

ARING BAGOBA, PEDRO DURANO, LOPEZ SUGA, BUAT ONGIO, JAIME ANGA AND MAURA ANGA, PETITIONERS, VS. HON. ENRIQUE A. FERNANDEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO, AND JOS...

G.R. No. 11539. May 19, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for certiorari and mandamus filed by Aring Bagoba, her brother Lopes Suga, her nephews Buat Ongio and Jaime Anga, and her niece Maura Anga, to set aside the order of execution of the decision against them, pending appeal, dated October 17, 1956, and to compel respondent Judge of the Court of First Instance of Davao to approve the record on appeal without further amendment, such as the inclusion of certain pleadings and documents suggested and required by the winning party, and which petitioners considered to be unnecessary.

For purposes of this petition, the following facts gathered from the petition itself and its annexes and the answer filed by counsel of respondents and its annexes, may be stated as follows: Obot, presumably a non-Christian, had one brother, Lopez Suga (Bagobo) and two sisters named Aring (Bagobo) and Antap (Bagobo), the latter upon her death leaving three children, now petitioners, Buat Ongio, Jaime Anga, and Maura Anga. Obot cohabited with a Japanese subject, named Hasuhiro Nakamura, without the benefit of marriage, and from their union was born an only child, named Jose (Nakamura) Original, on March 30, 1924. Obot died in 1928, leaving two parcels of land, Lot No. 158, with an area of about 15 hectares, covered by Original Certificate of Title No. 573, and Lot No. 162, with an area of about 21 hectares, covered by Patent No. V-1007, and Original Certificate of Title No. 141. Lot No. 162 was applied for as a free patent by Obot, but the patent and original certificate of title covering the same were issued after her death and in favor of her heirs. Both lots are included in the Guianga Cadastre, Davao.

In 1946, Lopez Suga and his sister Aring executed affidavits to the effect that their sister Obot died without issue, and that they were her only heirs; that although Obot cohabited with Nakamura, the two were never married; that Lopez Suga was renouncing in favor of his sister Aring any right or interest which he may have in the properties of Obot. On the basis of these affidavits, Aring executed another affidavit adjudicating to herself Lot No. 158, above-mentioned. On the basis of this adjudication, Original Certificate of Title No. 573 was cancelled and Transfer Certificate of Title No. 193 was issued in her name.

On December 15, 1950, Aring, her brother Lopez and their nephews and niece Buat Ongio, Jaime Anga and Maura Anga, executed a deed of extrajudicial partition of Lot No. 162 and divided said parcel among themselves. It would appear that all of them had taken possession of both Lots 158 and 162 in the year 1946, that is to say, after liberation.

It would further appear that upon the death of Obot in 1928, her common law husband Hasuhiro Nakamura took charge of her properties and secured an appointment as a guardian of the person and properties of their child, Jose (Nakamura) Original, and he had been rendering Recount of his guardianship and administration to the court until

he died in 1945. It will be noticed that the brother, sister, nephews and niece of Obot took possession of her properties, particularly Lots 158 and 162, after the death of Hasuhiro Nakamura.

After Liberation, or rather, about the year 1945, Jose (Nakamura) Original was taken to Japan by the United States Army of occupation to act as interpreter. In the meantime, presumably considering him as a Japanese subject, and therefore, an enemy alien, the Enemy Property Custodian proceeded to take charge of the properties left by Obot, and naturally inherited by her son, Jose, and on April 4, 1946, Captain Jose Phelon of the Enemy Property Custodian wrote to Pedro Durano, husband of Aring and who was administering her properties, telling him that in occupying Lot No. 158, he was trespassing on land under the custody of his organization, and asking him to leave the property with a warning that otherwise, his continued possession would lead to "consequences very serious for you".

Still in Japan and employed by the United States Army as interpreter, Jose (Nakamura) Original, on August 9, 1951 executed a general power of attorney in favor of Brigido R. Valencia, authorizing him to take charge of his properties and transact all business, even to bring court action in connection therewith. On the basis of said authority, the present case was filed in the Court of First Instance of Davao on behalf of Jose, to recover Lots 158 and 162 and for damages. After trial, respondent Judge Enrique A. Fernandez rendered the decision dated August 30, 1956, whose execution the petitioners now seek to stop. The decision ordered the defendants, petitioners herein, to deliver to the plaintiff or his legal representative, the two lots in question, with the improvements thereon. In said decision, the trial court found the facts we have already stated. It further found that the petitioners herein knew all along that Jose was the son of Obot, and therefore, inherited all her properties, including the two lots in question; that Aring and her brother Lopez Suga made false statements and representations in their affidavits to the effect that Obot died without issue; that petitioners herein even admitted having seen not only Jose, but his father, Hasuhiro Nakamura, on the properties in question as late as 1945; that although petitioners have introduced some improvements on the lots in question in the form of coconut, coffee, and durian trees, nevertheless, they were possessors in bad faith, not only because they knew that the lots did not belong to them, but because said improvements were introduced after the demand had been made on them to leave said properties. These are without doubt the reasons why after the rendition of the judgment, respondent Judge granted the petition of Jose for the immediate execution of said judgment on the ground that the appeal being prosecuted by the petitioners herein was merely for purposes of delay, this aside from the claim of plaintiff Jose that the appeal was frivolous. It is of interest to note that in his order of October 17, 1956, directing the issuance of a writ of execution of his judgment pending appeal, respondent Judge stated that during the hearing of plaintiff's motion for execution, defendants tacitly admitted that the land in litigation belonged to plaintiff, but claimed that the valuable improvements on the land were introduced by them in good faith. The order further said that defendants promised to deliver the land to plaintiff on his return to the Philippines from Japan, but said order also stated that to prevent plaintiff's return to the Philippines, they had filed charges in the Philippine Consulate in Tokyo to the effect that plaintiff, during the occupation of the Philippines by Japan, became a member of the Japanese Military Police (Kempetai) and as such, had committed all kinds of crimes, when in fact, they knew all along that all their charges were false.

On the basis of what we have already stated, we do not hesitate to say that the order for the issuance of a writ of execution of the judgment was properly and correctly issued.

The other cause of action of the present petition is that, at the instance of plaintiff Jose, respondent Judge had by order required petitioners herein to amend the record on appeal by adding certain pleadings and documents which petitioners consider to be unnecessary. We are inclined to agree with petitioners in this regard. The pleadings filed on behalf of Jose in that case, such as, the complaint, were amended more than once, and naturally, defendants

therein were obliged to amend their answers. Petitioners now claim, apparently with reason, that there is no need for including in the record on appeal the original pleadings which were later amended. Again, the pleadings to the inclusion of the Philippine National Bank as an additional party, in the opinion of petitioners, have no place in the record on appeal, for the reason that said Bank to which the properties in question had been encumbered, despite the filing of a notice of lis pendens, has lost interest in the case for the reason that the obligation secured by said encumbrance had already been liquidated.

In view of the foregoing, the petition as regards the annulment of the order for immediate execution of the judgment of the trial court is denied. With respect to the amendment of the record on appeal, the trial court is hereby advised and directed to again go over its record of the case and giving it full discretion, to determine for inclusion in the record on appeal only those pleadings and documents which are strictly necessary for the enlightenment and consideration of the case by the appellate court, in order to avoid unnecessary expense. The writ of preliminary injunction heretofore issued is hereby dissolved. No costs.

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

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