

REPUBLIC OF THE PHILIPPINES, PLAINTIFF, VS. SYLVIA DE KALINTAS, ET AL., CLAIMANTS. RICARDO DEQUITO, ET AL., PETITIONERS-APPELLANTS. HEIRS OF SALVADOR LOPEZ, OPPOSITORS-APPELLEES.

G.R. No. L-25141. January 31, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a final order of the Court of First Instance of Davao dismissing a petition for review of a cadastral decree in Cadastral Case No. N-17, LRC Cadastral Record No. 235, BL Cad. 286, Case 3 (Republic of the Philippines vs. Sylvia de Kalintas, et al.).

The background facts gleaned from the record are the following:

On 5 December 1963, Ricardo Dequito and 33 others, residents of Pagsilaan, Limot, Municipality of Limot, Province of Davao, filed a motion in the above-mentioned case, seeking to set aside a decision of 28 February 1959 –

"awarding Lot No. 1285, Mati Cadastre, to the Municipality of Mati, Province of Davao, Philippines, subject to the condition that the same be exclusively used as an agricultural school site, and if within four years from this date of adjudication such is not the actual use devoted to it, the same would revert to the owners, the heirs of Salvador Lopez."

The decision had been rendered by the then Justice of the Peace Court of Mati, Davao, sitting as a Cadastral Court upon assignment by the district judge, pursuant to Section 88 of the judiciary Act, as amended by Republic Act No. 2613. The latter act provides:

" x x x Provided, however, That justices of the peace may, with the approval of the Secretary of Justice, be assigned by the respective district judge in each case to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots the value of which does not exceed five thousand pesos,[1] such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants, if there are more than one, or from the corresponding tax declaration of real property."

The movants claimed to be adverse possessors under claim of title of the cadastral lot in question, since time immemorial, who had introduced considerable permanent improvements in said lot, which the Bureau of Lands intended to subdivide in their favor. They averred that the decision of the justice of the Peace Court was null and void for want of jurisdiction, because (a) Lot 1285 (Cad. 286) was a controverted lot, the value of which exceeded Five Thousand Pesos (P5,000.00); (b) the heirs of Salvador Lopez had not filed any answer in the Cadastral case claiming any title or interest in said lot; (c) that the said lot, at the time the case was heard by the Justice of the Peace of Mati, was the subject of another land registration case, No. 273, LRC Record No. 51858, as the Land Registration Commission had advised the Court of First Instance in September of 1963; and (d) that while on 12

October 1963 the latter court had set aside whatever decision had been rendered in the ordinary registration case and ordered the Land Registration Commission to proceed with the issuance of a decree conformable to the decision of the cadastral case in favor of the heirs of Salvador Lopez, said directive was, like the basic adjudication, also null and void.

The motion to set aside was opposed by the Lopez heirs, and at the hearing movants Dequito, et al. were apprised that, as ordered, the Registration Commission had already issued a decree on 14 October 1963. In view of this development, on 23 March 1964, they moved to be allowed to withdraw their motion to set aside and that the present petition be amended to include an alternative petition for review under section 38 of Act No. 496, which was filed on the same date.

The petition for review realleged and reproduced the jurisdictional defects pleaded in the motion to set aside the judgment, and added that the heirs of Lopez, though they had filed no answer nor made any claim to the lot in question, succeeded in procuring the decision in their favor through fraud and connivance with the Justice of the Peace of Mati, Davao, by whom the lot was adjudicated; and the property had not been transferred to an innocent purchaser for value. The petition for review prayed that the decision and the decree be annulled and set aside, and that after a new trial the controverted lot be adjudicated and decreed in favor of the petitioners.

The motion to withdraw the original petition and to give due course to the petition for review was objected to by the Lopez heirs. The Court of First Instance allowed the withdrawal of this petition to annul the judgment, but refused to give due course to the petition for review, reasoning that as the latter constituted an amendment to the original motion, petitioners could not be allowed to change their theory or cause of action; that the petition for review can not be entertained in the same proceedings, because "the original which it is intended to supplement has already been withdrawn". It ruled further that the petition had to be filed as a separate action.

Unable to have the court change its resolution, the movants, Dequito, et al., appealed directly to this Court.

We agree with appellants that the order under review is erroneous and must be set aside. In the first place, the petition for review is not properly an amendment to the previous motion to set aside the judgment in the cadastral case, for the objectives are distinct. The review is aimed at the decree entered by the Land Registration Commission, while the motion to set aside is against the decision of the court of first instance. While the decree is a consequence of the judgment, it has a virtuality all its own. It is the basis for the issuance of the certificate of title by the Register of Deeds, a result that the judgment can not produce. Hence, not being a mere amendment, any change of theory is irrelevant.

In the second place, even if the petition for review were taken as an amendment of the motion to set aside, the court a quo's view that it changed the cause of action or the theory of the case is not justified. A comparison of both pleadings shows that the theory of the action remains unaltered, for the petition for review restates and reproduces the grounds stated in the motion to set aside the judgment, to wit, the lack of jurisdiction of the court that decided the cadastral case. While the petition for review adds, as further ground, the fraudulent connivance between judge and the respondents Lopez, to the prejudice of appellants, such allegations are not incompatible with the preceding ones,[2] and the aim pursued is still the nullification of the cadastral proceedings and award. Considering further that neither the motion to set aside nor the petition for review have been as yet heard or decided on the merits, the action taken by the court below is certainly un-warranted.

Nor is the ruling that the petition for review can not be filed in the same proceeding before the court any more tenable. Section 112 of the Land Registration Act (made applicable to Cadastral proceedings by section 11 of Act 2259) requires that all petitions and motions after original registration "shall be filed and entitled in the original case in which the decree of registration was entered", the purpose being to avoid confusion and difficulty in

tracing the origin of the entries in the registry (*Cavan vs. Wislizenus*, 48 Phil. 636).

Appellees contend that the lot at issue was really uncontested and that the petition for review is belated. These matters were not passed upon by the court below, and we feel that the same should be threshed out there, since a correct determination of the same can only be made by referring to and scrutinizing the record of the cadastral case, and that record is not before this Court.

WHEREFORE, the appealed order of the Court of First Instance of Davao dismissing appellants' petition for review is hereby set aside, and the records are ordered remanded to the said court for further proceedings conformable to this opinion. Costs against appellees, heirs of Salvador Lopez.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Subsequently increased to P10,000.00 by Republic Act No. 3828, approved 22 June 1963.

[2] In *Vda. de Cuaycong vs. Senbengco*, L-11837, November 29, 1960, this Court ruled that a decree of registration may be reviewed not only by reason of fraud but also for a fatal infirmity of the decision upon which the decree is based, provided no innocent purchaser for value will be prejudiced.

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