

**THE ROMAN CATHOLIC ARCHBISHOP OF CACERES, PETITIONER,
VS. JUDGE RAFAEL DE LA CRUZ OF THE COURT OF FIRST INSTANCE
OF CAMARINES SUR, THE PROVINCIAL SHERIFF OF CAMARINES
SUR, CATAL...**

G.R. No. L-25496. December 27, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari seeking the annulment of the order of the Court of First Instance of Camarines Sur in its Civil Case No. 4309 granting herein private respondents' motion for a writ of possession to place them in possession of the land involved which is being used by herein petitioner as a cemetery for the Catholic Parish of Manguring, Calabanga, Camarines Sur, and of the subsequent order of the court a quo denying the motion of petitioner for the reconsideration of said order.

It appears that on January 24, 1955, herein private respondents obtained Original Certificate of Title No. 545 to their land in said Manguring, Calabanga, Camarines Sur, through an ordinary registration proceeding. Embraced in the said certificate of title, however, is the Catholic Cemetery used by petitioner, together with the surrounding area which is admittedly owned by said respondents. Petitioner then commenced action against private respondents on October 17, 1958, by filing the complaint (for reconveyance) in Civil Case No. 4309 of the Court of First Instance of Camarines Sur, praying for judgment (1) to declare herein petitioner the owner of the portion it uses as a cemetery; (2) to order private respondents to reconvey said portion to petitioner; and (3) to condemn respondents to pay it P1,000.00 in damages plus costs. Respondents answered with a denial of petitioner's claim of title and an assertion of its own ownership of the land in question, and by way of counterclaim alleged the existence of a lease and prayed for payment of rentals. After due trial, the court, Judge Jose L. Moya presiding, rendered judgment on June 4, 1959, with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered declaring the plaintiff to be the owner of the land described above and commanding the defendants to reconvey it to him, with costs against them."

The judgment above-quoted was, however, reversed by the Court of Appeals in CA-G.R. No. 27303-R upon appeal thereto by private respondents, the said appellate court finding and holding thus:

"x x x x x x x"

"In this appeal the defendants contend that the lower court erred in holding (1) that the plaintiff acquired title to the land in question by prescription; (2) that the defendants sold the land to the plaintiff as early as 1934; (3) in compelling them to reconvey the land to the plaintiff and (4) in sentencing them to pay damages.

"We have gone over the evidence carefully, particularly the transcript of the stenographic notes taken during the hearing on March 13, 1959, and found nothing to show in what manner the plaintiff acquired ownership of the land in question from the defendants. The statement in the pre-trial order that 'the defendants had been demanding

payment for the land since 1934 but the plaintiff failed to pay and merely made repeated promises to pay' does not afford a safe basis for determining that the land in question was sold by the defendants to the plaintiff. No testimony whatsoever was offered by the plaintiff to show how it acquired the land from the defendants. x x x x

“x x x x x x x

"The documentary evidence does not show that the land involved in the same is that declared by the plaintiff in its name for taxation purposes under Tax Declaration No. 6148 of the municipality of Naga, province of Camarines Sur (Exhibit C). This tax declaration, the commencement year of which is not indicated, shows that the land is bounded on the North by that of Paulino Bonco; on the east by public land, and on the south and the west by that of Paulino Bonco. In other words, the adjoining owner on all sides except on the east is Paulino Bonco. According to the sketch, Exhibit A, showing the dimensions and boundaries of the land (and this was agreed upon by both parties to be correct), the adjoining owner on all sides is the defendant, Marcos Atienza, one of the registered owners of the area covered by Certificate of Title No. 545 of the Registry of Deeds of the Province of Camarines Sur. This area indubitably contains the land in dispute as an integral part. It has not been sufficiently proven that the plaintiff has been in possession of said land since 1934 as its tax declaration, Exhibit C, does not show when it became effective as the land covered thereby is exempt from taxation. On the contrary it shows that the land described therein is altogether different and distinct from the one involved herein and no testimony was presented by the plaintiff to explain the discrepancy.

