

**THE GOVERNMENT OF THE PHILIPPINES, REPRESENTED BY THE
DIRECTOR OF LANDS, APPLICANT, VS. JACINTA ALVAREZ, ET AL.,
CLAIMANTS. LIM HAY BE, PETITIONER AND APPELLEE. DALMACIO
ATILANO...**

G.R. No. 10322. May 28, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Zamboanga, Hon. Teodoro Camacho' presiding, ordering Dalmacio Atilano and Eutalia Atilano to surrender to the Register of Deeds of the City of Zamboanga, owner's duplicate certificate of title No. 3843.

Petitioner Lim Hay Be, administratrix of the estate of the deceased Laureano Madrazo, alleges that the intestate was the owner of the land covered by certificate of title No. 3843, having acquired it at a sale by public auction; that the sale was confirmed by an order of the court dated July 4, 1939; that from that time the owner's duplicate certificate has been in the possession of Melchor Rojas; that demands have been made upon said Melchor Rojas for the surrender to petitioner of the owner's duplicate certificate, but the same has not been delivered; that the duplicate certificate is now in the possession of Dalmacio Atilano and Eutalia Atilano. The petitioner prays that the owner's duplicate certificate of title in the name of Melchor Rojas and Maria Socorro Pantaleon be surrendered by Dalmacio Atilano and Eutalia Atilano to the Register of Deeds of the City of Zamboanga in order that the latter could cancel the same and issue, in lieu thereof, a transfer certificate of title in the name of Laureano Madrazo.

Dalmacio Atilano filed an opposition to the petition alleging that the land was sold by the original owners to Alipio Atilano for P160.00 on February 17, 1920 and that the said Alipio Atilano on February 2, 1936 sold and conveyed the same property to oppositors Dalmacio Atilano and Eutalia Atilano; that on or after July 4, 1939, the owner's duplicate was no longer in the possession of Melchor Rojas and his wife, but was in that of the oppositors; that no demand was ever made by the petitioner or by Laureano Madrazo for the delivery of the said duplicate certificate; that the possession of the land remained in the oppositors; and that the order of the court of July 4, 1939 can no longer be enforced by motion.

Upon the above issues, the parties went to trial and thereafter the court issued the order subject of this appeal.

The evidence submitted at the hearing discloses that the original certificate of title No. 3843 was issued on October 31, 1913, in the name of Melchor Rojas and Maria Socorro Pantaleon. On February 17, 1920, the registered owners sold the land to Alipio Atilano for P160.00 (Exhibit "14"). On February 2, 1936, Alipio Atilano in turn sold the property to Dalmacio Atilano and Eutalia Atilano for P1.00 (Exhibit "13"). None of the above deeds of sale is registered but Dalmacio Atilano and Eutalia Atilano obtained possession of the owner's duplicate certificate as well as the possession of the land. On March 9, 1935, the property was attached in civil case No. 3252 of the justice of the peace court of Zamboanga, entitled Tan Tan vs. Melchor Rojas, this attachment being

noted at the back of the original certificate of title (Exhibit "10"). It further appears that on July 4, 1939, upon petition of the intestate the Court of First Instance of Zamboanga ordered the cancellation of certificate of title No. 3843 and the issuance of a transfer certificate in the name of the intestate (Annex "A").

The real issue presented relates to the respective rights of the petitioner's intestate and the oppositors to the land in question, because while the petitioner asks for the surrender of the owner's duplicate to enable the Register of Deeds to cancel the original and issue a transfer certificate of title in the name of the intestate, the oppositors object thereto claiming ownership of the land covered by the certificate by virtue of a previous sale, possession of the duplicate certificate and that of the land. So the parties at the trial submitted the documents, evidencing their respective titles or claims to the property in question. The court below should have refused to take cognizance of the petition for lack of jurisdiction. However, it did not do so although in its order limited itself to requiring the surrender of the certificate for the purpose of annotating the intestate's interest, thus:

"IN VIEW OF THE FOREGOING, the Court after considering the motion of the petitioner dated May 26, 1952 and finding¹ that the same is in order, hereby GRANTS the same. Dalmacio Atilano and Eutalia Atilano are hereby ordered to surrender to the Register of Deeds of the City of Zamboanga, Philippines, the owner's duplicate of Original Certificate of Title No. 3843 which is actually found in their possession." (p. 25, Record on Appeal.)

The lack of jurisdiction of the cadastral court over the subject matter of the motion and the issues raised in the opposition was opportunely raised before the trial court in oppositor's motion for reconsideration (Record on Appeal, pp. 44-48) and is again raised before us in Appellant's Brief (Record on Appeal, pp. 35-36.)

Finding that the court below as a cadastral court has no jurisdiction to pass upon the petition and the issues raised and tried before it (*Miraflor vs. Leano, et al.* 93 Phil., 466, 49 Off. Gaz., [7], 2775; *Cabangcala, et al. vs. Domingo*, 96 Phil., 124, 50 Off. Gaz., [11], 5319; *Enriquez, et al., vs. Atienza, et al.*, 100 Phil, 1072, 53 Off. Gaz., [20], 7231; *Castillo vs. Ramos, et al.*, 78 Phil., 809, 45 Off. Gaz., 183), the order issued is hereby reversed, and the petition is hereby dismissed, with costs against the petitioner and appellee.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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