

ALTO SURETY & INSURANCE CO., INC., PLAINTIFF AND APPELLEE, VS. ELEUTERIO LIMCACO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11596. March 16, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On January 19, 1950, plaintiff, a corporation duly organized under the laws of the Philippines, filed an action against defendants before the Court of First Instance of Manila to recover the amount of P1,800, plus 12% interest thereon per annum, based on an indemnity agreement entered into between plaintiff and defendants. In due time, the Court rendered judgment ordering defendants to pay plaintiff the sum of P2,006.25, with 12 % interest per annum, plus P100 as attorney's fees and costs of suit. Defendants failed to appeal from the decision which became final and executory.

On August 4, 1952, plaintiff moved for execution of the decision, which was granted, and, accordingly, a writ of execution was issued on August 23, 1952, as a result of which the sheriff levied upon a parcel of land belonging to defendant Emilio D. Dizon which was covered by Transfer Certificate of Title No. 15198 of the Register of Deeds of Manila. After the requisite publication, the property was sold at public auction and adjudicated to plaintiff as the highest bidder for the sum of P3,100. Meantime, defendant Dizon tried to negotiate the repurchase of the property from plaintiff, but the negotiation failed. And so, on July 2, 1956, plaintiff filed in the same case, a petition to cancel the title issued in the name of the original owner and to have a new one issued in its name, praying at the same time that the property be placed in its possession in accordance with Section 31, Rule 39, of the Rules of Court.

Defendants opposed this petition verbally on the ground that the court has no jurisdiction to entertain the petition for the same comes under the court which took cognizance of the original case relative to the registration of the property. On August 18, 1956, the court, overruling the opposition, issued an order directing the Register of Deeds of Manila to cancel Transfer Certificate of Title No. 15198 and issue in lieu thereof a new one in the name of plaintiff, directing at the same time the sheriff to place plaintiff in possession of the property under Section 31, Rule 39, of the Rules of Court. From this order defendants took the present appeal.

The appeal is meritorious. The property in question is one registered under the provisions of Act 496. Under Section 78 thereof, upon the expiration of the time for the redemption of the land sold by virtue of a writ of execution, a person claiming under the execution "may petition the court for entry of a new certificate to him", and under Section 112 of the same Act, this petition should be filed in the original registration case as may be inferred from the following paragraph: "Any petition filed under this section and all petitions and motions filed under the provisions of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered" (*Italics ours.*)

Thus, in the case of *Gavan vs. Wislizenus*, 48 Phil., 632, the facts of which are similar to those involved in the

present, this Court, interpreting the scope of Section 112 of Act 496, made the following pronouncement:

"It will be observed that the motion of June 29 was not filed in 'the original case in which the decree of registration was entered, but in an ordinary civil action and in view of the provisions quoted, it is evident that the court exceeded its jurisdiction in granting the motion under these circumstances.

Land registration proceedings are as separate and distinct from ordinary civil actions as are the latter from criminal actions, and it will probably not be contended that our courts have jurisdiction in civil actions to convict persons of criminal offenses.

"The rule that all petitions and motions filed under the provisions of the Land Registration Act must be presented in the original registration case, was adopted with an intelligent purpose in view; to allow such petitions and motions to be filed and disposed of elsewhere would eventually lead to confusion and render it difficult to trace the origin of the entries in the registry." (*Italics ours*)

It is obvious that the lower court acted in excess of its jurisdiction when it granted plaintiffs petition in the instant case praying for the issuance of a new title in its name in lieu of that of the original owner of the property. Hence that portion of the order has no legal validity.

With regard however to the portion of the order which directs that plaintiff be placed in possession of the property, which was acquired by it as highest bidder in the execution sale carried out by the sheriff and which sale became absolute for lack of the requisite redemption on the part of the owner, the court acted properly pursuant to Section 31, Rule 39, of the Rules of Court, which provides:

"Sec. 31. Deed and possession to be given at expiration of redemption period. By whom executed or given.—If no redemption be made within twelve months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to the conveyance and possession; but in all cases the judgment debtor shall have the entire period of twelve months from the date of the sale¹ to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it. The possession shall be given by the same officer if no third parties are actually holding the property adversely to the judgment debtor." (*Italics ours.*)

Wherefore, the order appealed from is set aside insofar as it orders the Register of Deeds to issue a new certificate of title in the name of plaintiff in lieu of that of its original owner, but the order is affirmed insofar as it orders the sheriff to deliver the possession of the property in question to plaintiff. No costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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