

CIPRIANO C. ANTONIO (DECEASED), PETITIONER; CANDELARIA Y. ANTONIO, PETITIONER AND APPELLEE, VS. CARMEN ROCAMORA, OPPOSITOR AND APPELLANT.

G.R. No. 13090, November 27, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the order dated June 14, 1957, of the Court of First Instance of Negros Occidental in Cadastral Case No. 31 (L.B.C. Case No. 446, Lot No. 102) directing the issuance of a writ of possession in favor of "herein petitioner-appellee.

Lot No. 102 (with an area of 5755 square meters) of San Carlos Cadastre was-originally decreed in Cadastral Case No. 31 of the province of Negros Occidental in favor of Susana, Numeriano, Dolores, Tranquilino and Ricardo, all surnamed Tabares, in equal shares. Original Certificate of Title No. 22339 in their names was issued on July 25, 1927 (Exh. 3).

Subsequently, Numeriano Tabares and Susana Tabares, of 2/5 shares of said lot consisting of 2,302 square meters, sold their rights, title, and interest to the spouses Martin Antonio and Eugenio Cayas, who, in turn, sold a portion of 180 square meters thereto to Florentina Pastrana on July 3, 1928. When Pastrana tried to register her deed of sale, the same was returned to her by the Register of Deeds because the transfer of the 2/3 portion to the Antonio spouses, of which the 180 square meters in question were a part, did not as yet appear annotated on the original certificate of the Tabares. Pastrana, however, took possession of the 180 square meters area and built her house thereon. Later, upon her death, her daughter Angela Ducay succeeded her.

On July 13, 1948, Angela sold said 180 square meters to herein appellant Carmen Rocamora. Rocamora thereupon constructed a bodega within the 180 square meters purchased by her, to house a corn mill costing P10,000.00, wherein Cipriano C. Antonio, son of the spouses Martin Antonio and Eugenia Cayas used to mill his own corn.

Subsequently, Cipriano C. Antonio acquired the 2/3 undivided portion of his parents and succeeded in having issued on July 16, 1949, a transfer certificate of title No. T-4813 in the names of himself, Cipriano C. Antonio (2/5 shares), Jose Hormillosa (2/3 shares) and the spouses Eladio Tan and Petra D. Tan (Vs share), the latter coowners apparently the successors-in-interest of the three other Tabares brothers and sister, original owners.

On September 30, 1950, Cipriano C. Antonio apparently having agreed with his registered co-owners to partition and segregate their undivided portions, filed a petition with the Court of First Instance in the same Cadastral Case No. 31, for the approval of a subdivision plan, Psd-29938, and the issuance of a separate title over his 2/5 portion now designated as Lot No. 102-A in the subdivision plan. Carmen Rocamora, having learned about this move of Cipriano Antonio, filed her opposition to said petition on October 11, 1950, in so far as her portion of 180 square meters of the segregated lot No, 102-A was concerned, asserting her right of ownership and actual possession of said portion.

On December 9, 1950, the court dismissed the opposition of Carmen Rocamora as being not well-founded and approved the subdivision plan and ordered the register of deeds to cancel Transfer Certificate of Title No. T-4813 and to issue new separate certificates of title, one in favor of petitioner Cipriano C. Antonio covering the segregated lot No. 102-A representing his 2/5 previously undivided portion, and another in the names of the other registered co-owners, covering the new segregated lot No. 102-B representing their 3/5 undivided portion in the bigger lot No. 102.

Carmen Rocamora filed two motion for reconsideration of the order of the court of December 9, 1950, both of which were denied the last, however, only on January 30, 1957. Because of the delay in the disposal of her motion for reconsideration, Rocamora filed an ordinary civil action, Civil Case No. 4119 docketed on November 12, 1956, entitled "Carmen Rocamora vs. Candelaria Y. Vda. de Antonio" (Cipriano C. Antonio having died in the meantime), wherein she claimed ownership and possession of the 180 square meters portion of lot No. 102-A and sought the annulment of the order of December 9, 1950, directing the issuance of a new certificate of title over the entire lot No. 102-A in favor of Cipriano C. Antonio.

On March 23, 1957, Candelaria Y. Vda. de Antonio, as administratrix, invoking the order of the court of December 9, 1950, filed a petition in the cadastral case for the issuance of a writ of possession over the controverted portion of 180 square meters included in lot No. 102-A.

On April 16, 1957, appellant Rocamora opposed the motion, contending that (a) the issuance of a writ of possession would be improper and unauthorized, considering that the order of December 9, [1950] upon which petitioner relied, concerned merely the approval of a subdivision plan and the issuance of a new transfer certificate title and did not involve nor adjudicate the possession or ownership of the lot in question; (6) the proceedings were not for the granting of an original decree and the issuance of the corresponding certificate of title, but dealt with voluntary transactions on registered land taking place subsequent to the judgment or decree adjudicating title to the land; and finally, (c) there was pending in the same court another action, Civil Case No. 4119, involving the question of ownership and possession of the same lot.

