

SUSANA VILLORIA, PETITIONER, VS. EDMUNDO PICCIO, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, NICANOR VILLORIA, AND EMILIANA VILLORIA, RESPONDENTS.

G.R. No. L-7344. September 16, 1954

Ponente: REYES, A., J.

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REYES, A., J.:

On August 10, 1937, the herein petitioner Susana Villoria bought from the Government of the Philippine Islands a parcel of land situated in Talisay, Cebu, and identified as lot No. 89 of the Talisay-Minglanilla Estate, one of the Friar Lands Estates. But before a final deed of sale could be executed in her favor, the respondents Nicanor Villoria and Emiliana Villoria, together with the now deceased Edilberta Villoria, claiming to be occupants of portions of the lot and therefore entitled to preference in the purchase thereof, applied for the purchase of those portions for themselves. Their application was denied by the Director of Lands, but on appeal the Secretary of Agriculture and Natural Resources decided in their favor, the dispositive part of the decision reading as follows:

"Wherefore, the decision of the Director of Lands of June 24, 1947 should be, as hereby it is, set aside; and the Director of Lands is hereby directed to order the subdivision of lot No. 89 Talisay-Minglanilla Estate; Cebu, in accordance with the actual occupation of the appellants and the appellee in 1937, and as soon as the subdivision survey is accomplished the respective holdings of the appellants be sold to them in accordance with the provisions of Commonwealth Act No. 32, and that a deed of conveyance be issued to SUSANA VILLORIA for the portion actually occupied by her in 1937 and return to her whatever excess money she might have paid to the Bureau of Lands after deducting the corresponding purchase price for the said portion actually occupied by her."

Contesting the above decision, Susana Villoria filed an action in the Court of First Instance of Cebu to annul the same and to have the Secretary of Agriculture and Natural Resources and the Director of Lands execute a final deed of sale in her favor, and succeeded in having the court issue a writ of preliminary injunction to suspend the subdivision of the lot and the execution of the deed of sale in favor of Nicanor Villoria, Emiliana Villoria and Edilberta Villoria. But the action did not prosper. The court, after trial, rendered its decision the dispositive part of which reads:

"In view thereof, this Court renders judgment dismissing the complaint as far as the requirement for the Honorable Director of Lands to issue final deed of sale on the whole lot is concerned, with corresponding dissolution of the writ of preliminary injunction heretofore issued against defendant, the Honorable Secretary of Agriculture and Natural Resources, restraining him from ordering the execution of corresponding deed of sale of portion of the lot in question to his co-defendants Nicanor, Emiliana and Edilberta Villoria with costs against plaintiff."

The decision was affirmed by the Court of Appeals and a petition to have the affirmance reviewed was denied by this Court.

After the return of the record to the Court of First Instance, that court, upon motion, issued an order "for the

execution of the judgment in the * * * case, ordering the Provincial Sheriff of Cebu to place said defendants in possession of their respective portion in lot No. 89 of the Talisay-Minglanilla Estate; ordering plaintiff Susana Villoria to remove the fence she has enclosed the property with her expense. * * * " The motion to have the order reconsidered having been denied, Susana Villoria came to this Court with a petition for a writ of certiorari to have the order of execution annulled for having been issued in excess of jurisdiction and with grave abuse of discretion.

The petition must be granted.

Every possessor has a right to be respected in his possession (Art. 539, New Civil Code), and whether he has title or not, he cannot be deprived of such possession without being given his day in court in a proper proceeding. (Maglasang vs. Maceren et al., 46 Off. Gaz., No. 11, p. 90.)

As provided in section 45, Rule 39, Rules of Court, "that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." Examining the judgment which was ordered executed by the lower court in this case, we find that all that is therein ordained is the dismissal of the complaint and the dissolution of a writ of preliminary injunction restraining "execution of corresponding deed of sale of portion of the lot in question." It does not adjudge possession of any portion of said lot to anybody or order the removal of any fence. Indeed, even the decision of the Secretary of Agriculture and Natural Resources, which the court refused to annul, merely directs the Director of Lands to make a subdivision of the contested lot in accordance with actual occupation in 1937 and, once that was done, to sell to appellants their respective holding pursuant to the provisions of Commonwealth Act No. 32.

As Chief Justice Moran says in his comments on the Rules of Court, "The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law. * * *" (Vol. I, 1952 ed., p. 809.)

In ordering something to be done that has not been adjudged, the lower court clearly exceeded its authority. The order complained of is therefore revoked, with cost against the respondents other than the Judge of First Instance.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion and Reyes, J.B.L., JJ., concur.

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