

**ALIPIO VILLONES, AURELIO VILLONES AND CATALINA VILLONES,
PLAINTIFFS IN CIVIL CASE NO. 130 OF THE COURT OF FIRST
INSTANCE OF NUEVA ECIJA, PETITIONERS, VS. MARIANO NABLE,
JUDGE OF...**

G.R. No. L-1372. November 29, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari. Properly it should be a petition for mandamus, and it will be so considered. The facts and incidents that led up to it are these:

On December 30, 1940, Conrado Pens on sold or promised to sell to Alipio Villones, Aurelio Villones, and Catalina Villones, one half of his residential land situated in the town of Talavera, province of Nueva Ecija, for P1,000. There and then the seller received from the purchasers fifty cavanos of palay as advance payment, same to be appraised in March of the following year. When, it was agreed, the balance should be paid. On different dates in 1941, Pens on received from the Villones various amounts ranging from P20 to P50 in cash on account of the purchase price.

On March 4, 1946, the Villones brought an action against Pens on for specific performance, alleging that of the P1,000 agreed upon as the sale price they had paid P425 leaving an unpaid balance of P575; that the defendant refused to accept the latter amount in 1942 because, he said, the money offered was Japanese war notes; that after liberation, in February 1946, they again offered the defendant the same amount, this time in Philippine legal currency, but the defendant again refused to accept it or to execute the corresponding deed of sale, giving as his reason the fact that he no longer wished to sell the land.

As the defendant's answer was only a general denial, Judge Sotero Rodas, upon motion of the plaintiffs, rendered judgment on the pleadings on May 17, 1946, sentencing the defendant, in accordance with the complaint, "to accept the payment of P575 which, together with the sum of P425 already paid to him, represents the full purchase price of the land sold by him to said plaintiffs, and to execute the corresponding deed of conveyance as of December 30, 1940, and to pay the costs."

The defendant did not appeal; and as far as the record would show, no step was taken by either party towards the enforcement of the judgment until September 20, 1946, when the defendant, through counsel, filed a motion with the court, stating that he was ready and willing to receive from the plaintiffs the sum of P575 and to execute a deed of conveyance to one half of his "terreno solar declarado para fines de amillaramiento bajo el Tax No. 18229 a favor de los demandantes." To the motion was attached the projected deed.

The plaintiffs opposed the defendant's above motion as to the extent of the land proposed to be conveyed. It so happened that the defendant's land, which is covered by certificate of title No. 2715, contains a total area of 4,715 square meters; that for purposes of taxation Pens on had subdivided this land into two lots, the smaller of which

was assessed under tax declaration No. 18229 at P250; that the extent of this lot is only 1,000 square meters. The plaintiffs alleged in their opposition that it was one half of the entire parcel of 4,715 square meters which had been sold to them; that since December 30, 1940 they had been in continuous and open possession of this half, having made improvements thereon with the knowledge of the defendant; that in making reference to tax declaration No. 18229 in their complaint, they labored under the belief that it was the declaration of the defendant's entire lot. Wherefore, they countered with a petition that a hearing be held and that thereafter the defendant be ordered to execute a deed of absolute sale to one half of the 4,715 square meter land described in certificate of title No. 2715, more particularly segregated by fences constructed by them. In another motion, the plaintiffs asked that the provincial sheriff be appointed to view the land and submit a report of his inspection. The defendant objected to the suggested hearing or appointment of the sheriff as commissioner, insisting that according to the plaintiffs' own allegations in their complaint, only 500 square meters, or one half of the land covered by land tax declaration No. 18229, had been bought by them.

Judge Mariano Nable sustained the defendant's objection, reasoning that the plaintiffs' motion would amount to a reopening of the case and readmission of evidence after the decision had become final and executory. It was at this juncture that the present proceeding was instituted in this Court.