"The statement in paragraph 3 of the pre-trial order that defendants have been demanding payment for the land since 1934 does not necessarily show that it was sold to it by the defendants. It may be construed in relation to paragraph 4 thereof stating 'that the reasonable compensation for the use and occupancy of the land is P30.00 a month'. The demand for payment mentioned in paragraph 3 may possibly refer to the payment of monthly rentals of P30.00. These doubtful and obscure points could have been threshed out or clarified at the pre-trial conference or at the trial itself, but unfortunately the record of the hearing is a memorial of the incompleteness and deficiency of plaintiff's evidence.

"Plaintiff's acquisition of ownership of the land by prescription has not been satisfactorily established, the defendants maintaining that in using the land as cemetery plaintiff has always recognized their rights thereto. Although this was denied by the plaintiff's lone witness, Fr. Amado Camaya, this mode was not established by positive evidence. During the direct examination of Fr. Amado Camaya he was not given a chance to state what was the nature of the plaintiff's possession and how it was obtained. The transcript of the stenographic notes previously quoted shows that when he was asked about the nature of the plaintiff's possession, the attorney for the defendants objected to the question for lack of basis. The plaintiff's attorney, instead of reforming his question and pressing on the matter so as to establish the plaintiff's uninterrupted, peaceful and public possession thereof in the concept of an owner, desisted and closed his evidence by saying: 'In that case, Your Honor please, that will be all for the witness'.

"The admission by the defendants that the plaintiff has been in possession of the land and using it as a cemetery since 1934, is open to varied interpretations and does not shut out the possibility that the use of the land for that purpose was with the tolerance or permission of the defendants, for which reason they have been demanding payment of rentals at the rate of P30.00 monthly (t.s.n., p. 8, Esplago).

"We are not in accord with the trial court's theory that the demand for payment of the land is an admission that it was sold to the plaintiff by the defendants. In the absence of other evidence showing that the plaintiff became the owner under any of the modes of acquiring ownership established by law, that ownership cannot be merely presumed or implied therefrom. For a reconveyance action to prosper, the plaintiff must show that he is the owner of the land involved, the foundation of such kind of action being an indubitable title which is defeated or rendered ineffectual by fraudulent registration in the name of another under Act No. 496 (Section 55, Act 496, as amended by Act No. 3322; *Consunji v. Tison*, 15 Phil. 81; *Macapinlac v. Gutierrez Repido*, 43 Phil. 770; *Severino v. Severino*, 44 Phil. 343; *Roman Catholic Bishop of Nueva Caceres v. Municipality of*

Tabaco, 46 Phil. 271; Government of the Philippine Islands v. Court of First Instance of Nueva Ecija, 49 Phil. 433; Rodriguez v. Llorente, 49 Phil., 823; Philippines Land Improvement Co. v. Blas, 55 Phil. 540; Palet v. Tejedor, 55 Phil. 790; Bayagas v. Guilao, 64 Phil. 347; Sorsogon v. Salcedo, 87 Phil. 25; Beriones v. Court of Appeals, et al., G.R. No. L-5980, March 22, 1954; Sanchez v. Tamsi, G.R. No. L-16736, June 30, 1961; Macapanas, et al., v. Macawile, et al., CA-G.R. No. 22361-R, September 12, 1963).

"Having shown that plaintiff is not the owner of the land in dispute, it was not, therefore, fraudulently deprived thereof by the registration in the name of the defendants of the area containing it as an integral part. No actionable fraud was, therefore, perpetrated by the defendants in not notifying the plaintiff of its application. Such failure to notify the plaintiff is not the kind of fraud which, under Article 38 of Act 496, serves as a ground for reopening the decree of registration within one year after its issuance or for compelling, under Section 55 of said Act, the reconveyance of the registered property, or portion thereof, to the rightful owner (De la Cruz v. Fabio, 35 Phil. 144; Loyola v. Barruela, et al., CA-G.R. No. 12420-R, Dec. 21, 1955). Perhaps it would be easier to believe that the defendants acted fraudulently in gobbling up the land involved had it been shown by the plaintiff that it purchased the same from the former, and that despite such alienation they proceeded to include it clandestinely in the registration of the area containing it. Even then, it would be hardly possible for the plaintiff not to have known of the application for registration and to oppose it, considering its capacity and its economic and social standing. The publication of the notice of hearing in the Official Gazette, which serves as a notice to the whole world in land registration its proceeding in rem, precludes any imputation to the defendants of fraud or concealment in obtaining registered title thereto. But it is unnecessary to dwell further on the question of whether or not there was fraud, inasmuch as it is our conclusion that plaintiff has no valid title to the land involved and is not the owner of the same.

