

JUAN JABON, ALEJANDRO DIGAL, CANDIDO JABON, AND PAULINO JABON, PETITIONERS, VS. HIPOLITO ALO, JUDGE OF FIRST INSTANCE OF BOHOL AND SATURNINO ALIAS CATA LINO YTEM, RESPONDENTS.

G.R. No. L-5094. August 07, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari with preliminary injunction seeking to nullify an order of respondent Judge entered on August 11, 1951.

Saturnino alias Catalino Ytem filed an action against Juan Jabon and three other persons praying that he be declared owner of a parcel of land containing approximately an area of four hectares. Defendants, in turn, prayed that Juan Jabon be declared owner of the property and that the claim of the plaintiff for damages be denied.

On March 13, 1950, Judge Jose Querubin, then presiding the court, after trial, rendered judgment, the dispositive part of which reads:

"In view whereof, the Court declares the defendant Juan Jabon the owner of the portion of land described in his tax declaration No. 13439, having an extension of 2 hectares 07 areas and 36 centares and indicated in the report of the commissioner and his sketch, Exhibits X and X-1, as the portion covered by angles A, B, C, D, and back to A and the rest of the portions covered by tax declarations, Exhibits D, E, and F, belong exclusively to the plaintiff, without special pronouncement as to costs".

This decision became final for lack of appeal, and so on May 8, 1950, a writ of execution was issued ordering the defendants to vacate the portion of the land adjudicated to the plaintiff. As defendants resisted the execution, plaintiff asked the court to declare them in contempt, but Judge Jose Veluz, then presiding the court, denied plaintiff's motion, ruling that the writ of execution was not in accordance with the dispositive part of the decision.

On August 6, 1951, or after the lapse of more than a year since the decision had become final, plaintiff moved that the dispositive part of the decision be amended by including therein an order directing the defendants to vacate the land adjudicated to the plaintiff, and notwithstanding the vigorous opposition of defendants, the respondent Judge, Hon. Hipolito Alo, entered an order on August 11, 1951, which practically amended the decision, for in said order he directs that defendants should vacate the land and should deliver its possession to the plaintiff. The case is now before this Court on a petition for certiorari, defendants contending that the respondent Judge acted in excess of his jurisdiction.

As may be noted from the dispositive part of the decision which appears quoted in the early part of this decision, the court merely declares plaintiff owner of the portions of the land under litigation which are not covered by the area of 2 hectares, 07 areas and 36 centares adjudicated to defendant Juan Jabon. It does not give plaintiff any other relief, much less it orders plaintiff to be placed in possession of the land adjudicated to him. It later

developed, however, that when plaintiff attempted to execute that part of the judgment rendered in his favor, a portion of the land was occupied by the defendants, and the latter had their houses built thereon. And because the decision contains no directive for their ejectment, they resisted the execution. The question now that arises for determination is whether that decision, which has become final and executory more than a year ago, can still be amended by adding thereto a relief not originally included, such as the delivery of the possession of the land and the ejectment therefrom of the defendants.

Our answer is in the negative. Rule 39, section 45, provides that "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". Here there has been only a declaration of ownership. No other relief is awarded to the plaintiff. In the absence of any other declaration, can we consider a mere declaration of ownership as necessarily including the possession of the property adjudicated? We do not believe so, for ownership is different from possession. A person may be declared owner, but he may not be entitled to possession. The possession may be in the hands of another either as a lessee or a tenant. A person may have improvements thereon of which he may not be deprived without due hearing. He may have other valid defenses to resist surrender of possession. We, therefore, hold that a judgment for ownership, does not necessarily include possession as a necessary incident. In a similar case, this Court held:

"It may be admitted that the judgment absolving defendant Talens was in effect a declaration that the sale to him was valid. It may also be admitted, though with some reluctance or reservation, that it was a declaration of ownership of the lot. But it is doubtful whether it also included a direction to surrender it to him. Although it is true that the owner is generally entitled to possession, it is equally true that there may be cases where the actual possessor has some rights which must be respected or denned. A lessee is not the owner; yet a declaration of ownership in another person does not necessarily mean his ouster.

Touching the case at bar, if the possessor Garcia had made necessary improvements for which he is entitled to compensation, an order of possession would deprive him of such payment without having had an opportunity to claim for them and prove their value. His Honor, the trial judge, obviously foresaw this possibility among others, and refused to decree the restitution, taking 'into consideration that said decision (of the Court of Appeals) seems not to close all the doors for the parties to protect their respective interests, if they still have any.'

