

CIPRIANO VERASTIGUE, ET AL., PETITIONERS, VS. COURT OF APPEALS, CARMEN VERDAGUER, EMILIO VILLASIN, ET AL., RESPONDENTS.

G.R. No. L-23973. April 29, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

A point of jurisdiction as to the power of a court of first instance sitting as a cadastral court to issue a writ of possession was raised and an issue of due process invoked in this petition for the review of a decision of the Court of Appeals dismissing a special civil action for mandamus and certiorari. As will hereafter be made apparent, neither is sufficiently persuasive to call for a reversal. We affirm.

The principal question raised in the Court of Appeals according to the decision sought to be reviewed "is whether, as claimed by the petitioners, 'the respondent Court has acted without or in excess of its jurisdiction in trying the oft-stated cadastral case for re-opening and review, on account of its special and limited jurisdiction, because of the pendency of Civil Case No.211-G before it, between the same parties and over the same land, where the issue of ownership and possession is involved.'"[1]

The question was disposed of in the Court of Appeals decision thus: "Upon careful consideration, we arrived at the conclusion that said question should be answered in the negative. Inasmuch as it was the respondent Court, sitting as Cadastral Court, that handed down the decision sought to be reviewed in the Petition for Review above-mentioned, it is un-questionable that said Court did not act without or in excess of its jurisdiction when it entertained said petition for review based upon the ground that said Court did not have legal authority to award and adjudicate privately owned lands already covered by Torrens Title. We are satisfied, under the facts hereinabove mentioned, that the respondent Court was right in reconsidering and setting aside its said decision and declaring null and void the decrees as well as the certificates of title issued in accordance therewith, it appearing that although given a chance to do so, the herein petitioners had not presented evidence to show, or had not succeeded in showing, that Certificate of Title No. 75 issued in favor of Andres Villasin of Parafina on September 15, 1914 did not include Lot No. 5387. In view hereof, it would appear that the appeal sought to be taken by the herein petitioners from the aforementioned orders of the Cadastral Court, even granting that the steps towards that end were taken within the reglementary period, would not serve any benefit."[2]

Petitioners thus disputed the right of respondents to the aforementioned lot, but without success. They ought to have taken the proper steps to appeal; they failed to do so within the reglementary period. They would then rely on the special civil action for mandamus and certiorari as a substitute measure, having lost the right to appeal. The Court of Appeals saw through their scheme and dismissed their petition.

More specifically, insofar as the issue of the writ of possession is concerned, the version in the brief of petitioners follows: "After the appeal was dismissed, the private respondents moved for the issuance of a Writ of Possession to place them in possession of the land in controversy. The said Motion was heard on 27 March 1961 and was,

with undue haste, granted on the same day, but a copy thereof was received by the undersigned only on 28 March 1961, or the following day after it had been heard and granted. After their Motion to reconsider the Order of 27 March 1961, granting the issuance of a Writ of Possession, was denied in the Order of 27 September 1961, the Trial Court issued such Writ. (Actually, the herein petitioners, however, still remain in possession of the land.) Thus, the Petition for Certiorari and Mandamus, which was dismissed by the principal respondent."[3]

It is in the light of the above facts thus presented that they would raise the aforementioned jurisdictional and due process questions. Their contention, as set forth in their lone assignment of error is that the Court of Appeals erred in not declaring null and void the aforesaid orders with particular emphasis on the writ of possession thereafter issued. In their effort to lend substance to the above allegation, petitioners stressed the alleged lack of jurisdiction of the court of first instance acting as a cadastral court to issue a writ of possession and the alleged denial of procedural due process.

As already indicated, their plea is futile and unavailing, running counter as it does to controlling decisions of this Court. The court of first instance sitting as a cadastral court was empowered to issue a writ of possession. Nor was there a failure to accord petitioners procedural due process.

1. In *Abellera v. De Guzman*,[4] we left no doubt about the power of the cadastral court to issue a writ of possession. Thus: "After hearing, the cadastral court may declare the plaintiff the owner of the lots and entitled to their possession and may issue a writ directing the sheriff to put him in possession thereof, but it cannot award damages to the plaintiff." As a matter of fact, the *Abellera* doctrine has its roots in our opinion rendered 22 years earlier in *Director of Lands v. Court of First Instance of Tarlac*. [5] The language used by Justice Laurel in *Cordero v. Court of First Instance of Laguna*, [6] a 1939 decision, would, if carefully analyzed, likewise yield an affirmative answer to the question of whether or not a cadastral court may issue a writ of possession.

