

**JOSEFA DULAY, ASSISTED BY HER HUSBAND SEBASTIAN SOLOMON,
PETITIONERS AND APPELLANTS, VS. PEDRO C. MERRERA, IN HIS
CAPACITY AS REGISTER OF DEEDS OF THE PROVINCE OF
PANGASINAN, RE...**

G.R. No. L-17084. August 30, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

Juan Dulay and Teodora Bautista, husband and wife were the owners pro-indiviso, of a parcel of land situated in the Poblacion of San Carlos, Pangasinan, known as Lot No. 1253 of the San Carlos Cadastre, with an area of 805 sq. meters, more or less, and covered by O.C.T. No. 62708. Upon the death of Juan Dulay on August 21, 1953, Josefa, Petra and Teodora (the widow), alleging that they are the only legitimate surviving heirs, executed an "Extra-Judicial Settlement of the Estate of the deceased Juan Dulay, with Absolute Safe", dated May 30, 1956, the pertinent portions of which recite—

"5. That the parties herein agreed as they hereby agree to divide and settle the aforementioned property between and among themselves in the following manner:

ADJUDICATION

To: Josefa B. Dulay and Petra Dulay—the entire one-half (1/2) portion, in undivided equal share.

6. That I, Teodora Bautista, do by these presents, renounce all my interest, title, participation and right of usufruct over the above mentioned property in favor of my children, Josefa B. Dulay and Petra Dulay.

7. That for and in consideration of the sum of Two Hundred Pesos (P200.00), Philippine Currency, to me in hand paid by Josefa B. Dulay married to Sebastian S. Solomon, of legal age, Filipino and a resident of San Carlos, Pangasinan, I, Petra Dulay, do by these presents, sell, cede, convey and transfer by way of absolute sale all my share, interest, title, and participation over the aforementioned property unto the said Josefa B. Dulay, her heirs and assigns, the receipt of which amount is hereby acknowledged to my full and entire satisfaction."

The above document was duly recorded with the Register of Deeds, on July 16, 1956, and on the same date O.C.T. No. 62708 was cancelled and TCT No. 21067 was issued in the name of Josefa B. Dulay, married to Sebastian S. Solomon.

On April 19, 1960, the same persons who executed the said Extra-Judicial Settlement, presented with the respondent Register of Deeds, a pleading styled "Reformation of Extra-Judicial Settlement of the Estate of Juan Dulay", alleging that there were two other legitimate surviving heirs,—Restitute and Cecilia Dulay, and that they were presenting the reformation "para contrarestar o anular los efectos legales de aquella declaracion arriba * * *". Atty. Dimalanta, Deputy Register and Examiner of Deeds, sustained by respondent Register of Deeds, was of the opinion that the document was not registrable. Because of their refusal to receive and register the document, Josefa B. Dulay, filed with the CFI of Pangasinan, a petition for Mandamus, to compel said Register of Deeds to

receive and register the reformatory document. In the petition, it was alleged that the respondent register of deeds denied the registration "sin exponer razones validas para denegar la inscripcion o registro del mencionado documento"; that the register of deeds "no les incumbe a ellos decidir o determinar si un documento es registrable o no es registrable, porque esto es un acto judicial".; "que la inscripcion del documento presentado en la Oficina de Registro de Titulos es un Deber Ministerial, siempre y cuando que su presentacion se haga con los requisitos que exige la ley; que el Registrador de Titulos no tiene facultades para inquirir y determinar la validez o legalidad del documento que se trata de registrar, etc." He prayed that the Register of Deeds be compelled to receive and register the document of reformation, annotate the contents thereof in TCT No. 21067, and for damages in the amount of P200.00 (moral and actual) in favor of petitioner.

On May 18, 1960, the lower court issued the following order—

"It appearing from the very document entitled 'Reformation of Extra-Judicial Settlement of the Estate of the deceased Juan Dulay', that not all the legitimate heirs have signed the said extra-judicial partition and, hence, the said adjudication does not dispose of the land, this Court is constrained to conclude that the said document of extra-judicial settlement is fatally defective and cannot be really accepted by the Register of Deeds for annotation and further action; hence the petition for mandamus is hereby dismissed for lack of cause of action."

The above Order is now before Us for consideration upon two errors allegedly committed by the lower court, both of which pose the singular issue of whether or not the Register of Deeds has neglected in the performance of a duty enjoined by law and/or has unlawfully excluded the petitioner from the use and enjoyment of a right of which she is entitled.

In the first place, the trial court was referring in said order, to a document of extrajudicial settlement, which was already registered, and not to the reformatory instrument which is the object of the present action. In the second place, the duties of the Register of Deeds are enumerated in Sections 56, 57, 58 and 59 of the Land Registration Act, the first of which provides—

"Each register of deeds shall keep an entry book in which, upon payment of the filing fee, he shall enter in the order of their reception all deeds and other voluntary instruments, and all copies of writs or other process filed with him relating to registered lands * * *.

* * * * *

No serious dispute can arise regarding the fact that the instrument sought to be registered is a voluntary one, relating to a registered land. The phraseology of the provision makes the duties imposed therein purely ministerial. We have once said:—

"The duties enjoined upon the register of deeds by section 57 of the Land Registration Act are clearly ministerial and mandatory in character not only as is indicated by the auxiliary 'shall'[1] but by the nature of such functions to be performed by him. Upon the other hand, section 193 of the Administrative Code, in referring to the 'general functions of the register of deeds' provides that 'it is the duty of a register of deeds to record in proper form all instruments relative to such lands, the recording whereof shall be required or allowed by law'. If the register of deeds is in doubt as to the propriety of recording any given instrument, section 200 of the Administrative Code provides the procedure to be followed. (In re Consulta by Attorney Vicente J. Francisco on behalf of Domingo Cabantog, 67 Phil. 222).

And in a case, We also made the following pronouncements:—

"Registration is a mere ministerial act by which a deed, contract or instrument is sought to be inscribed in the records of the Office of the Register of Deeds and annotated at the back of the certificate of the title covering

the land subject of the deed, contract or instrument." (Agricultural Credit Cooperative Association of Hinibaran vs. Yulo Yusay, et al., 107 Phil., 791).

Tested by the above authorities, therefore, the respondent Register of Deeds cannot refuse to accept and inscribe the document under consideration. His refusal in this particular case is a proper instance where mandamus will lie, for it is tantamount to an unlawful neglect in the performance of a duty resulting from an office, trust or station (Sec. 3, Rule 67).

Conformably with all the foregoing, the order appealed from is hereby reversed and another entered, ordering the respondent Register of Deeds to accept the instrument and inscribe the same on the title concerned. No pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Dizon, Regala, and Makalintal, JJ., concur.
Concepcion and Barrera, JJ., concur in the result.

[1] The word "shall" is also used in section 56.

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