

**MARIANO C. ATEGA, PETITIONER, VS. HON. MONTANO A. ORTIZ,
DISTRICT JUDGE OF THE COURT OF FIRST INSTANCE OF AGUSAN,
RESPONDENT.**

G.R. No. L-24775. March 28, 1969

Ponente: DIZON, J.

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DIZON, J.:

Appeal interposed by Mariano C. Atega from an order issued by the respondent judge dismissing Civil Case No. 186 of the Court of First Instance of Agusan "motu proprio for want of jurisdiction".

It appears that on December 13, 1930 Atega filed Sales Application No. 14768 with the Bureau of Lands. On May 15, 1941, after proper proceedings in connection there-with, the parcel of land applied for was sold at public auction to Atega. Actual award, however, was executed in his favor only on August 2 of the same year.

It appears further that several persons, amongst them Pablo Sarnillo, Macario Sarnillo, Baldomero Diez and others occupied different portions of the same parcel of land, some of them during the war years and the others after the war. Resolving their respective claim to the different portions occupied by them (B.L. Claim No. 111) the Bureau of Lands, on May 26, 1949, dismissed their claims and they were ordered to vacate the land respectively occupied by each of them within sixty days from notice of the decision. Their appeal from this decision to the Department of Agriculture and Natural Resources was dismissed on December 31, 1949, and their subsequent appeal to the Office of the President was likewise dismissed on October 9, 1951. On May 31, 1956, upon their petition, the case was reopened by order of the Undersecretary of Agriculture and Natural Resources, but this order was re-voked on July 31, 1959 and the decision of the Bureau of Lands of May 26, 1949 was reinstated. To enforce this decision the Director of Lands issued an order of execution on August 17, 1960. As, apparently, the claimants or con-testants defied said order, the Director of Lands requested the Department of Justice to have them prosecuted for violation of the provisions of Section 2753 of the Administrative Code, as amended. Accordingly, they were prosecuted in the City Court of Butuan, but they were acquitted on the ground of reasonable doubt on January 30, 1964.

In view of the failure of the prosecution mentioned above, on February 9, 1965 Atega filed in the Court of First Instance of Agusan, then presided by the respondent judge, Civil Case No. 186 of said court entitled "CONTEMPT, DAMAGES AND WRIT OF POSSESSION" against Serafia Bacolot and fifteen other persons, the relief prayed in his complaint being as follows:

"WHEREFORE, plaintiff most respectfully pray:

1. For the immediate issuance, ex-parte, of the writ of possession of the subject and, pending hearing on the merits of the case, upon plaintiff's filing a bond in such amount as the Honorable Court may fix;
2. That after the defendants have been given a chance to be heard by themselves or counsel, said defendants be declared in contempt for disobedience of the decision of the Honorable Director of Lands dated May 26,

1949, and in addition:

- a) ordering the defendants to vacate the premises;
- b) ordering the defendants to pay the plaintiff, jointly and solidarily, the sum of P5,000.00 yearly from 1961 up to the time the possession of the premises is restored to the plaintiff; and
- c) ordering the defendants to pay the plaintiff the sum of P10,000.00 in concept of moral damages, attorney's fees, expenses of litigation, and the costs and such other and further relief as the Honorable Court may deem just and equitable."

On February 22, 1965, even before the defendant named in the complaint could be served with summons, the respondent judge, *motu proprio*, issued the appealed order which is of the following tenor:

"It appearing from the allegations in the petition filed by Atty. Virgilio N. Atega, the said petition arose out of pure-ly administrative case between the parties from the Bureau of Lands and not from a case instituted in this Court, this Court therefore acquires no jurisdiction over the subject matter.

"Noticing, this defect, the Court notices the limits of its authority, consequently it dismisses this action *motu proprio* for want of jurisdiction, with-out costs."

As Atega's motion to have the above order recon-sidered was denied by the respondent judge, he filed the present petition for certiorari on July 22, 1965.

It is obvious from the order appealed from that His Honor erroneously considered Civil Case No. 186 merely as a proceeding for contempt when, in truth and in fact, the complaint showed that it was principally an action to recover possession of land and for the recovery of yearly damages at the rate of P5,000 from 1961 up to the recovery of possession, and moral damages in the sum of P10,000, plus attorney's fees and expenses of litigation. It is therefore manifest that His Honor committed a serious error in dismissing the case, *motu proprio*, on the ground of lack of jurisdiction, because the action was clearly with-in the original and exclusive jurisdiction of his Court.

PREMISES CONSIDERED, the order appealed from is hereby set aside and the respondent judge or his successor as presiding judge of the Court of First Instance of Agusan is hereby ordered to conduct the proper proceedings in Civil Case No. 186 of said Court in accordance with law.

Concepcion, C.J., Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

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