

HAW PIA, PETITIONER, VS. RAMON R. SAN JOSE, JUDGE OF COURT OF FIRST INSTANCE OF QUEZON, THE REGISTER OF DEEDS OF QUEZON, AND AURELIA ALTEA, RESPONDENTS.

G.R. No. L-952. March 31, 1947

Ponente: HILADO, J.

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HILADO, J.:

In cadastral case No. 63, G.L.R.O. cadastral record No. 1019, lot No. 8610 was the subject of litigation between Haw Pia, the instant petitioner, and Aurelia Altea, one of the instant respondents. The litigation involved the right of conventional redemption which Altea claimed, as assignee of one Valeriano Niala, with respect to said lot.

Decided by the Court of First Instance of Tayabas, and later appealed to the Court of Appeals, the case was disposed of by the latter tribunal in its decision of August 31, 1940, whereby the right of conventional redemption claimed by the now respondent Altea was upheld, the judgment declaring the redemption price to be P490 (Exhibits A and B of petition). The redemption price having been declared in the judgment of the Court of Appeals to be P490, respondent Altea, according to paragraph 4 of the petition, consigned said sum with the clerk of the Court of First Instance of Tayabas (now Quezon) some time in September, 1940, while according to paragraph 4 of Exhibit B of the same petition, it was consigned before October 31, 1940, and had been authorized by the court's order of September 30, 1940.

Subsequent proceedings in the case culminated in an order of the Court of First Instance of Tayabas dated January 13, 1941, decreeing, among other things, that the Register of Deeds register on the Certificate of Title covering said lot the aforementioned right of redemption, which was to last till August 2, 1942. (Exhibit C of petition.) Upon appeal, said order was affirmed by the Supreme Court of the occupation government in a decision promulgated on July 27, 1943 (Exhibits B and C of petition).

Upon Altea's motion of December 1, 1943, and amending petition of December 15, 1943 (Exhibits A and B of petition), the Court of First Instance entered its order of January 6, 1944, directing: (1) Haw Pia within ten days from notice thereof to deliver to the Register of Deeds the owner's duplicate of Original Certificate of Title No. 43125 for its cancellation as respected lot No. 8610; and should Haw Pia fail to do so within the period therein fixed, (2) the Register of Deeds to cancel said certificate of title and to issue another in favor of Altea; and (3) the clerk of said court or the Provincial Treasurer to deliver to Haw Pia the sum of P490 consigned by Altea for the redemption of the land, as above narrated, reserving to said Altea the right which she might have, in a separate action, to claim from Haw Pia the fruits of the land in question. (Exhibit C of petition.)

Under date of December 14, 1943, counsel for Haw Pia filed a petition for continuance of the consideration of the aforesaid motion filed by Altea, to the second fortnight of January, 1944 (Exhibit D of petition), and the court continued the consideration to January 6, 1944, in an order written at the foot of said petition, and on January 6, 1944, the court entered its order of this date already mentioned above.

Against this order of January 6, 1944, petitioner Haw Pia filed three motions for reconsideration, which were all

denied by the Court of First Instance, as appears from the order of August 30, 1946, entered by Judge Ramon R. San Jose (Exhibit J of petition), as follows:

"ORDEN

"El 6 de enero de 1944, este Juzgado expidio una orden, cuya parte dispositiva es del tenor siguiente:

" 'Considerando bien fundada la mocion de Aurelia Altea, el Juzgado ordena (1) a Haw Pia a que dentro del plazo de diez dias desde que reciba copia de esta orden, entregue al Registrador de Tituloa de Tayabas la copia para el dueño del certificado original de titulo No. 43125 para su cancelacion en cuanto al Lote No. 8610, y si deja dicha Haw Pia de entregar dicho titulo dentro del plazo aqui concedido, (2) se ordena al Registrador de Titulos a que lo cancele en cuanto al mencionado lote y expida en su lugar, otro certificado de titulo a favor de Aurelia Altea, cuyas circunstancias personales ya constan al principio de esta orden; y (3) que el escribano de este Juzgado o el tesorero Provincial de Tayabas entregue a Haw Pia la suma de P490 depositada por Aurelia Altea para la recompra de dicho terreno, reservando a dicha Altea el derecho que le pueda asistir, en accion aparte, a reclamar de Haw Pia los frutos del terreno en cuestion desde que Altea se cree con derecho como dueña del mismo.'

"El 18 de enero del mismo año 1944, la reclamante Haw Pia, por medio de su abogado Sr. Fidel J. Silva, presento una mocion de reconsideracion, en la que se pedia, por las razones en ella expuestas, se deje sin efecto dicha orden, de fecha 6 de enero de 1944. A esta mocion de reconsideracion, la reclamante Aurelia Altea, por medio de su anterior abogado, Jose P. Veluz, presento su replica por escrito el 9 de febrero de 1944, y este Juzgado, habiendo considerado los argumentos en pro y en contra de la mocion de reconsideracion, denego dicha mocion de reconsideracion mediante su auto de fecha 26 de septiembre de 1944.

"El 12 de octubre de 1944, la representacion de la reclamante Haw Pia presento una segunda mocion de reconsideracion, y, estando esta pendiente de resolucio, presento otra mocion de reconsideracion el dia 9 de agosto de 1946. A esta tercera mocion de reconsideracion, la representacion de la reclamante Aurelia Altea presento su objecion por escrito con fecha 19 del actual.

"Examinando la segunda mocion de reconsideracion, el Juzgado es de parecer que es una repeticion de la primera mocion de reconsideracion, y, por tanto, deniega la misma.