"WHEREFORE, the judgment appealed from is hereby reversed and the case dismissed with cost against the plaintiff-appellee."

This decision of the Court of Appeals having become final, on October 11, 1965, herein private respondents filed a motion for execution with the lower court, praying that a "writ of possession be issued in this case, commanding the Provincial Sheriff to deliver the land in question" to them; and, notwithstanding petitioner's opposition to this motion, respondent Judge Rafael de la Cruz granted the same in his order of November 24, 1965, as follows:

"A careful reading of the decision appealed from, it is very clear that defendant-appellant was deprived of the possession of the land treated in the decision which is part of the property described in Original Certificate of Title No. 545 of the land records of Camarines Sur.

"To enforce the pronouncements of the appellate court, we find no reason to deny the prevailing defendant-appellant from enforcing the decision. It would indeed be a useless ceremony to ventilate another action just to compel plaintiff-appellee to restore defendants to the possession of the property in question.

"Petition granted."

Petitioner moved for the reconsideration of this order, but his motion was denied by respondent judge in his order of December 15, 1965, with the following rationale:

"The carefully prepared motion for reconsideration citing cases to support the said motion finds no practical applicability to the present case.

"It would be noted that the land in question is a titled property, the ownership of which has been and still with the defendant. Supported by the pronouncements of the Court of Appeals, the basic and elementary concept of ownership attached to it the right of possession.

"To deny the prevailing party, the defendant, from the exercise of ownership and dominion over his property

will be tantamount to giving a premium to the plaintiff which he never did deserve.

"While it is true that the cases cited by plaintiff-appellee were in consonance with the laws then existing, nevertheless the pronouncements of the Court of Appeals finds no support under Article 22 of the Civil Code which seemed to do away with further unnecessary litigations after the very fundamental object and motive of the action has been duly passed upon and decided.

"WHEREFORE, the motion for reconsideration should be, as it is hereby not favorably granted."

In effect, petitioner assails these orders on the following grounds: first, that the issuance of a writ of possession ordering petitioner to deliver the land to private respondents would not be in accordance with the dispositive portion of the decision of the Court of Appeals which merely states "Wherefore, the judgment appealed from is hereby reversed and the case dismissed with cost against plaintiff-appellee"; and, second, that since private respondents themselves maintain "that if the plaintiff (herein petitioner) is in possession of the same (the portion of the land used by petitioner as a cemetery) it is because the plaintiff had asked permission sometime in the year 1934 from the defendants' (herein private respondents') father to utilize said portion of land as cemetery with the agreement that the plaintiff shall pay the defendants the reasonable rental thereof", then, petitioner "cannot be deprived of the possession of the land merely by means of a writ of possession" but respondents "must file an action for unlawful detainer on account of the failure of petitioner to pay the rent as contended by them". (Par. 15, Petition, and Appendices "E" and "G")

Petitioner is right on both scores. Evidently, respondent judge has misread the decision of the Court of Appeals. There is nothing therein indicating that respondents have been illegally deprived of the possession of their land or that the continued possession thereof by petitioner is against their will. Oh the contrary, what appears strongly suggested to the point of appearing as a factual premise for the decision is the existence of a lease agreement between petitioner and respondent covering the land in question. Indeed, if anything is to be gathered regarding this matter from the records, it is that the counter-claim of respondents for the payment of rentals must be considered as having been dismissed by both the trial court and the Court of Appeals, considering the same was properly pleaded and yet it was not passed upon by said courts. Accordingly, the only rentals which would appear to be recoverable by respondents are those which accrued after the decision of the Court of Appeals became final.

