

**REGINO CRUZ, RECURRENTE, CONTRA EL HON. BIBNVENIDO A. TAN,
JUEZ DEL JUZGADO DE PRIMERA INSTANCIA DE RIZAL,
RECURRIDO.***G. R. No. L-5704. June 17, 1953*

Ponente: PABLO, J.

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En los expedientes G. L. R. O., Records Nos. 699, 875 y 917 del Juzgado de Primera Instancia de la provincia de Rizal (debe presentarse la mocion en uno de los expedientes en que se ordeno el registro de la parcela de la cual forma parte el sublote en cuestion), Regino Cruz presento una mocion debidamente jurada alegando que el es filipino, mayor de edad y casado con Fausta Mendoza; que su padre Simeon de la Cruz obtuvo en compra a plazos el sublote No. 50-H-5-C-9-J-51 del plano de subdivision No. 9765, situado en el barrio Ugong, municipio de Pasig (antes Mariquina), provincia de Rizal, de Ortigas, Madrigal & Company en 1932; que el recurrente obtuvo en compra dicho sublote de su padre antes de su fallecimiento; que el continuo pagando las mensualidades, y, al saldarlas por complete, Ortigas, Madrigal & Company le entrego el certificado de transferencia de titulo No. 17035 (Annex B); que su padre Simeon de la Cruz fallecio en 1939 y su madre Nicolasa Santos en 1942, dejando cuatro hijos llamados Apolonia, Eufemia, Cornelia y el recurrente (Regino), todos de apellido Cruz; que la venta a su favor de dicho sublote esta reconocida y confirmada por sus tres hermanas ya nombradas por medio de su affidavit Annex "A-I"; que su abogado descubrio mas tarde que en el certificado de transferencia de titulo No. 17035 aparece como dueño no el (Regino Cruz) sino su difunto padre Simeon de la Cruz; por lo que pidio que el tribunal ordenase al registrador de titulos de la provincia de Rizal que borrara el nombre de Simeon de la Cruz y que se pusiera en su lugar el nombre de Regino Cruz. Al pie de su mocion Apolonia, Eufemia y Cornelia Cruz hacen constar que no tienen objecion a la peticion.

Ortigas, Madrigal & Company en su escrito titulado Constancia y Clarificacion, manifiesta que no tiene interes en el sublote y que si aparece en el certificado de transferencia de titulo el nombre de Fausta Mendoza como esposa del finado Simeon de la Cruz fue por informacion dada por el mismo mocionante.

En 22 de marzo de 1952 el Hon. Juez recurrido denego la peticion y, denegando tambien la mocion de reconsideracion, dicto una orden diciendo que no podia ordenar la sustitucion del nombre de Simeon de la Cruz en el certificado de transferencia de titulo sin darle oportunidad a defenderse en una accion ordinaria.

En recurso de certiorari, Regino Cruz acude a este Tribunal pidiendo la revocacion de la orden del Juez recurrido de 22 de marzo de 1952; que se le conceda el remedio que pidio en su mocion presentada en el juzgado inferior y cualquier otro remedio justo y equitativo. En su contestacion, el Juez recurrido alega que la sustitucion del nombre de Simeon de la Cruz por el de Regino Cruz debe pedirse por el interesado a Ortigas, Madrigal & Company para que esta otorgue otra escritura y, si esto es imposible, que promueva un asunto de intestado para determinar quienes son los verdaderos dueños del lote.

El recurrente erro al pedir que se borrara el nombre de Simeon de la Cruz y que en su lugar se pusiese su nombre,

Regino Cruz; debio haber pedido la cancelacion del certificado de transferencia de titulo y la expedicion de otro en su lugar.

El peligro apuntado por el Juez de que otras partes interesadas puedan ser privadas de su derecho y por eso sugirio la incoacion de una accion ordinaria, es remote, pues las tres coherederas de Regino Cruz estan conformes con las alegaciones de la mocion. La promocion de un intestado es innecesaria si los coherederos pueden amigablemente repartirse los bienes entre si y el finado no tiene deudas; no estan obligados a incurrir en gastos que lleva consigo un intestado. (Regla 74, art. 1.º) Tampoco es necesaria la incoacion de un asunto civil, porque este Tribunal en Cavan contra Wislizenus, (48 Jur. Fil., 671), dijo lo siguiente:

"Se observara que la mocion de 29 de junio no se presento en 'el caso original en que se dicto el decreto de inscripcion.' sino en una accion civil ordinaria, y, en vista de las disposiciones citadas, es evidente que el Juzgado se excedio en su competencia al acceder a la mocion en vista de esta circunstancia. Los procedimientos sobre registro de terrenos son tan separados y distintos de los juicios civiles ordinarios, como estos lo son de las causas criminales, y probablemente no se sostendra que nuestros tribunales tienen jurisdiccion en acciones civiles para condenar a nadie por infracciones criminales.

