec. 117, citing *Campbell vs. McCahan*, 41 ILL. 45; *Roberts vs. Stowers*, 7 Bush, 295, *Huls vs. Buntin*, 47 ILL. 396; and other cases cited in *Gomez v. Concepcion*, 47 Phil. 717, 723.

[3] *Ang Lam v. Rosillosa, et al.*, 86 Phil. 447, 452.

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