The land which, according to the plaintiffs, was sold to them was described in the complaint as follows: "Residential land about 500 square meters, more or less, in area, and bounded on the North, by the solar of the defendant; on the East, by the land of Juan Valenton; on the South, by the land of Eusebio Valenton; and on the West, by the National Road. This land is one half of the land declared under tax No. 18229, and assessed at P250."

This description is contradictory, in that by the boundaries given it embraces one half of the total area included in the defendant's certificate of title, or over 2,000 square meters. In paragraph 17 of the complaint, as has been seen, it was also alleged that after December 30, 1940, when the sale was consulted, the plaintiffs entered upon the possession of one half of defendant's entire lot and had been in such possession up to the time the action was commenced, having erected houses and made other improvements on said half, improvements which had cost them about P200. On the other hand, the complaint stated that the land which the defendant had sold to the plaintiffs was one half of the land declared under tax declaration No. 18229 (which measures 1,000 square meters) and assessed at P250. The complaint also alleged that the land sold to the plaintiffs had an area of about 500 square meters.

These conflicts are irreconcilable. With them in the way the judgment can not be executed. Something has to be done to remove the ambiguity if the decision is to be enforced. What is the remedy? The identity of the land that is the subject of the judgment may be ascertained from the pleadings and the record if these afford sufficient clue to the sense of the description. Otherwise extrinsic evidence, oral or written, should be taken. As there was no trial and no evidence was adduced from which the identity of the land in litigation could be made out with absolute certainty and with fairness to both parties, an investigation is obviously the only course open, investigation which may take the form of a hearing or an ocular inspection of the land by the court or a commissioner, or both methods, as the court may deem convenient.

Such proceedings are in aid of execution and are authorized by Section 2 (c) of Rule 34, which provides that the court may, upon its own motion or upon application of one of the parties, direct a reference to the commissioner "when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or of carrying a judgment or order into effect." As Freeman on Judgment says, although a judgment or decree which determines all the equities or the substantial merits of the case is final for the purpose of appeal, further proceedings may be necessary in the execution of it, or some incidental or dependent matters may still remain to

be settled. (1 Freeman on Judgments, 5th Rev. Edition, 5.) These are supplementary proceedings, not a new trial or rehearing of the original case. They are to be confined to the determination of the bounds of the land which was adjudged to the plaintiffs. Matters already decided will not be reviewed or re-examined, such as the fact that there was a contract of sale between the parties, the fact that the plaintiffs have already paid P425 out of the agreed price of P1,000, and the fact that the plaintiffs have a right to have a deed of conveyance executed in their favor.

The petition is granted and the respondent Judge is ordered to conduct further proceedings in accordance with the tenor of this decision, with costs against the respondent Conrado Penson.

Moran, C. J., Ozaeta, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

TUASON, J.:

Mr. Justice Feria has authorized me to certify that he concurs in this decision.

DISSENTING

PARAS, J.:

In civil case No. 130 of the Court of First Instance of Nueva Ecija, the plaintiffs therein (Alipio Villones, Aurelio Villenes and Catalina Villones) sought to compel the therein defendant (Conrado Penson) to deed to them a parcel of land situated in Talavera, Nueva Ecija, and more particularly described in paragraph II of the complaint as follows:

"Residential land about 500 square meters, more or less, in area, and bounded on the North by the solar of the defendant; on the east, by the land of Juan Valenton; on the South, by the land of Eusebio Valenton; and on the west, by the National Road. This land is one-half of the land declared under Tax No. 18229, and assessed at P250."