"El principio de que todas las solicitudes y mociones presentadas de acuerdo con las disposiciones de la Ley del Registro de la Propiedad, se deben presentar en los asuntos originales de registro, fue adoptado teniendose en cuenta un fin inteligente; el permitir que dichas solicitudes y mociones se presenten y resuelvan en otra parte, conduciria eventualmente a confusion, y haria dificil trazar el origen de los asientos del registro."

El articulo 112 de la Ley del Registro de la Propiedad autoriza al Juzgado, a peticion de parte y con notificacion a las partes interesadas, ordenar la cancelacion de un certificado de transferencia de titulo de uno que dejo de ser dueño y la expedicion de otro a favor del nuevo; y era eso lo que deseaba el recurrente al presentar su mocion y, no habiendo oposicion sino conformidad de sus tres coherederas a que el recurrente Regino Cruz aparezca como dueño del sublate No. 50-H-5-C-9-J-51, por haberlo comprado de su difunto padre, y que se expida a su favor el certificado de transferencia de titulo, el Juez recurrido debio haber expedido la orden correspondiente.

Por tanto, se revoca la orden del Hon. Juez recurrido de 22 de marzo de 1952 y se le ordena que expida otra dando instrucciones al Registrador de Titulos de la provincia de Rizal que cancele el certificado de transferencia de titulo No. 17035 y en su lugar expida otro a nombre de Regino Cruz, casado con Fausta Mendoza, sin pronunciamiento sobre costas.

Paras, Pres., Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo y Labrador, MM., estan conformes.

CONCURRING

REYES, J.,

On the authority of Government of the P. I. vs. Serafica, 61 Phil. 93, I concur in this opinion; but on the authority of the same case I must insist that, before hearing, the petition for transfer of title be first published "in order to better safeguard the rights of those who may have an interest in the land."

DISSENTING

FERIA, J.,

Ortigas, Madrigal & Co. sold in 1932 to Simeon de la Cruz, married to Nicolasa Santos, a parcel of land described in transfer certificate of title No. 17035 on a ten-year installment basis. Simeon de la Cruz died in 1939, and Nicolasa Santos in 1942, leaving Apolinario, Eufemia and Cornelia Cruz and the petitioner as legal heirs.

The transfer certificate of title No. 17035 was issued in the name of the deceased buyer, Simeon de la Cruz and recorded in the Register of Deeds on January 23, 1950, without any objection on the part of the petitioner or any other heirs of Simeon de la Cruz, and in accordance with the deed of sale executed by Ortigas, Madrigal & Co., the vendor, because according to Annex G of the petitioner's petition, which is a sworn answer of Ortigas, Madrigal & Co., the land in question was bought on installment basis by the late Simeon de la Cruz, and no transfer of rights from Simeon de la Cruz to the petitioner Regino de la Cruz has been presented for recording and approval in the books of the Company and in the ultimate deed of sale to Simeon de la Cruz. The name of Fausta Mendoza and not of Nicolasa Santos was put as wife of Simeon de la Cruz according to the information given by the petitioner Regino de la Cruz to the vendor. Said Annex G filed without contradiction by the petitioner, as part of his petition reads as follows:

1. "That Ortigas, Madrigal & Co. has no interest whatever in that piece of land registered in the name of Simeon de la Cruz. That it was the appearing Company who sold under installment basis the piece of land described now in Transfer Certificate of Title No. 17035 of the Register of Deeds of Rizal.
2. "That originally the land was bought on installment basis by the late Simeon de la Cruz; that contrary to the allegations of Regino de la Cruz, the transfer of rights from Simeon de la Cruz to Regino de la Cruz, has not been registered in the books of the Company; that there might be a transfer of said rights as alleged, but it was never presented for recording and approval; that if the name of the petitioner's wife appears as the wife of the late Simeon de la Cruz, this mistake is due to no others fault but that of Regino de la Cruz who when asked by the Accountant of Ortigas, Madrigal & Co. gave the name of Fausta Mendoza as the name of the late Simeon de la Cruz's wife."

About two years after the registration of the transfer of certificate of title No. 17035 in the name of the vendee Simeon de la Cruz married to Nicolasa Santos, or on November 5, 1951, the petitioner filed a petition with the Court of First Instance of Pasig, Rizal, under G. L. R. O. records 699, 875, and 917, in which the original decree of registration of the lot No. 377, rendered in August, 1907, was issued in the name of Ortigas, Madrigal & Co. of which the lot in question was a part, praying that the Court order the Register of Deeds of Rizal to correct, under section 112 of Act No. 496, the certificate of title No. 17035 substituting the name of Regino de la Cruz as owner of said lot sold by Ortigas, Madrigal & Co. in lieu of Simeon de la Cruz.

The court denied the petition on the ground that the substitution cannot be ordered by the court under section 112 of Act No. 496, because Simeon and Regino are two different persons. Instead of appealing from the order of the respondent Judge denying the petitioner's petition, the petitioner filed with this Supreme Court a petition for certiorari alleging that the Court acted with grave abuse of discretion in denying the petition.

