

**TOMAS RODIL AND THE DECEASED SPOUSE CATALINA CRUZ,
SUBSTITUTED BY HER HEIRS, NAMELY: VIVENCIO RODIL MARRIED
TO ZUEKO MATSUO, CONSOLACION RODIL, MARRIED TO
FRANCISCO HEMEDES, DOM...**

G.R. No. L-28616. January 22, 1980

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for mandamus to direct the respondent Judge to order the issuance of a writ of possession against the respondents in Cadastral Case No. 61, LRC Rec. No. 1369, Lot Nos. 2417, 3423, 3424, 3753 and 3754 of the Cadastral Survey of Peñaranda, Nueva Ecija.

In Cadastral Case No. 61, LRC Rec. No. 1369, Lot Nos. 2417, 3423, 3424, 3753 and 3754 of the Peñaranda (Nueva Ecija) Cadastre were claimed and applied for by the spouses Tomad Rodil and Catalina Cruz. The claim was not contested,[1] and on October 11, 1958, the cadastral court adjudicated the aforesaid lots in favor of the applicants. Pursuant to the decree of registration, Original Certificate of Title No. 0-1719 was issued to the applicants on December 10, 1958. On February 26, 1959, the heirs of Alejandro Abes filed a petition with the court for the review of the registration decree upon the ground "that the petitioners are the true owners and are the ones in actual legal possession of the aforesaid land and that the award of said lots to claimant-spouses was secured thru fraud." The cadastral court gave due course to the petition and set the case for hearing, where oral and documentary evidence were presented by the petitioning heirs of Alejandro Abes. On July 7, 1961, the cadastral court denied the petition for review upon the ground that the petitioners failed to overcome the evidence of the claimants-adjudicatees. No appeal was taken from this order of July 7, 1961. Instead, on September 4, 1961, the heirs of Alejandro Abes filed an action against the registered owners for the reconveyance of title, claiming that Tomas Rodil and his wife procured registration of the land "thru fraud, misrepresentation and the use of falsified deeds of sale." Essentially, this is the same ground of fraud they urged in their petition for review of the cadastral decree. The defendants therein filed a motion to dismiss the case upon the ground of res adjudicata and on December 13, 1962, the court dismissed the complaint with costs. The plaintiffs therein filed a motion for the reconsideration of the order, but the court denied the motion on January 16, 1963. Hence, an appeal was interposed with this Court, docketed herein as G.R. No. L-20996. On July 30, 1966, the Court rendered judgment, affirming the orders complained of, with costs.[2]

Upon the return of the records to the lower court, Tomas Rodil and Catalina Cruz filed a petition for the issuance of a writ of possession asking that they be placed in possession of the lots and that the heirs of Alejandro Abes be evicted therefrom.[3]

On April 11, 1967, the respondent Judge issued an order granting the petition only with respect to Alejo Abes, Bienvenido Abes, Teodora Vda. de Abes, and Cornelio Abes and denied the same with respect to the other respondents stating that he is completely at a loss as to who, aside from Alejo Abes, Cornelio Abes, Bienvenido

Abes, and Teodora Abes, among the said respondents, were parties to the original cadastral proceeding or as to who were at least occupants of the properties in question prior to the issuance of the decree of registration.[4] Pursuant to said order, a writ of possession was issued on April 19, 1967.[5]

On April 20, 1967, Alejo Abes, Bienvenido Abes, Teodora Vda. de Abes, and Cornelio Abes filed a motion for the reconsideration of the order of April 11, 1967 upon the grounds that: (1) the petition for the issuance of a writ of possession was filed out of time; and (2) there is no allegation in the petition, and neither had it been proved, that the respondents were defeated in a registration proceeding, or that they were adversely occupying the land during the registration proceedings, or that they were unlawfully and adversely occupying the land at any time up to the issuance of the final decree, or that they were one of those against whom a writ of possession may be issued.[6]

Finding "that no allegation was made, neither was evidence adduced to the effect that the herein respondents have been declared in default during the original registration proceedings; neither was it alleged or proved that the herein respondents were occupants of the land during the registration proceedings, or prior to the promulgation of the final decree of registration, circumstances by the existence of which a writ of possession may not be validly issued," the respondent Judge set aside its order of April 11, 1967 and ordered the dissolution of the writ of possession issued pursuant thereto.[7]

The spouses Tomas Rodil and Catalina Cruz filed a motion for the reconsideration of said order,[8] but the respondent Judge denied the motion on December 12, 1967.[9] Hence, the instant recourse.

After a careful study of the case We are convinced that the respondent Judge committed an error in denying the petition for the issuance of a writ of possession. The findings of the respondent Judge that a writ of possession cannot be issued in the cadastral case because the respondents were not parties in said registration proceedings, or that they were not occupants of the land during the registration proceedings prior to the issuance of the final decree of registration is not supported by the evidence and law. The respondent heirs of Alejandro Abes cannot be said to be strangers to the registration proceedings. A cadastral proceeding is a proceeding in rem and against everybody, including the respondents herein, who are deemed included in the general order of default entered in the case. Besides, it appears that the said respondent heirs of Alejandro Abes filed a petition for the review of the decree of registration, thereby becoming a direct party in the registration proceedings by their voluntary appearance.