On June 14, 1957, the court granted the writ of possession to herein petitioner-appellee, in the following order:

"ORDER "

Acting upon the motion dated March 18, 1957 filed by attorneys for the petitioner Cipriano C. Antonio substituted by Candelaria Y. Antonio, praying that a writ of possession be issued against the oppositor, Carmen Rocamora, ordering the latter to turn "over and restore the portion of lot No. 102-A, San Carlos Cadastre, Psd29938, actually possessed and occupied by her, to the petition, as administratrix of the estate of her deceased husband Cipriano C. Antonio; the opposition thereto dated April 11, 1957 filed by attorneys for the oppositor; the reply dated April 26, 1957 filed by attorneys for the petitioner; and the rejoinder dated June 5, 1957 filed by attorneys for the oppositor; it appearing that the order of this Court dated December 9, 1950, approving subdivision plan Psd—29988 for lot No. 102 of the San Carlos Cadastre and ordering the Register of Deeds of Negros Occidental to cancel Transfer Certificate of Title No. T-4813 covering said Lot No. 102 and to issue in lieu thereof of new Transfer Certificate of Title for Lot No. 102-A,. Psd-29938, in the name of Cipriano C. Antonio, is admittedly now final; considering that although the petition that gave rise to the aforesaid order of December 9, 1950 is merely an incident subsequent to the original proceedings for registration, said incident may be considered original as between the petitioner and the oppositor in the sense that they are before this Court for the first time; considering that the opposition interposed by Carmen Rocamora has been finally resolved'in this subsequent proceeding and no writ of possession has heretofore been issued in favor of the-petitioner with reference to the lot in question, with the result that the cases of Yuson vs. Diaz, 42 Phil. 22, and Manuel vs. Rosario, 56 Phil. 365, cited by the oppositor, are not controlling; considering that oppositor's contention that petitioner's remedy is to institute an ejectment proceeding against

the oppositor, is not conducive to a speedy administration of Justice; and considering lastly that the pendency of the complaint filed by the oppositor against the petitioner in the Court of First Instance of Negros Occidental, Civil Case No. 4119, praying that the oppositor be adjudged the sole owner of the disputed portion of Lot No. 102-A and to order of this Court "dated December 9, 1950 declared null and void, is not a bar to and will not be affected by the issuance of a writ of possession herein; the Court resolves to direct as it hereby directs the issuance of the corresponding writ of possession in favor of petitioner Candelaria Y. Antonio and against oppositor Carmen Rocamora.

So Ordered."

Her motion for reconsideration having been denied, oppositor Carmen Rocamora interposed the present appeal claiming that the lower court committed an error in prepared by a duly authorized private surveyor and subnew lots, Nos. 102-A and 102-B, had been surveyed and issuing the writ of possession directing appellant Rocamora to vacate the land and deliver the same to petitioner-appellee.

We agree with oppositor-appellant that the lower court was in error.

The initial, error of the court a quo consists in having considered the proceeding that led to the order of December 9, 1950, as original between the parties solely because they were before the court for the first time, in spite of its recognition that the same (proceeding) was merely an Incident subsequent to the original proceedings for registration. The petition that gave rise to the December, 1950 order, is specifically referred to in the said order thus:

"This is a verified petition, dated September 30, 1950, for the approval of a subdivision plan," (Italics supplied.)

This was the nature and purpose of the petition, nothing more. The order, after setting forth the fact that the lot No. 102 sought to be subdivided was inscribed in the names of the co-owners appearing in the corresponding certificate of title, with their respective undivided portions, and the fact that the subdivision plan, delimiting the two new lots, Nos. 102-A and 102-B, had been surveyed and prepared by a duly authorized private surveyor and subsequently approved by the Director of Lands, merely approved the said subdivision plan and ordered the Register of Deeds to cancel the old certificate of title and issue new ones covering said two lots Nos. 102-A and 102-B in accordance with the approved subdivision plan, after payment of the corresponding fees therefor.

This is a routinary order in a routinary proceeding of subdivision among co-owners resulting from an agreed determination and segregation of their previous undivided shares or interests in a single parcel of land. It is true, and this is the cause of the misapprehension, that a short reference was made in the order, to the opposition of Carmen Rocamora which was dismissed, not being well founded. But this portion of the order did not constitute any adjudication of the question of ownership or of possession of the questioned small portion of 180 square meters out of the 2302 square meters in lot 102-A. There were absolutely no findings of fact nor conclusions of law upon which such adjudication, if intended, was predicated. In fact, the record of the proceeding in 1950 does not show any evidence presented and the incident of the approval of the subdivision plan was submitted, as far as it can be gathered from the record, only upon the arguments of counsel for the parties. Consequently, that proceeding can if not be likened to a proceeding where ownership is adjudicated. It was merely a summary proceeding under Section 112 of Act 496, where controversial issues can not be litigated^[1] but must be threshed out in an ordinary case.^[2] Having come to this conclusion, and considering that the writ of possession authorized under section 17 of Act 496, is but the execution of a judgment or decree adjudicating title as between adversary parties in the registration proceeding, it follows that no such writ can be issued by virtue of the said order of December 9, 1950, it being not an adjudication of title or possession of the property involved. Nor can the writ of possession be issued pursuant to the original decree in favor of respondent Antonio, successor-in-interest of the

original applicant, although no previous writ has yet been issued, because the appellant, against whom the writ is sought to be enforced, is not an adverse party, herself being a successor-in-interest of the successful original applicant, and obtained possession of the questioned portion long after the original decree has been issued and become final.[3] On the relative merit of the parties respective claims to the ownership and right of possession of the property in question, this Court expresses no opinion, it being unnecessary in this proceeding and it appearing that the same is being litigated in an ordinary civil action, Civil Case No. 4119, now pending in the court below.

In view of the foregoing, the order appealed from dated June 14, 1957 is hereby set aside, with costs against the appellee. So ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

Paras, C. J., concurs in the result.

[1] Castillo et al. vs. Ramos et al., 78 Phil., 809; 45 Off. Gaz., 183.

[2] Tangunan, et al. vs. Republic of the Philippines; 94 Phil., 171; 50 Off. Gaz., 115, and the cases cited therein.

[3] Yuson, et al. vs. Diaz etc., et al., 42 Phil., 22; Hart vs. Revilla, G.R. No. 16498, December 18, 1920; Manuel vs. Rosario, 56 Phil. 365; Sepagan vs. Dacillo, 63 Phil., 412.

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