The respondent Judge in his answer to the petition for certiorari alleges that the proper remedy in the present case is not certiorari but appeal. This is correct because the lower court has jurisdiction to grant or deny the petitioner's petition under section 112 of Act No. 496 on any of the grounds specified in said section, depending on the allegation set forth in the petition and on the evidence presented in support thereof. As section 112 does not confer upon the court discretion to grant or deny the petitioner's petition, no discretion may be abused by the lower court. If the lower court did commit error of law or of fact in its decision, appeal is the proper and only remedy.

But even considering the present case as an appeal from the lower court's order denying the petition on the facts

alleged therein, the respondent Judge did not commit any error in denying the petitioner's petition. Said section 112 provides that the Court may order that erasure, alteration or amendment shall be made upon the registration book after the entry of a certificate of title on the following grounds: (1) "that any error, omission or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate;" or (2) "that registered interests * * * have terminated or ceased"; or (3) "that new interests have arisen or been created which do not appear in the certificate"; or (4) "that the name or status of a person mentioned in the certificate has been changed"; or (5) "that the registered owner has been married"; or (6) "if registered as married, the marriage has been terminated"; or (7) "upon any other reasonable grounds". And the petition filed in the present case is for the erasure, alteration or amendment of the name of Simeon de la Cruz in the certificate of title No. 17035, and insertion therein of petitioner's name Regino de la Cruz, which cannot be done under said section 112.

The majority in its decision held "that the petitioner erro al pedir que se borrarse el nombre de Simeon de la Cruz y que en su lugar pusiese el nombre Regino de la Cruz. He should have asked for the cancellation of said transfer certificate of title and the issuance of another in lieu thereof."

The conclusion of the majority that the petitioner erred in asking for the erasure of the name of Simeon de la Cruz and substitution of the name Regino de la Cruz in lieu thereof under section 112 of Act No. 496 cannot be done, is correct. But there is absolutely no reason or ground for the conclusion that the petitioner should have asked the court in his petition to order the Register of Deeds of Rizal to cancel the transfer certificate of title No. 17035 in the name of Simeon de la Cruz, the deceased father of the petitioner, and to issue another in the name of the petitioner, who alleges, with the conformity of his three sisters to have purchased the land from his deceased father, contrary to what appears in the record and books of Ortigas, Madrigal & Co., Exhibit G of petitioner's petition; because said section 112 of Act No. 496 does not authorize the court, upon the petition of the interested party, to order the cancellation of a transfer certificate of title issued in the name of a deceased person and the issuance of another in the name of his successor in interested, an heir or vendee. The court having jurisdiction to order the execution of a deed of sale or transfer of a registered land in the name of a deceased to another by the executor or administrator of the deceased, is the probate court of the estate of the deceased, except in cases of extrajudicial settlement by agreement between the heirs of the deceased under Rule 74 of the Rules of Court.

To allow the lower court (as Court of Land Registration) to order the transfer of the land in question from the deceased Simeon de la Cruz to the petitioner Regino de la Cruz as vendee of the land would be to deprive the creditors and other heirs of the deceased, if there is any, of their right to file their claims against the estate of the deceased Simeon de la Cruz, or to contest the validity of the alleged sale of the land in question by the deceased to the petitioner, since if the petitioner's petition were granted, no other heirs or creditors of Simeon de la Cruz may claim their share or credit against the estate of the deceased.

The attorney for the petitioner, in his written memorandum filed in the present case in lieu of oral argument, says:

"Before the filing of the petition in the lower court, the attorney for the petitioner thought of extrajudicial settlement provided in Rule 74 of the Rules of Court as a means of securing the alternation by transfer of the title. This procedure was deemed feasible in view of the fact that all the heirs of Simeon de la Cruz are of age and there is no known indebtedness left by the deceased. But, there is an obstacle to it for the heirs are not really children of Simeon de la Cruz and the supposed wife, Fausta Mendoza, who appear in the title. Besides, the Register of Deeds of Rizal had advised him that the intended settlement could not be registered unless a court order is obtained authorizing the change of the name of Fausta Mendoza to that of Nicolasa Santos, the real wife of Simeon de la Cruz and the mother of all the heirs. If the heirs should be made to sign the settlement as heirs of Simeon de la Cruz and Fausta Mendoza when in fact they are not, it is feared that they would commit perjury."

The attorney for the petitioner was correct in stating that he thought before the filing of his petition that the proper procedure he should have taken is extrajudicial settlement or partition by agreement under Rule 74 of the Rules of Court, since the court may, upon a petition filed under section 112 of Act No. 496, properly authorize "the change of the name of Fausta Mendoza through error to that of Nicolasa Santos," the real wife of Simeon de la Cruz and mother of all the heirs. Such extrajudicial settlement is the proper procedure for it would not deprive the right or claim of the creditors and other persons having interest in the estate of the deceased Simeon de la Cruz of their right to file their claim within two years after the settlement under section 4 of Rule 74.

In view of the foregoing, we are of the opinion that the petition for certiorari filed by the petitioner is denied with costs.

Se revoca la orden.

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