In a recent decision, less than three years ago, where the party adversely affected did not even bother to assail the legality of an order of a writ of possession coming from a cadastral court, we pointed out, in an opinion through Justice J. B. L. Reyes, how broad and extensive is the scope of such an authority. Thus: "Neither de respondents dispute the propriety and validity of the order of the cadastral court, granting the writ of possession in favor of petitioners as well as its enforcement. Under these circumstances, we hold that the order, dated March 20, 1962, of the cadastral court, granting petitioners' motion to compel respondents to remove their respective houses from the disputed lot, is valid and enforceable against respondents. In the case of *Marcelo v. Mencias, etc., et al.*, L-15609, April 29, 1960, 58 O.G. 3349, this Court had already upheld the jurisdiction or authority of the court of first instance, sitting as a land registration court, to order, as a consequence of the writ of possession issued by it, the demolition of improvements introduced by the successor-in-interest of a defeated oppositor in the land registration case." [7] The confidence with which therefore petitioners asserted such lack of jurisdiction in a cadastral court to issue a writ of possession is clearly unjustified.

2. The due process question is just as easily disposed of. Petitioners, in their brief would argue thus: "The herein petitioners had no chance to object to the private respondents' Motion for Writ of Possession because, as hereinbefore discussed, they received a copy thereof only on 28 March 1961, or on the following day that it was heard and granted by the Court on 27 March 1961." [8]

In an earlier page of their brief, they did admit that they had a motion to reconsider such order of March 27, 1961 which was denied in an order of September 27 of the same year. Only then, as admitted by them likewise, did the lower court issue such a writ of possession. Where then is the denial of due process?

Our ruling in *Batangas Laguna Tayabas Bus Co. v. Cadiao* [9] would dispel any doubt that the answer to the above due process question must be in the negative. Thus: "While it is true then that the order of November 2, 1967 was

issued ex parte, it is equally true that Whatever objections could have been raised by petitioner were in fact set forth in its petition to set aside and to reconsider and were inquired into in a hearing held on January 24, 1968. As far back as 1935, it has already been a settled doctrine that a plea of denial of procedural due process does not lie where a defect consisting of an absence of notice of hearing was thereafter cured by the alleged aggrieved party having had the opportunity to be heard on a motion for reconsideration. 'What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard.' There is then no occasion to impute deprivation of property without due process where the adverse party was heard on a motion for reconsideration constituting as it does 'sufficient opportunity' for him to inform the Tribunal concerned of his side of the controversy. As was stated in a recent decision, what 'due process contemplates is freedom from arbitrariness and what it requires is fairness or justice, the substance rather than the form being paramount,' the conclusion being that the hearing on a motion for reconsideration meets the strict requirement of due process."

3. The third point raised by petitioners to the effect that a writ of possession cannot affect parties who enter the land after the issuance of a decree of registration is equally devoid of merit. This is a factual matter, the determination of which was properly within the cognizance of the Court of Appeals. It should there have been raised. Apparently, petitioners did not do so. The invocation of this particular issue at this stage cannot be characterized as other than a last-ditch attempt of petitioners to impute an aspect of vulnerability to the decision now on appeal, when in reality there is none.

WHEREFORE, the decision of the Court of Appeals of August 28, 1964, dismissing the petition for mandamus and certiorari, is affirmed. With costs against petitioners.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., and Castro, J., on official leave.
Capistrano, J., did not take part.

[1] Appendix A, Brief for Petitioners, p. VI.

[2] Ibid, pp. VI-VII.

[3] Brief for Petitioners, p. 6.

[4] 85 Phil. 738 (1950).

[5] 51 Phil. 805.

[6] 67 Phil. 358.

[7] Baltazar v. Caridad, L-23509, June 23, 1966.

[8] Brief for Petitioners, pp. 11-12.

[9] L-28725, March 12, 1968, citing De Borja v. Flores, 62 Phil. 106 (1935); De Borja v. Tan, 93 Phil. 167 (1953); Embate v. Penolio, 93 Phil. 702 (1953); Caltex (Phil.) Inc. v. Castillo, L-24657, Nov. 27, 1967.

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