"En cuanto a la tercera mocion de reconsideracion, la mocionante Haw Pia otra vez suscita las cuestiones sobre la consignacion de los P490 en la Escribania de este Juzgado y sobre los supuestos gastos que ella alega haber incurrido, y que la reclamante Aurelia Altea debe reembolsarlos, de conformidad con lo que se dispone en los articulos 1509 y 1518 delCodigo Civil, las cuales ya han sido objeto de resolucio por parte de este Juzgado cuando considero y denego la primera mocion de reconsideracion, y, en su consecuencia, ya no se pueden suscitar dichas cuestiones en el estado en que se halla ahora el asunto. Por tanto, el Juzgado deniega dicha tercera mocion do reconsideracion, de fecha 9 de agosto de 1946.

"Ahora sobre la cuestion de si o no el Registrador de Titulos de Tayabas actuo de acuerdo con la ley al cancelar el certificado Original de Titulo No. 43125 y expedir en su lugar el Certificado de Transferencia de Titulo No. 20400, el Juzgado es de parecer que la misma no puede suscitarse en una mocion de reconsideracion, puesto que la misma es una cuestion aparte, que no puede resolverse en este incidente.

"ASI SE ORDENA.

"Lucena, Tayabas, Agosto 30, 1946.

(Fdo.) "R. SAN JOSE

Juez"

Petitioner's attack is centered upon the order of the Court of First Instance of January 6, 1944. While the writer has consistently been one of those members of this Court who consider judicial proceedings of the courts of the puppet regime in the Philippines during the war invalid, as such, the majority have just as consistently upheld their validity. At any rate, petitioner submits her case regardless of which theory is to be applied to the case (vide p. 10, petitioner's memorandum). Furthermore, this question has become academic in the instant case, in view of the fact that the order entered by Judge San Jose of the Court of First Instance of Tayabas on August 30, 1946, in effect, reiterated not only the said order of January 6, 1944, but also that of September 26, 1944, denying petitioner's first motion for reconsideration of the order of January 6, 1944. In said order of August 30, 1946, the court denied petitioner's second motion for reconsideration for the reason that it was, in the court's opinion, a repetition of the first motion for reconsideration, thus virtually confirming both the order of January 6, 1944, and that of September 26, 1944, denying its reconsideration. As regards the third motion for reconsideration, Judge San Jose stated in his aforesaid order of August 30, 1946, that petitioner was raising anew the same questions respecting the consignment of the sum of P490 with the clerk of said court, and was claiming that she should also be reimbursed for the expenses alleged by her in accordance with articles 1509 and 1518 of the Civil Code, and Judge San Jose proceeded to declare that those questions had already been the subject of a previous determination of the court when it considered and denied the first motion for reconsideration. For which reason, the third motion for reconsideration was also denied. All of the above specified court orders were appealable. In the case of *Government of the Philippine Islands vs. Payva* (44 Phil., 624), the heirs of Julio Sause had filed a motion in the Court of First Instance of Occidental Negros under section 72 of Act No. 496, praying for an order of the court directing the administrator of the intestate estate of Clara Amarmas to surrender the duplicate of Certificate of Title No. 681 of lot No. 1298 of a certain cadastral survey in order that the said heirs might cause the annotation on the said certificate of title of a certain deed of sale with right of redemption executed in favor of their predecessor in interest Julio Sause by Clara Amarmas. The administrator had refused to surrender said duplicate certificate and, after the court had ordered him to do so, he interposed an appeal to the Supreme Court. Counsel for the heirs of Julio Sause, after failing to obtain an order of the Court of First Instance denying the appeal, tiled a motion to dismiss said appeal with the Supreme Court once the case had been docketed therein, said heirs contending that the order of the court entered under said section 72 of the Land Registration Act was not subject to appeal. This court, in denying the motion, held that since the order appealed from "resolves important questions as to the respective rights of the parties, questions not definitely adjudicated previously to its issuance, and requires the surrender of the certificate of title for an operation which will carry with it, as a necessary consequence, the eventual cancellation of the surrendered certificate and the issuance of a new one in favor of a different owner", said order of the lower court was appealable. The facts of the cited case are very similar to those in the instant proceeding, and the rule therein laid down is perfectly applicable herein. Upon this ground alone—that appeal was the proper remedy—the instant petition for certiorari cannot prosper.

But there are certain other considerations which we deem worthy to be noted. Petitioner lays much emphasis upon the point that the aforesaid order of January 6, 1944, has become impossible of execution because she says the amount consigned by respondent Altea in September or October, 1940, with the Clerk of the Court of First Instance, which was later deposited by said official with the Provincial Treasurer, was "frozen" by the Japanese authorities, and she adds that to this day the present government has not made provision for the payment of said amount. Be this as it may, and even supposing that the so-called freezing of said amount and the alleged failure of the present government to provide for its payment have made it impossible for petitioner to collect the same, the loss, if any there should be, must be suffered by petitioner.

"ART. 1176. If a creditor to whom tender of payment has been made should refuse without reason to accept it,

the debtor may relieve himself of liability by the consignment of the thing due.

"The same effect shall be produced by consignment alone when made in the absence of the creditor, or if the latter should be incapacitated to accept the payment when it is due, or when several persons claim to be entitled to receive it, or when the muniments of the obligation have been lost or mislaid." (Civil Code.)

The amount consigned was in Philippine genuine money before the war and the record shows that all the requisites of a valid consignment were complied with.

"* * * *Ademas de quedar extinguida la obligacion produce la consignacion valida el efecto de quedar libre el deudor de responsabilidad por los riesgos que despues, y sin que procedan de actos suyos, sobrevengan a la cosa debida y consignada.*" (8 Manresa, 4th Edition, p. 297; italics supplied.)

The petition will be dismissed, with costs to petitioner. So ordered.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

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