

**FLORENTINO KIAMKO, JULIAN ESTELLES AND GUILINGAN (ATA)
PETITIONERS VS. CIRILO C. MACEREN, AS JUDGE OF THE COURT OF
FIRST INSTANCE OF DAVAO, AND ARCOY (MORO) RESPONDENTS.***G. R. No. L-5452. April 30, 1953*

Ponente: MONTEMAYOR, J.

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This is a case of prohibition wherein petitioners seek to restrain respondent Judge Maceren from ordering the execution of his judgment in Civil Case No. 504 of the Court of First Instance of Davao under the theory that he had no jurisdiction in hearing and deciding said case. The facts as revealed by the pleadings in this case, including their exhibits and annexes are as follows:

In the year 1932 a woman named Marisa (ATA) filed homestead application No. 188366 for a parcel of land known as lot No. 1937 of the Guianga Extension cadastre, situated within the City of Davao, with an area of about twenty-four hectares. In her application she stated that she was married to Moro Pakira, and that they had two children named Mamonas and Balan. Her application was given due course.

Marisa cultivated the land and introduced many improvements like abaca plants, fruit trees and food crops. She died in 1946 before obtaining a patent to her homestead. Shortly after her death, petitioner Guilingan and his brothers Abas claiming to be her brothers and that she died without issue, entered and occupied the homestead. On April 19, 1949, the two brothers adjudicated the land to themselves under Rule 74 of the Rules of Court providing for the summary settlement of estates of deceased persons, and on the same day they sold a portion of the land containing six hectares to petitioner Florentino Kiamko and another portion to Juan (Julian) Estelles. On July 3, 1950, respondent Arcoy, a moro, his sister Casiran and his brothers Depiran, Zapanta, Kawasa, Cabiran and Saraba, claiming to be the heirs and grandchildren of the original homestead applicant Marisa, brought an action (Civil case No. 504) in the Court of First Instance of Davao against Guilingan, Kiamko and Stelles to recover the possession of the whole homestead and damages. In their answer the defendants claimed that Arcoy and his brothers were in no way related to Marisa and were total strangers to her, but that Guilingan and Abas were brothers of Marisa and as such succeeded her in all her rights over the land because she had no issue. During the hearing evidence was presented to show that Guilingan and Abas were not even relatives, much less brothers of Marisa but that the plaintiffs Arcoy et al., were her grandchildren because they were the children of Mamonas who was a son of Marisa, and that although the latter had another son Balan, he died without issue. After hearing, respondent judge held that the principal issue to be determined in the case was—which of the contending parties were the legal heirs of Marisa so that her rightful successors-in-interest could be determined. He found and ruled that Arcoy and his brothers and sister are the grandchildren of Marisa and so rendered judgment in their favor, declaring them to have a better right to the possession of the land in question with all the improvements thereon, and he ordered the defendants to vacate the land and deliver possession thereof to the plaintiff's. The defendants failed to appeal from said decision and respondent judge on January 29, 1952, ordered the execution of the judgment.

In the meantime Kiamko and Stelles filed homestead applications for the portions of the homestead ceded to them. As regards Kiamko the Bureau of Lands issued an order dated February 16, 1952, to the effect that inasmuch as the heirs of the original homesteader (Marisa) ceded said portion to him (Kiamko), he had the right to occupy the same as a homesteader and so gave due course and approval to his application. Arcoy and his brothers filed a protest with the Bureau of Lands against the favorable action taken on the homestead application of Kiamko and invoking the decision in their favor in civil case No. 504, asked that the approval of Kiamko's homestead application be revoked on the ground that his application was filed under false pretenses and the bureau's approval was given under a misapprehension, namely, that the portion was ceded to him by the heirs of Marisa when as a matter of fact the cession was made by persons in no way related to her as found by the trial court. Acting upon said protest the Bureau of Lands in an order dated March 21, 1952, held that "considering the judicial declaration that the herein contestants are the legal heirs of Marisa Ata, it is clear that they are entitled to succeed her in whatever right or interest she might have acquired in the land in controversy," and the Bureau ordered the District Land Officer to conduct an investigation of the case.

The theory of the petitioners is that the land in controversy which is covered by the homestead application of Marisa being public land, it comes under the exclusive jurisdiction of the Director of Lands who has the authority to determine who are the persons entitled to its possession, and that if in the present case the decision of the respondent judge were allowed to stand, there would be confusion because while on the one hand the Director of Lands approved and gave due course to the homestead application of Kiamko, meaning to say that he is entitled to the possession of the portion of the homestead of Marisa ceded to him, the decision sought to be annulled declares that only the respondents Arcoy and his brothers and sister as heirs and successors-in-interest of Marisa have a right to the possession of the whole homestead and consequently, Guilingan and his brother Abas and Kiamko to whom they ceded a portion of the homestead would have no right whatsoever over the land.

Petitioners presumably have in mind section 4 of the Public Land Act (Commonwealth Act 141) which as amended, reads as follows:

"Sec. 4. Subject to said control, the Director of Lands, shall have direct executive control of the survey, classification, lease, sale or any form, of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Natural Resources."

There is no question that under this section the Director of Lands has executive control over the concession and disposition of lands of the public domain such as through homestead. He has the right to determine which among several applicants for homestead has preference based for instance on previous occupation. He also has the right to determine compliance or non-compliance with the conditions required by the Public Land Act such as residence and cultivation prior to the issuance of the patent. However, transmission by operation of law of the rights acquired over said homestead are no longer within his control and determination. Section 105 of the same Public Land Act reads:

"Sec. 105. If at any time the applicant or grantee, shall die before the issuance of the patent or the final grant of the land, or during the life of the lease, or while the applicant or grantee still has obligations pending towards the Government, in accordance with this Act, he shall be succeeded in his rights and obligations with respect to the land applied for or granted or leased under this Act by his heirs in law, who shall be entitled to have issued to them the patent or final concession if they show that they have complied with, the requirements therefore, and who shall be. subrogated in all his rights and obligations for the purposes of this Act."

In the present case and in accordance with section 105 of the Public Land Act above quoted, Marisa, the original homestead applicant upon her death was succeeded in her rights over the homestead by her heirs in law. Who

those heirs in law are, are not mentioned by the Public Land Act. The legal provisions as to who are the heirs in law of a deceased person are contained in and come under the civil law. They involve questions peculiarly for judicial determination or by the courts. Even the Director of Lands in acting on the protest of Arcoy and his brothers against the approval of the homestead application of Kiamko recognized the propriety and legality of the judicial determination of the heirs and successors-in-interest of Marisa over her homestead. It is, therefore, clear that the respondent judge had jurisdiction and authority to determine who were the heirs in law of Marisa and who had a better right to the homestead.

In view of the foregoing, the petition for prohibition is hereby denied and the writ of preliminary injunction 1062 previously issued is hereby dissolved. Petitioners will pay the costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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