

**APOLINARIO DUQUE, FLORENTINO DUQUE, PRECILLANO DUQUE,
DOROTEA DUQUE, CECILIA DUQUE AND PATROCINIA DUQUE,
PETITIONERS, VS. L. PASICOLAN, JUDGE OF THE COURT OF FIRST
INSTANCE OF N...**

G. R. No. L-5989. April 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to set aside the order of July 23, 1952 of respondent Judge which reiterates a previous order of the court dated May 30, 1952 with the modification that, upon the surrender of the original title to the clerk of court, the same shall be delivered to the register of deeds who is ordered to annotate on the back of the new title a notice of lis pendens with respect to the petition for review of the decision rendered in the cadastral case dated November 27, 1929.

Telesforo Duque was the original owner of lots Nos. 743 and 744 by virtue of a Homestead Patent No. 1386 issued in his favor on January 24, 1918. Telesforo Duque later registered these lots in his name in accordance with the provisions of Act No. 496, having been issued in his name transfer certificate of title No. 337. When Telesforo Duque died, said lots were inherited by his heirs, the petitioners herein.

When cadastral proceedings were instituted in the municipality of Guimba, Nueva Ecija, said lots were claimed by Telesforo Duque as the only claimant, but when the decision was rendered on November 27, 1929, the court decreed that said lots be registered in the names of Telesforo Duque and Eusebio Tabaquin, pro indiviso and share and share alike, ordering that the certificate of title No. 337 originally issued in the name of Telesforo Duque be surrendered to the clerk of court for cancellation, who in turn should deliver it to the Office of the General Land Registration so that a new one may be issued as above directed subject to the encumbrance existing in favor of the mortgagees of the property.

On March 18, 1948, the Chief of the General Land Registration Office issued Order No. 66 which in substance had the effect of implementing the decision of the cadastral court rendered on November 27, 1929, and on July 9, 1948, petitioners herein, who were the successors-in-interest of Telesforo Duque, filed in the same cadastral case a petition for review, alleging that the court erroneously rendered said decision because of fraud and misrepresentation committed by Eusebio Tabaquin.

On December 20, 1948, or after the lapse of 19 years from rendition of the decision aforementioned, respondents herein, heirs of Eusebio Tabaquin, filed a petition in the cadastral case praying that said decision be complied with, to which the petitioners filed a vigorous objection invoking the ground that the decision is void ab initio because the court acted without jurisdiction.

On January 7, 1949, the court granted the motion directing the petitioners to surrender the duplicate of title No. 337 issued in the name of their father to the Register of Deeds so that a new title may be issued as required by the

decision.

This order was temporarily stayed by an order of August 5, 1949, but was later revived by another order of May 30, 1952. On June 18, 1952, petitioners filed a motion for reconsideration wherein the same ground of nullity for lack of jurisdiction was reiterated, but the court denied it in its order of July 23, 1952. These are the orders subject of the present petition for certiorari.

We are of the opinion, that the respondent Judge erred in not suspending the effects of the decision rendered by the cadastral court dated November 27, 1929, as urged upon him by petitioners in their motion for reconsideration, considering the petition for review filed by them in the same cadastral case wherein they assailed the validity of said decision on the grounds of error, fraud and misrepresentation. It should be noted that while the decision was rendered on November 27, 1929, the final decree was not issued until March 18, 1948, when the Chief of the General Land Registration Office issued Order No. 66. It appears from the record that the petitioners came to know of this order No. 66 only sometime in March, 1948 and on July 9 of the same year, they filed the aforesaid petition for review. This they have the right to do under the law and jurisprudence (section 38, Act No. 496).

It, therefore, appears that when the heirs of Eusebio Tabaquin, respondents herein, filed their petition for execution of the decision rendered on November 27, 1929, the petition for review was already pending consideration, and the most wise step that the court should have taken was to suspend action on said motion for execution until after the petition for review had been definitely acted upon on the merits. It should be noted that all the different incidents pertaining to the property in question had risen in the same cadastral case and they were all before the court who could have acted on them one in connection with the others. There was therefore no justification for the court to say that it had no jurisdiction to inquire into the validity of the decision, or of Order No. 66 implementing it, simply because said decision has long become final and executory. Considering the circumstances obtaining in the present case, it is our opinion that the respondent Judge has abused his discretion in issuing his order of July 23, 1952, for what he should have done was to give priority to the petition for review.

Wherefore, the Court hereby sets aside the order of respondent Judge dated July 23, 1952, as well as the order dated May 30, 1952 which was revived by it, and directs that the case be remanded to the court of origin so that action may be taken on the petition for review filed by petitioners dated July 9, 1948.

The preliminary injunction issued in this case is hereby declared final.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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