CELSO ICASIANO, PETITIONER, VS. BIENVENIDO TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND TEOFILO RIVERA, RESOPONDENTS; AMBROSIO PADILLA, RESPONDENT.

G.R. No. L-2168. October 31, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari to review an order of Honorable Bienvenido Tan, Judge of the Court of First Instance of Rizal, Rizal City branch.

The challenged order, promulgated February 28, 1948, set aside a previous order, dated July 25, 1946, of Judge Eulalio Garcia, then of the same court and Judge Tan's predecessor, directing hte register of deeds of Rizal to reconstruct original certificate of title No. 24486, and after reconstruction, to cancel the same and issue one in its stead in the name of Celso Icasiano as purchaser of the land from the original owner.

A skeleton narrative of the facts and circumstances which served as grounds for Judges Garcia's and Tan's orders is necessary for the proper understanding of the case.

Raymunda Santos was the owner of a registered tract of land in Quezon City measuring 249,625 square meters. It was under the administration of Jose F. Zamora as Raymunda Santos' attorney in fact. On April 18, 1944, Antonio Quirino, as broker acting for Teofilo Rivera, offered in writing to purchase the land at P1.70 a square meter subject to certain conditions. That offer was accepted and confirmed by Zamora on June 15, 1944.

On June 16, Ambrosio Padilla sent a written offer to Quirino to buy the same property at P2 a square meter, or a total price of P526,762, payable in various amounts on different dates specified in the letter. Quirino accepted and confirmed Padilla's offer.

On June 17, the following day, Jose Zamora conveyed the land to Celso Icasiano for P499,250, apparently in absolute sale.

On the same date, June 17, Teofilo Rivera brought an action for specific performance against Raymunda Santos and Jose F. Zamora who, it was alleged, refused to consumate the sale in violation of the plaintiff's previous offer and defendants' acceptance thereof.

On September 6, 1944, Celso Icasiano filed a motion to intervene setting out the fact of his purchase of the property on June 17.

Ambrosio Padilla filed a complaint in intervention much later, praying that he and/or Teofilo Rivera be declared the owner of the estate, after setting out the facts of the dealings between him and Rivera and between Rivera and Raymunda Santos.

The case thus stood, pending trial, when Icasiano, on June 22, 1946, through counsel, asked for the issuance of the certificate of title in question, alleging that he was the absolute owner of the tract and that both the Original

Owner's Certificate of Title and the Transfer Certificate were destroyed as the result of the war. This motion was filed ex parte, ex parte in the sense that no one was notified of it and Judge Garcia heard Icasiano only.

Certiorari lies when the tribunal, board or officer has acted without or in excess of its or his jurisdiction or with grave abuse of discretion. The petitioner does not allege that Judge Tan's order was outside or in excess of his jurisdiction or was Issued with grave abuse of discretion. As a matter of fact, the respondent Judge did have jurisdiction to cancel the order of another Judge of the same court to the same extent as if he were that Judge; he had the same jurisdiction which the petitioner had invoked to have Judge Garcia authorize the issuance of a new title in his name. If Judge Tan has no jurisdiction to set aside Judge Garcia's order, Judge Garcia had no jurisdiction to make the order which Judge Tan revoked. This is so obvious as to be axiomatic.

The petitioner complains that he was denied the right to produce evidence to show that he had not committed fraud or misrepresentations in applying for the issuance of the certificate of title in his favor. This complaint is also without merit.

The taking of evidence lies within the sound discretion of the court. Section 112 of the Land Registration Act provides only that all parties in interest should be notified. If the taking of evidence were not discretionary then the order of Judge Garcia was void, for petitioner's motion which Judge Garcia granted was acted upon without any hearing, and even without notice to any of the interested parties who were litigating the title to the property or contesting the validity of the sale to the petitioner in another court, parties who and whose claims were known to him but were deliberately concealed from the court.

Moreover, a copy of the motion of Teofilo Rivera and Ambrosia Padilla to set aside Judge Garcia's order was sent Celso Icasiano's attorneys and these later filed a written lengthy opposition. Besides, the motion to set aside with the opposition was set for hearing and was heard with the attendance of both parties, in which hearing extensive oral argument was had. Finally, both the motion to set aside and the opposition were accompanied with numerous annexes. In this connection, Judge Tan stated in denying the motion for reconsideration that "oral evidence in this case will not at all alter the facts as already presented."

There is another reason why Icasiano's motion for reconsideration was properly denied. In the original opposition and hearing, Icasiano or his attorneys did not ask for permission to present oral evidence to substantiate his written opposition. Request to be allowed to present such evidence was made only and for the first time in the motion for reconsideration.

We therefore do not believe that Judge Tan abused his discretion in denying Icasiano's attorneys' motion to present evidence. More, if the evidence which Icasiano proposed to introduce was material, there is no showing that It was newly discovered unavailable to the petitioner when the first hearing was held.

The serious aspect of the case is the fact that the property has been sold by Icasiano to another party and the latter has mortgaged it to still another. It appears that shortly after Icasiano acquired a copy of the certificate of title in his name following Judge Garcia's order, he conveyed the land to Emerito Ramos, his partner in business, and Ramos thereafter mortgaged it for P30,000 to the Philippine Trust Co. Neither Ramos nor the Philippine Trust Co. intervened or was made a party in the proceedings in the court below or in this court, although Ramos, at least, considering his relation with Icasiano, could not have been unaware of these proceedings. The truth is, Icasiano and not Ramos or the Philippine Trust Co. opposed the motion to set aside, filed a motion for reconsideration, and brought the case to this court on certiorari. In his opposition to the motion to set aside Judge Garcia's order, Icasiano did not even mention the fact that he had disposed of the property, an attitude which would lend credence to the charge that the sale was not bona fide. It was in Icasiano's motion for reconsideration where the interests of Emerito Ramos and Philippine Trust Co. formally came up for the first time.

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Not being parties to these proceedings and to the proceedings in the court below, Judge Tan's order under review and this decision can not adversely affect them. This is the more so because they have been made parties to the suit instituted by Teofilo Rivera where the preferential rights and interests of the parties are being threshed out. Nor can this decision or Judge Tan's order be said to impair or curtail the right of Emerito Ramos to make other negotiations for loans on the strength of the certificate of title allegedly conveyed to him, for it appears upon the record that a notice of lis pendens has been registered in connection with the pending suit.

In view of all these considerations, the petition will be denied. Though unnecessary to do so, we qualify this decision with the distinct understanding that it will not in any way impair or prejudice the rights of Emerito Ramos and Philippine Trust Co. in the action now pending between Rivera, Padilla, Santos, Zamora, Icasiano, Ramos and the Philippine Trust Co, Icasiano will pay the costs of these proceedings.

Moran, C.J., Ozaeta, Paras, Bengzon, Montemayor, Reyes, and Torres, JJ., concur.

Feria, J., concurs in the result.

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