The respondent heirs of Alejandro Abes cannot also be said to be not occupants of the land during the registration proceedings prior to the issuance of the final decree of registration. In their action for the reconveyance of title to the land in question, Alejo Abes and the other heirs of Alejandro Abes stated: "that in the year 1914, said Alejandro Abes took possession personally, occupied and cultivated the aforementioned land, lived with his children and grandchildren therein; and that Alejandro Abes' children and grandchildren have continued in actual possession, occupation, and cultivation of the land.[10] In said action, "Bienvenido Abes ... testified that Alejandro Abes was his grandfather ... that he knows the land in question because the same belongs to his grandfather; that his grandfather died before the war, probably in 1938; ... that during the lifetime of his grandfather ... his possession of the lots in question was peaceful and undisturbed; that after the death of his grandfather, he was succeeded by his grandmother and the children of his deceased grandfather ... that after the death of his grandfather, the lands left by his grandfather was divided between his uncle Alejo and the heirs of the deceased brothers of Alejo, who are in possession of their respective shares." [11]

The respondent heirs of Alejandro Abes, being in possession of the lots in question, unlawfully and adversely, during the registration proceedings, may be judicially evicted by means of a writ of possession and it is the duty

of the registration court to issue said writ when asked for by the successful claimant.[12]

The respondents claim that the petition for the issuance of a writ of possession was filed out of time, the said petition having been filed more than five years after the issuance of the final decree of registration. In support of their contention, the respondents cite the case of *Soroñgon vs. Makalintal*,[13] wherein the following was stated:

"It is the law and a well settled doctrine in this jurisdiction that a writ of possession must be issued within the same period of time in which a judgment in ordinary civil actions may be summarily executed (section 17, Act 496, as amended), upon the petition of the registered owner or his successors in interest and against all parties who claim a right to or interest in the land registered prior to the registration proceeding."

The better rule, however, is that enunciated in the case of *Manlapas and Tolentino vs. Llorente*,[14] which has not yet been abandoned, that the right of the applicant or a subsequent purchaser to ask for the issuance of a writ of possession of the land never prescribes. The Court therein said:

"The second point alleged by the petitioners has reference to the prescription of the rights of the respondent corporation to ask for a writ of possession.

The law has not made applicable to the writ of possession provided for in section 17 of Act No. 496 and its amendments, the provisions of the Code of Civil Procedure regarding execution of judgments.

It cannot be held to have been the intention of the law to permit after five years the reinstitution of a registration proceeding, whether ordinary or cadastral, as the case may be, to revive a decree, which on the other hand, according to Act No. 496, is to exist forever, as provided in various sections of said Act, among which may be cited section 45 which says:

'The obtaining of a decree of registration and the entry of a certificate of title shall be regarded as an agreement running with the land, and binding upon the applicant and all successors in title that the land shall be and always remain registered land, and subject to the provisions of this Act and all Acts amendatory thereof.'

Nor could the law make said provisions of the Code of Civil Procedure applicable to a decree of registration, since the property rights and possession of a registered owner would be nugatory when they are imprescriptible under the conclusive provisions of Section 46 of said Act No. 496 which says:

'No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.'

In a later case,[15] the Court also ruled that the provision in the Rules of Court to the effect that judgment may be enforced within five years by motion, and after five years but within ten years by an action (Section 6, Rule 39) refers to civil actions and is not applicable to special proceedings, such as land registration cases. The Court said:

"The second assignment of error is as follows:

'That the lower court erred in ordering that the decision rendered in this land registration case on November 28, 1931 or twenty six years ago, has not yet become final and unenforceable.'

We fail to understand the arguments of the appellant in support of the above assignment, except in so far as it supports his theory that after a decision in a land registration case has become final, it may not be enforced after the lapse of a period of 10 years, except by another proceeding to enforce the judgment or decision. Authority for this theory is the provision in the Rules of Court to the effect that judgment may be enforced within 5 years by motion, and after five years but within 10 years, by an action (Sec. 6, Rule 39). This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision

unenforceable against the losing party. In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person or a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.

Furthermore, there is no provision in the Land Registration Act similar to Sec. 6, Rule 39, regarding the execution of a judgment in a civil action, except to place the winner in possession by virtue of a writ of possession. The decision in a land registration case, unless the adverse or losing party is in possession, becomes final without any further action, upon the expiration of the period for perfecting an appeal."

IN VIEW OF THE FOREGOING, the petition for mandamus is hereby granted and the respondent Judge or anyone acting in his stand is directed to issue said writ of possession over Lot Nos. 2417, 3423, 3424, 3753, and 3754 of the Peñaranda Cadastre in favor of the petitioners. With costs against the private respondents.

Barredo, Antonio, Aquino, Santos, and Abad Santos, JJ., concur.

[1] Rollo, p. 34.

[2] Id., p. 10.

[3] Id., p. 17.

[4] Id., p. 20.

[5] Id., p. 24.

[6] Id., p. 26.

[7] Id., p. 34.

[8] Id., p. 39.

[9] Id., p. 44.

[10] Id., p. 42.

[11] Id., pp. 29-30.

[12] *Demorar vs. Ibañez*, 97 Phil. 72.

[13] 80 Phil. 259.

[14] 48 Phil. 298.

[15] *Sta. Ana vs. Menla*, 111 Phil. 947.

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