On May 17, 1946, the case was disposed of by a decision on the pleadings to the effect that "in accordance with said complaint, the court hereby renders judgment ordering the defendant to accept the payment of P575 which together with the sum of P425 already paid to him represents the full purchase price of the land sold by him to said plaintiffs and to execute the corresponding deed of conveyance as of December 30, 1940, and to pay the costs." This judgment became final, and in a motion filed on September 20, 1946, Conrado Penson offered to execute in favor of the Villones a deed of conveyance for the following lot:

"Terreno solar situado en la Poblacion del Municipio de Talavera, Provincia de Nueva Ecija, lindante al Norte, Conrado S. Penson; al Este, Conrado S. Penson (terreno Bacood); al Sur, Eusebio Valenton; y al Oeste, Carretera Nacional, de una extension superficial de quinientos (500) metros cuadrados. Este Terreno es la mitad Sur del descrito y amillarado bajo el Tax No. 18229."

The Villones objected to the offer, insisted that Conrado Penson was bound to convey the entire portion included within the boundaries specified in the description set forth in the complaint (charging an area of some 2,000 square meters), and prayed that the provincial sheriff be commissioned to view the disputed lot and determine its size. In its order of November 28, 1946, the Court of First Instance of Nueva Ecija overruled the position of the Villones on the ground that the latter in effect sought to reopen the case in which the judgment had become final. Failing to obtain a reconsideration, the Villones have instituted the present special civil action for certiorari.

It appears that the herein respondent (Conrado Penson) was the owner of cadastral lot No. 272, situated in Talavera, Nueva Ecija, and covered by certificate of title No. 2715. For purposes of taxation, however, and as

early as December 31, 1929,—evidently with a view to paying a lower real estate tax,—said respondent divided the lot into two. One was declared as residential (with an area of 1,000 square meters) and being bounded as follows: North, Trinidad Tinio; east, Conrado S. Penson; south, Eusebio Valenton; west, provincial road. (See tax declaration No. 11912, Annex X.) The other was declared as corn land (with an area of 3,714 square meters) and being bounded as follows: north, Trinidad Tinio; east, Juan Valenton; south, Eusebio Valenton; west, land of declarant. (See tax declaration No. 11911, Annex X-3.) Tax declaration No. 11912, covering the first lot, assessed as residential and having an area of 1,000 square meters, was subsequently cancelled by tax declarations Nos. 13739 (Annex X-1), 16496 (Annex X-2), and 18229. The latter tax declaration No. 18229 was made on December 28, 1940, and two days thereafter (according to the very complaint of the herein petitioners), one half of the lot covered by said tax declaration was sold by the respondent Penson to the petitioners.

There can therefore be no doubt that the petitioners well knew that the portion actually sold to them was only one half of the land covered by tax declaration No. 18229; "solar" as stated also in all receipts mentioned in the complaint. They are now estopped to deny this fact, not only because of their very admission in the complaint in civil case No. 130, but because of the final judgment in said case based on their complaint. The petitioners cannot seek refuge in the rule that the boundaries prevail over the area, for the simple reason that the apparent conflict is settled by the positive and definite stipulation that the portion sold "is one half of the land declared under tax No. 18229." At any rate, if there is any ambiguity in the identity of the lot, the same should be construed against the petitioners whose complaint gave rise to and was the sole basis of the final judgment in civil case No. 130.

It is true that the petitioners have intimated that, when the land was sold to them, delivery was made of the entire portion now claimed by the petitioners who in turn built a fence around it and placed improvements thereon. But they failed to avail themselves of the right to adduce corresponding evidence in civil case No. 130, and they should not now be permitted to supply what was neglected or forgotten.

I therefore dissent from the opinion of the majority in so far as the "investigation" which the respondent Judge is ordered to conduct is not limited to the determination of the boundaries of the half portion of the land covered by tax declaration No. 18229, adjudged in a final judgment to have been sold to the petitioners, but leaves the door wide open for adjudicating to the petitioners an area greater than 500 square meters.

Section 2(c) of Rule of Court No. 34 which provides that the court may, upon its own notion or that of either of the parties, direct a reference to a commissioner "when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or of carrying a judgment or order into effect," should not be interpreted as authorizing the reopening of a closed case or a substantial alteration or modification of a final judgment.

I vote for the dismissal of the petition, with costs against the petitioners.

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