

TEODORA DEMORAR, PETITIONER, VS. THE HONORABLE JUDGE ROMAN IBAÑEZ OF THE COURT OF FIRST INSTANCE OF ILOILO AND GREGORIO PORAS, RESPONDENTS.*G.R. No. L-7595. May 21, 1955*

Ponente: MONTEMAYOR, J.

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This is a petition for mandamus to compel respondent Judge Roman Ibañez of the Court of First Instance of Iloilo to issue a writ of possession over lot 2529 in cadastral case No. 88, G.L.R.O. 1565, Court of First Instance of Iloilo, against respondent Gregorio Poras or his successor-in-interest. Finding the petition to have shown a prima facie case it was given due course and the two respondents were by resolution of this court of March 26, 1954, ordered to answer the petition within ten days, but although according to the record, particularly the registry return receipt cards both of them received a copy of said resolution, and the petition, they did not file any answer. The case was set for hearing before this Tribunal on September 3, 1954, but when it was called for hearing on that date there was no appearance for the respondents. Only Atty. Gil B. Armada appeared for the petitioner and he submitted the case without oral argument.

Under the circumstances, we shall have to accept the allegations contained in the petition, namely, that petitioner Teodora Demorar had filed an answer in cadastral case No. 88, G.L.R.O. 1565 in the Court of First Instance of Iloilo, claiming lot 2529; that said lot was not contested and so a general order of default was issued by respondent Judge and evidence for the petitioner was presented and admitted on November 8, 1951; that on the same date said lot was adjudicated to petitioner Demorar; that said decision has already become final and executory as shown by the order dated October 20, 1953, for the issuance of the corresponding decree for said lot; that on February 10, 1954, petitioner Demorar filed a motion for the issuance of a writ of possession directed against respondent Gregorio Poras or his successor-in-interest on the ground that said Gregorio Poras was in unlawful possession of the lot when the judgment became final and executory and even before that time and that respondent Judge denied the motion in an order dated February 14, 1954, despite the fact that the motion for the issuance of the writ of possession was not opposed by respondent Poras; that petitioner Demorar filed a motion for reconsideration on February 17, 1954 but it was denied in an order of the same date.

For our satisfaction and to do justice to the respondents, particularly the respondent Judge, despite their failure to answer the petition for mandamus we directed the Clerk of Court of this Tribunal to ask the Clerk of Court of the Court of First Instance of Iloilo for a copy of the order of Judge Ibañez denying the motion for the issuance of the writ of possession as well as the order denying said motion for reconsideration, as well as any other data or document in his office bearing on said lot, because we wanted to know the reason, if any, why the writ of possession was not issued despite the facts alleged by petitioner in her petition that respondent Gregorio Poras was in unlawful possession of the lot when it was finally adjudicated to her. In answer the Clerk of Court of First Instance of Iloilo furnished us copies of the two orders of respondent Judge, as well as the decision of adjudication of November 8, 1951, from which we gather that the motion for issuance of the writ of possession

was denied by respondent Judge on the ground that according to the evidence submitted by her she was in possession of said lot. It is true that a person presently in possession of a lot adjudicated to him or to her in registration proceedings has no need of a writ of possession, but in the present case we surmise that at the time that petitioner Demorar presented evidence on her ownership and possession before the Court in 1951, she was then in possession and testified to that effect, but that thereafter and at the time of the issuance of the decree sometime in the year 1953, she was no longer in possession because Gregorio Poras had unlawfully entered the land.

We have heretofore held that a writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the land registration proceedings (*Pasay Estate Co. vs. Del Rosario*, 11 Phil., 391; *Manlapas vs. Llorente*, 48 Phil., 298). The issuance of the decree of registration is part of the registration proceedings. In fact, it is supposed to end the said proceedings. Consequently, any person unlawfully and adversely occupying said lot at any time up to the issuance of the final decree, may be subject to judicial ejectment 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.

In view of the foregoing, the petition for mandamus is hereby granted and the respondent Judge or any one acting in his stead is directed to issue said writ of possession over lot 2529 in favor of petitioner Demorar. No costs.

Pablo, Acting C.J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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