"Consequently, we hold that the judgment of the Court of Appeals in G. R. No. 3221-R absolving Talens from the complaint did not include an order for delivery of possession of the land.

The petition is denied, with costs". (Talens vs. Garcia et. al. 47 Off. Gaz. [Supp. to No. 12], pp. 358, 360-361.)

Consequently, we hold that the order of respondent Judge dated August 11, 1951, is null and void, it having been issued in excess of his jurisdiction.

Petition is hereby granted, with costs. The preliminary injunction issued is declared final.

Paras, C. J., Bengzon, Montemayor, and Labrador, JJ., concur.

CONCURRING

PADILLA, J.:

I concur for the same reason given in my concurring opinion on the point in the case of Contreras et al., vs. Felix et al., 44 Off. Gaz., 4306, 4315.

DISSENTING

TUASON, J.:

I think the application for certiorari should be dismissed.

The general rule is that a court may amend its judgment as truth and justice require, to the end that the judgment may express what was actually decided or intended. This power is inherent and independent of statutes; but the power to amend and correct judgments is very largely regulated by statute in the different jurisdictions. (49 C. J. S. 447, 448.) Where it clearly appears what judgment should have been rendered as of course on the facts in the record, the court will assume to treat the failure to render such judgment as a mere clerical misprision, and will amend the judgment so as to make it conform to that which should have been rendered on the facts. (Idem, p. 454.)

This is the rule in this jurisdiction as announced in a long line of decisions, and this rule fits the facts and the pleadings in the case at bar. In a nutshell, here was an action to recover title to, and possession of, land in which "the plaintiff asked that he be declared the absolute owner of the land and that the defendant be ordered to vacate the property and to pay the corresponding damages." (See the court's order under review.) The defendant resisted the demand with the allegation that they, and not the plaintiff, were the owners and entitled to stay in possession of the property in litigation. They did not assert any right to possession independent of the ownership. Consequently upon the issues, possession was inseparably linked to title. As a matter of fact, possession was the immediate objective of the suit, declaration of ownership occupying a secondary importance to that objective.

It is evident, as Judge Alo says, "that the omission, in the judgment, of the corresponding order for the delivery of the land in question to the plaintiff was simply an oversight." Otherwise, as His Honor aptly observes, the decision would be left "hanging in the air for no purpose at all" and "the proceedings in this case would amount to a mere futility."

What, indeed, will the plaintiff get from the judgment if the judgment is not amended in the manner requested by him? The plaintiff has been declared the owner, it is true, but what good does that pronouncement do to the plaintiff without the possession?

The solution suggested is that the plaintiff should bring a new action. But what is the plaintiff to allege and prove, and what is the court to decide, in the new case that was not alleged and proved and decided in the finished case? Upon what theory will the possessory action be based if not upon ownership which already and finally has been adjudicated?

And where will such action of possession be instituted? In the court of the justice of the peace? Could the parties litigate in that court the matter of possession, and could the justice of the peace have jurisdiction to try that matter with the inevitable authority to reverse or modify the findings and final judgment of the Court of First Instance? And, again, upon what theory would the summary action be based? Necessarily it would have to be upon contract or the allegation of force, violence or stealth. But there was never a contract between the parties, and there was no force committed or alleged to effect entry upon the land.

If an action to secure possession of the property were to be recommenced, the action would have to be filed in the Court of First Instance, in which case, exactly the Same issues which were joined and disposed of in a valid judgment would have to be retried and read judged.

It is pointed out that the defendants have a house or part of a house erected on the land adjudicated to plaintiff and

that the defendants might have a claim to compensation for the improvements or wish to buy the property.

It suffices to remark in reference to this new angle that the defendants themselves did not and do not now make such claim. The parties planted their cases on the simple question of the right of possession predicated on ownership. If the defendants had a right to be indemnified for their construction and to stay on the land before indemnity was paid, that right is barred by the prior judgment. It should have been asserted before in the form of counterclaim or cross-claim.

The defendant may set forth by answer as many affirmative defenses as he may have. (Section 9, Rule 9.) Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. (Section 10, Rule 9.) And that 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. (Section 45, Rule 39.)

There is no parity between this case and that of *Talens vs. Garcia et al.*, 47 Off. Gaz. (Supp. to No. 12), pp. 358 et seq. In the latter case the party who applied for execution for the delivery of the land was the defendant who, in his answer, had sought no affirmative relief for the possession. His defense was simply that he owned the land. Upon the pleadings in that case, it was to be doubted whether in the judgment itself the defendant could be declared entitled to possession.

For the foregoing reasons, with regret I have to dissent.

Petition granted.

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