

GREGORIO MONTINOLA, ET AL., PLAINTIFFS-APPELLANTS, VS. MONSERRAT BARRIDO, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-14438. March 24, 1962*

Ponente: DIZON, J.

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Appeal taken by Gregorio J. Montinola and Matilde Montinola, assisted by her husband Alfredo Samson, from an order of the Court of First Instance of Negros Occidental dated June 13, 1958 dismissing the complaint they filed against Monserrat, Eliarte, Democrito, all surnamed Barrido, C. N. Hodges and the Register of Deeds of said province.

It appears that in Cadastral Case No. 26, G.L.R.O. record No. 214 of the Court of First Instance of Negros Occidental, lots 391 and 392 of the Cadastral Survey of the municipality of Manapla were claimed, on the one hand, by the late Gregorio Montinola, predecessor in interest of appellants, and on the other, by the late Pablo and Luis Barrido, predecessor in interest of appellee Barridos. On September 5, 1921 while the said proceedings were pending, Pablo Barrido, in his behalf and' in that of his brother Luis, then a minor residing in the United States, executed a deed of sale in favor of Gregorio Montinola conveying to the latter their rights and interests over said lots. Relying upon the promise made by the attorneys of the vendors that they would take the necessary steps to have the corresponding title issued in his name, the vendee withdrew his claim when the lots were called for hearing on August 30, 1923. Many years thereafter, or more specifically on October 4, 1941, decision was rendered by the court adjudicating the lots aforesaid to Pablo and Luis Barrido. In due time appellants, as heirs of Gregorio Montinola, who had died in 1933, filed a motion for new trial. This was granted by the court on November 25, 1941. On December 16 of the same year Pablo and Luis Barrido filed a motion for the reconsideration of said order, which motion remained unresolved until October 23, 1957 when the court denied it after a reconstitution of the records of Cadastral Case No. 26 made on petition of appellants.

The petition for reconstitution was filed on December 5, 1947. In the course of the hearing held in connection therewith, the Barridos appeared and objected to the reconstitution, and in support of their opposition they offered as Exhibit 1 a copy of an alleged court order dated January 19, 1942 granting their motion for reconsideration mentioned heretofore. The court, however, rejected said exhibit on the ground that it could not be taken and accepted as a faithful and true copy of the alleged order. This ruling was, on appeal, affirmed by the Court of Appeals on November 16, 1950 in CA-G. R. No. 4761-R. J

It appears, however, that pursuant to an order of the court issued upon an ex-parte petition filed by the Barridos sometime in April, 1947, the Chief of the General Land Registration Office issued decree No. 353 of May 3, 1947 in connection with the registration of the lots in question, including lot No. 301 of the same cadastral survey, in the names of Pablo and Luis Barrido in equal shares. At that time, as already stated; the record of Cadastral Survey No. 26 had not yet been reconstituted, the petition for this purpose having been filed only on December 5, 1947. In accordance with said decree, Original Certificate of Title No. I-N was issued on May 9, 1947 by the Office of the Register of Deeds of Negros Occidental, but it was subsequently canceled by Transfer Certificate of

Title No. 1586 in the names of Luis and Pablo Barrido. On July 9, 1947 this transfer certificate of title was in turn cancelled by Transfer Certificate of Title Nos. 1746 and 1747 issued in the names of their heirs, the Barridos involved in this case.

On December 11, 1951 appellants filed Civil Case No. 721 in the Court of First Instance of Negros Occidental against the Barridos and the Register of Deeds of said province to recover the ownership and possession of lots 391 and 392. Upon motion of the therein defendants the court dismissed the case in an order dated June 28, 1957, the pertinent portions of which read as follows:

"Se desprende de los escritos de alegaciones, en particular de las de la demanda enmendada, que la cuestion del dominio y titulo de los Lotes Nos. 391 y 392 objeto de esta causa, se halla controvertida entre las mismas partes en el Expediente Cadastral No. 26, G.L.R.O. Cad. Rec. No. 214, cttya contencion no ha sido hasta ahora definitivamente resuelta por este Juzgado en el ejercicio de su jurisdicon y competencia original y exclusive, como tribunal de catastro.

"Bajo tales hechos, el Juzgado es de opinion que este tribunal, en el ejercicio de su jurisdicci6n general, carece de jurisdicddn y competencia para conocer de esta causa con el fin de resolver la cuestion. sobre.la. adjudicaciin^ del dominio y titulo de las propiedades en ella envueltas a favor de los demandantes, tal como estos piden en su demanda enmendada.

"POR TANTO, y estimando bien fundadas las razones alegadas en la mocion de los referidos demandados, se ordena el sobreseimiento de esta causa, sin especial pronunciamiento en cuanto a las costas."

On September 16, 1957 the Barridos sold the lot in question to C. N. Hodges and the transfer certificates of title in their names were canceled and a new transfer certificate of title was issued in the name of the vendee.

On November 22, 1957 appellants commenced the present action in the Court of First Instance of Negros Occidental to have said court declare illegal and improper the certificates of title mentioned heretofore, including the one Issued in the name of Hodges, and to recover damages.

On February 28, 1958 the Barridos filed a motion to dismiss on the ground that the present action was barred by a prior judgment; that the action had already prescribed; that the court had no jurisdiction over the subject matter; and lastly, that there was another action pending between the same parties for the same cause. Resolving said motion after due hearing the lower court issued the appealed order sustaining it and dismissing the complaint, with costs.

Upon the uncontested facts involved in this case we are of the opinion that the order of dismissal must be reversed.

The lower court's contention that the order of dismissal issued in Civil Case No. 721 bars the present action is untenable. The order aforesaid was predicated principally on the opinion of the court that, in the exercise of its general jurisdiction, it had no jurisdiction over the subject matter of said civil case because it was exactly the same matter involved in Cadastral Proceedings No. 26 where a new trial had been granted and was yet to be held. A dismissal on the ground of lack of jurisdiction does not constitute *res judicata*.

The contention of the lower court that the cause of action of appellants had already prescribed is likewise without merit for the obvious reason that, up to the present, the question of title over lots 391 and 392 of the Cadastral Survey of Manapla is still unresolved. In other words, the question involved in the present cases still before the lower court awaiting final trial and appropriate adjudication.

While we agree with the lower court that the issue involved in the present action is the same question of ownership over the above-mentioned lots pending trial and adjudication in the cadastral proceedings already

referred to, we are of the opinion that, considering all the facts and circumstances involved, especially the fact that the Barridos have allegedly sold said lots to C. N. Hodges, the lower court, instead of dismissing the present case, should have ordered it consolidated—for a joint trial and adjudication with said cadastral proceedings still pending new trial.

IN VIEW OF THE FOREGOING, the order of dismissal appealed from is hereby set aside, and the record of this case is remanded to the lower court for further proceedings in accordance with this decision.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, and De Leon, JJ., concur.

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