

ANG LAM, PETITIONER, VS. POTENCIANO ROSILLOSA AND VICENTE SANTIAGO, JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON, RESPONDENTS.

G.R. No. L-3595. May 22, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

This is a petition for certiorari to annul an order of the respondent judge, denying the petitioner's motion to set aside a judgment in civil case No. 4820 of the Court of First Instance of Quezon Province, entitled Potenciano Rosillosa vs. Maximo Alpay and Eugenia Peregrina, on the ground of lack of jurisdiction over the person of the defendant Eugenia Peregrina, and to declare said judgment null and void.

The herein respondent, Potenciano Rosillosa, was the owner of a parcel of land, planted to coconuts, containing an area of 145,957 square meters, and located in the municipality of Unisan, province of Quezon, which parcel of land he had acquired by homestead and for which he had obtained homestead title No. 3201, patent No. 18102, issued January 30, 1932. On May 22, 1944, he sold said parcel of land to Maximo Alpay for P10,000. In the month of July, 1944, Maximo Alpay in turn sold said parcel of land to Eugenia Peregrina for the sum of P25,000 and Transfer Certificate of Title No. 19539 was duly issued in her name on July 29, 1944.

On or about October 22, 1947, Potenciano Rosillosa instituted said civil case No. 4320 in the Court of First Instance of Quezon against Maximo Alpay and Eugenia Faregrina to redeem the said property under the provisions of the Public Land Act. The complaint was amended on October 21, 1943. In the meantime the plaintiff asked for the dismissal of the case against the defendant Maximo Alpay on the ground that the latter had ceased to have any interest in the property sought to be redeemed.

On December 4, 1943, upon petition of the plaintiff Potenciano Rosillosa, who alleged that the defendant Eugenia Peregrina could not be found and served with summons at her known address, the respondent judge ordered that said defendant be served with summons by publication in The Manila Chronicle. Thereafter said defendant, having failed to appear within the period fixed in the summons, was declared in default; and the court, after hearing the evidence for the plaintiff, rendered a decision on April 2, 1949, ordering the defendant Eugenia Peregrina to execute a deed of resale of the land in question in favor of the plaintiff Potenciano Rosillosa upon payment to her of the sum of P50, which the court found as the equivalent in Philippine currency of the original price of P10,000 in Japanese military notes (which the original buyer Maximo Alpay had paid to the said plaintiff) at the rate of P1, Philippine currency, for every P200 of Japanese fiat money.

It turned out, however, that the defendant Eugenia Peregrina had died in the city of Manila as early as April 1, 1945, that is to say, several years before said civil case No. 4820 was commenced. On September 22, 1949, the present petitioner Ang Lam, who alleged under oath that on September 21, 1949, he was appointed by the Court of First Instance of Manila administrator of the estate of the deceased Eugenia Peregrina, filed a petition in said civil case No. 4820, praying that the judgment theretofore rendered therein be set aside on the ground that the

court had not acquired jurisdiction over the person of the deceased defendant Eugenia Baregrina. That petition was denied by the respondent judge on the grounds (1) that plaintiff's action was by its nature one in rem; (2) that the petitioner Ang Lam is the surviving husband of the defendant Eugenia Peregrina and had the administration of the land in litigation; and (3) that the decision of the court was handed down on April 2, 1949, whereas the petition to set it aside was presented only on September 26, 1949, that is to say, after the lapse (sic.) of the periods mentioned in section 3 of Rule 3# of the Rules of Court.

We are of the opinion and so hold that the judgment in question is null and void for lack of jurisdiction over the person of the defendant. At the time the action was commenced said defendant had long passed to another world. Hence the publication of the summons against her was absolutely vain and of no validity whatsoever.

The attempt of the respondent judge to hold the said summons by publication binding upon the petitioner Ang Lam on the theory that the action was one in rem and that said petitioner is the surviving husband of the defendant and is the administrator of the property in question, is, in our opinion, untenable. An action to redeem, or to recover title to or possession of, real property is not an action in rem or an action against the whole world, like a land registration proceeding or the probate of a will; it is an action in personam, so much so that a judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. (See *Patriarca vs. Orate*, 7 Phil. 390, 393-394.)

"Actions in personam and actions in rem differ in that the former are directed against specific persons and seek personal judgments, while the latter are directed against the thing or property or status of a person and seek judgments with respect thereto as against the whole world." (1 C.J.S. 1148.)

An action to recover a parcel of land is a real action, but it is an action in personam, for it binds a particular individual only although it concerns the right to a tangible thing. An action for resolution of a contract of sale of real property is an action in personam (*Sandejas vs. Robles*, 46 Off. Gaz., [Supp. to No. 1], 203 [1]). If, on the other hand, the object is to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established, and if any one in the world has a right to be heard on an allegation of facts which, if true, shows an inconsistent interest, the proceeding is in rem (*Grey Alba vs. Cruz*, 17 Phil. 49, 62). For instance, an application for the registration of land under Act No. 496 is an action in rem, for the judgment which may be rendered therein is binding upon the whole world (*Reyes vs. Razon*, 38 Phil. 480, 482). The probate of a will is a proceeding in rem, because the order of probate is effective against all persons wherever residing (*In re Estate of Johnson*, 39 Phil. 156). (See *Moran*, Rules of Court, 2d. Ed. Vol. 1, p. 9.)

With regard to the other reason adduced by the respondent judge, that the petition to set aside the judgment was presented after the lapse of the six months' period provided in Rule 38, we think said rule is not applicable.[2] That rule provides for relief from a judgment, order or other proceeding taken against a party to the case, who "by fraud, accident, mistake, or excusable negligence, has been unjustly deprived of a hearing therein, or has been prevented from taking an appeal." The petitioner herein was not a party to the original case, and he did not seek relief from the judgment upon any of the grounds mentioned in section 1 of Rule 38, but sought the annulment of said judgment for lack of jurisdiction over the person of the defendant, who had long deceased before the action was commenced. A judgment rendered by a court which had not acquired jurisdiction either over the subject matter or over the person of the defendant, is void. A void judgment may be assailed or impugned at any time either directly or collaterally, by means of a petition filed in the same case or by means of a separate action, or by resisting such judgment in any action or proceeding wherein it is invoked.

The order of the respondent judge of November 18, 1949, is set aside and the decision rendered in civil case No. 4820 on April 2, 1949, is declared null and void, with costs against the respondent Potenciano Rosillosa.

Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

[1] 81 Phil., p. 421.

[2] Although immaterial to our conclusion, we note that the petition was presented within 60 days after petitioner learned of the judgment, and within six months after the judgment was entered.

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