Ordinarily, as precedents have it,[1] a judgment declaring a party the owner of a land entitles such party to an execution to re-cover possession thereof from the losing party even if there is no prayer therefore in the complaint. This rule holds, however, only when the matter of possession is not otherwise litigated separately from that of ownership. It is only proper that when possession is dealt with by the parties in any manner that separates it from the matter of ownership or title, the two things be also considered as separable in the judgment. There is nothing inconsistent in ownership and possession being in distinct parties when there are relations or agreements between them to such effect. In this particular case, for instance, while indisputably the title over the subject land belongs to the respondents, it is equally clear that petitioner is using the same as a cemetery, no less, by virtue of a contract of lease. In such circumstance, petitioner's contention must be upheld that it is only by a separate action of ejectment, if such be warranted, that respondents may recover the possession of their land.

In *Talens v. Garcia*,[2] one Felipe Garcia filed a complaint (1) to annul a deed of sale executed by Laureano Estefanio in favor of his co-defendant Jose L. Talens involving a parcel of land (a homestead) in Laur, Nueva Ecija, (2) to compel Laureano Estefanio to convey the property to him, and (3) to recover damages. It appears that after selling the lot to Felipe Garcia in 1938, Estefanio sold it again to Jose L. Talens in 1943. The lower court ruled in favor of Garcia; but on appeal, the Court of Appeals found for the defendant Jose L. Talens, and said:

"Wherefore, the decision appealed from is hereby reversed and defendant-appellant Jose Talens absolved from

the complaint, with costs against the plaintiff-appellee, Felipe Garcia."

Upon finality of the decision, Talens filed with the lower court a motion for an order to the provincial sheriff "for the possession of the controverted land by Jose L. Talens by evicting the plaintiff therefrom" and for collection of costs. The court denied the petition as to possession, explaining that after having gone "over the decision of the Court of Appeals we have found no disposition regarding the return of the possession to defendant Jose L. Talens". Talens instituted an action for mandamus in this Court to compel the respondent judge to order the delivery of the land to him, but the same was denied by this Court in the following rationale:

"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 defined. 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 doors for the parties to protect their respective interests, if they still have any.'"

The same rationale was echoed in *Jabon, et al. v. Alo*,^[3] where this Court held:

"x x x 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."

As correctly pointed out in the *Perez v. Evite* case,^[4] "it may be observed that in both decisions (referring to the *Talens* and *Jabon* cases just cited), this Court underscored the possibility that the actual possessor has some rights which must be respected and defined", and that "the pronouncement was made having in mind cases wherein the actual possessor has a valid right over the property enforceable even against the owner thereof". It is Our view that this doctrine is squarely applicable to the present case where, admittedly, petitioner came into the possession of the property in dispute with prior consent of and agreement with herein private respondents' predecessor-in-interest, and upon the promise of the former to the latter to pay "the reasonable rental thereof". It is Our conclusion then that petitioner is legally in possession of the property and its right of possession must be respected by private respondents. If at all, the alleged non-payment of rents may be the basis of an action for ejectment; but the declaration of ownership in the action for reconveyance here involved does not justify the issuing of a writ of possession under the circumstances of this case. Consequently, We hold that the respondent judge acted in excess of jurisdiction in granting herein private respondents' motion for a writ of possession.

Incidentally, it may be stated before closing, the writ of possession issued by respondent judge could not be the appropriate remedy, even if it were assumed that the judgment of the Court of Appeals carries with it a

recognition of respondents' right to have possession of the disputed land. The writ of possession is available to an applicant for registration and his successors-in-interest only as against a party who has acquired possession thereof adversely to such applicant prior to the issuance of the decree, but not against one who has been legitimately given such possession like petitioner in this case who, by respondents' own admission is a lessee. The pro-per remedy against a lessee is ejectment under Rule 70. Besides, a writ of possession is supposed to be issued by the court issuing the decree of registration as a consequence thereof and not by virtue of a counterclaim in ordinary action as in this case.

WHEREFORE, the orders of November 24, 1965 and December 15, 1965 are set aside, with costs against private respondents.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Teehankee, JJ., concur.
Fernando, J., in the result.

[1] See *Pasay Estate Company v. Del Rosario*, 11 Phil. 391; *Manlapas v. Llorente*, 48 Phil. 298; *Marcelo vs. Mencias*, L-15609, April 29, 1960; *Perez v. Evite*, L-16003, March 29, 1961, 1 SCRA 949; *Unson v. Lacson*, L-13798, July 31, 1961, 2 SCRA 861.

[2] 87 Phil. 173.

[3] 91 Phil. 750.

[4] *Supra*.

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