

GASPAR DURLAO, PETITIONER AND APPELLEE, VS. MARCELO T. DOMINGO, RESPONDENT, JOSE APOSTOL, OPPOSITOR AND APPELLANT.*G. R. No. L-18835. April 29, 1963*

Ponente: LABRADOR, J.

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This is an appeal from an order of the Court of First Instance of Nueva Ecija, the Hon. Jose N. Leuterio, presiding, issued in Cadastral Case No. 2922, L.R.C. Cad. Eec, No. 49239, ordering Jose Apostol, oppositor-appellant herein, to surrender Transfer Certificate of Title No. 16671 to the Register of Deeds of Nueva Ecija or to petitioner's counsel in Cadastral Case No. 2922 of the said court.

It appears that in Civil Case No. 1961 of the Court of First Instance filed on October 29, 1955 entitled "Gaspar Dumlao, plaintiff, vs. Marcelo T. Domingo, defendant," the latter was ordered in the decision rendered by the lower court to reconvey to the plaintiff the property covered by Transfer Certificate of Title No. 16671. The defendant having failed to execute the deed of reconveyance after said decision had become final and executory, the clerk of court, in compliance with an order of the lower court authorizing him to execute said deed of reconveyance, executed the same, place and on behalf of defendant and in favor of plaintiff. But in order to have this deed of reconveyance recorded in the Registry of Deeds of Nueva Ecija, it was necessary that the owner's duplicate of said certificate of title be surrendered to said office.

On April 4, 1957, Gaspar Dumlao in Cadastral Case No. 2922, L.R.C. Rec. No. 49239, petitioned the court to order Marcelo T. Domingo to surrender owner's duplicate certificate of title No. 16671 to the Register of Deeds or to his (Dumlao's) counsel. The motion was granted by the lower court in an order dated July 1, 1957. On January 20, 1958, Marcelo T. Domingo manifested in court that he did not have the title in his possession as he had previously delivered it to one Jose Apostol, to guarantee payment of a debt. So in a petition dated February 12, 1958, Gaspar Dumlao prayed the court to order said Jose Apostol to surrender the said owner's duplicate of the transfer certificate of title in question. This petition was granted in an order dated February 12, 1958.

Jose Apostol objected to the surrender claiming that said owner's duplicate of title was turned over to him by virtue of an obligation annotated at the back of the original of the said certificate of title. The court overruled the objection of Apostol declaring that the registration of the deed of reconveyance and the issuance of a new title in plaintiff's favor would not and cannot prejudice the appellant whose rights according to the opposition were duly annotated and registered in the certificate of title, because the transfer certificate in the name of Dumlao would carry the lien of said Jose Apostol in the title, citing the case of Gurbax Singh Pabla & Co., et al. vs. Reyes, et. al., 92 Phil., 177. Consequently the court ordered said Jose Apostol to surrender either to the petitioner or directly to the Register of Deeds the said transfer certificate, of title, that the deed of reconveyance in favor, of Dumlao be registered and annotated on the title and that another title be issued in favor of the petitioner.

His motion for reconsideration having been denied, Jose Apostol brought an appeal to the Court of Appeals which

certified the case to Us, since only questions of law are involved.

Appellant argues in the main that inasmuch as he has already an interest and right to hold the title in question, to require him to surrender the same would be tantamount to a deprivation of property without due process of law; that the decision in his favor in Civil Case No. 1748 would be rendered ineffectual. (Civil Case No. 1748 was filed by Apostol before the present case, to enforce an obligation of Marcelo T. Domingo, and in the decision therein, the property covered by the title in question was attached.)

There is no merit in the above argument of oppositor-appellant Jose Apostol, because as expressly stated in the order of the court requiring the Surrender of the transfer certificate of title "in favor of1 Dumlao (the certificate) would carry the lien in the name of the said Jose Apostol," and because "it is not intended by the proceeding for registration to seek to destroy or otherwise affect already registered rights over the land subsisting or existing from the time of registration. These rights are not put in issue when an instrument is subsequently presented for registration." The above ruling of the court below is supported by Section 38 of the Land Registration Act. The order of the court is expressly authorized by Section 111 of the Land Registration Act which in part provides:

"Sec. 111. In every case where the clerk or any register of deeds is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the clerk or register of deeds shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the court. The court, after hearing, may order the registered owner or any person withholding the duplicate to surrender the same, and direct the entry of a new certificate upon such surrender."

It is also contended in this appeal that the court issuing the order against oppositor-appellant Jose Apostol for the presentation of the transfer certificate of title had no jurisdiction over the subject matter of the case for the reason that Apostol was not a party in Civil Case No. 1961 in which case the order for the delivery of the certificate of title was issued. In answer to this argument it should be stated that the certificate of title in question is in the name of Marcelo T. Domingo, who was defendant in the civil action in which the order for the delivery of the certificates of title was issued. As the certificate of title was in the name of said Marcelo T. Domingo, the court had the power to direct any person in possession of the said title in the name of Domingo to deliver said certificate of title to the court or the register of deeds.

It must be remembered that in the new certificate of title to be issued in the name of petitioner Dumlao, in lieu of the certificate of title in the name of Domingo to be cancelled, the entries appearing at the back of said certificate of title in favor of Apostol will also be annotated in the new title to be issued in the name of Gaspar Dumlao. (See. 59, Land Registration Act). This is a guarantee that any rights that Apostol may have acquired to the property prior to the issuance of the new certificate of title in the name of Dumlao will not be affected.

Finding no merit in the grounds raised in the appeal of Jose Apostol, the order appealed from is hereby, affirmed, with costs against the oppositor-appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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