

PEDRO AVENTURA AND ANACLETA GALAN, PETITIONERS, VS. HON. PANTALEON A. PELAYO, JUDGE, COURT OF FIRST INSTANCE OF ILOILO, ROMAN PORTAJE, ESPERIDION ADELANTE, MARGARITA ADELANTE, A...

G.R. No. 13852. March 30, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In Cadastral Case No. 88, G.L.R.O. Record No. 1565 of the Court of First Instance of Iloilo, Pedro Aventura and Esperidion Adelante both filed cadastral answers or claims over Lot No. 2457, located in Janiuay, Iloilo. When the case was called for hearing on November 8, 1951, claimant Adelante failed to appear and an order of default was entered against him. On April 18, 1952, evidence for claimant Aventura was received by the Court; on April 24, 1952, Judge Roman Ibañez rendered judgment adjudicating Lot No. 2457 to Aventura; and on November 24, 1952, the Court ordered that the corresponding decree of registration be issued.

On February 11, 1953, a certain Roman Portaje, who did not file any answer or claim over Lot No. 2457, filed, through counsel Attorney P. Peñaredondo, a "Petition for Review of Judgment and Petition for Ocular Inspection". Consideration of this petition was indefinitely postponed. In the meantime, the decree of registration in favor of claimant Pedro Aventura was entered by the General Land Registration Office on April 17, 1953; and on May 19, 1953, Original Certificate of Title covering said Lot No. 2457 was issued in his name.

On June 22, 1953, adjudicatee Aventura filed with the Court, a "Motion for a Writ of Possession" of Lot No. 2547. On July 18, 1953, claimant Espiridion Adelante for the first time appeared again in the case, also through Attorney P. Peñaredondo, and opposed the motion for writ of possession. On July 18, 1953, the court, through Judge Makalintal, set the petition for review of Portaje and the motion for writ of possession of adjudicatee Aventura for hearing on August 1, 1953. On July 28, 1953, Aventura filed his opposition to the petition for review of Portaje. On July 31, 1953, claimant Adelante filed a reply to Aventura's opposition, as well as a motion to amend their answer and petition for review of judgment and ocular inspection. This last motion was duly opposed by Aventura.

After a hearing of the several pending motions and oppositions in the case, the Court, through Judge Makalintal, issued, on October 20, 1953, an order denying Portaje's petition of February 9, 1953 asking for the review of judgment and ocular inspection, as well as his amended petitions of July 31, 1953, Attorney Peñaredondo, as counsel for the Adelantes, having filed, on October 24, 1953, a motion for the reconsideration of the order of October 20, said motion was denied by Judge Makalintal in the following order of November 18, 1953:

"The claimants Petra and Esperidion, all surnamed Adelante, as well as Roman Portaje and his wife Margarita Adelante, thru Atty. P. Peñaredondo, have filed a motion dated October 24, 1953 asking for reconsideration of the order of October 20, denying their petition for review of the judgment pursuant to Section 38 of Act 496. It appears from the record that Esperidion Adelante filed a cadastral answer to the lot in question. Pedro

Aventura was another claimant, he having filed another answer in his name. On November 8, 1951, the case, was called for hearing and in view of the non-appearance of Espiridion Adelante the Court (Judge Roman Ibañez, presiding) issued an order declaring him in default and commissioning the Clerk of Court to receive the evidence. On November 12, 1951, Adelante filed a motion asking that the order of default be lifted, but so far as the record shows the said motion was never resolved. On April 18, 1952 the commissioner appointed by the Court received the evidence for the claimant Pedro Aventura, and on the following April 24 the Court rendered its decision adjudicating the lot in question to him.

"Espiridion Adelante for the first time filed his pleading herein after the judgment, in the form of an opposition to the motion for a writ of possession of Pedro Aventura, which opposition was submitted on July 15, 1953. Even then Esperidion Adelante did not ask for a review of the judgment, the petition to that effect having been filed on February 11, 1953 not by him but by Roman Portaje, who does not appear to have any interest in the land he not having filed any cadastral answer herein.

"But even granting that the opposition of Esperidion Adelante to the petition for a writ of possession submitted by adjudicatee, Pedro Aventura, is in the nature of a petition for review under Section 38 of Act 496, the same cannot be granted, because a review of the decree under that legal provision is available only on the ground of fraud, which has been interpreted to mean actual fraud, that is intentional deception or downright dishonesty of some sort. No such deception or dishonesty can be ascribed to the adjudicatee Pedro Aventura simply because he filed a cadastral answer herein claiming to be the owner of the property applied for.

"Nor may the petition of Adelante be considered as a petition for relief from judgment under Rule 38 of the Rules of Court inasmuch as none of the grounds provided for therein has been alleged and, furthermore, more than six (6) months had elapsed since the decision herein was rendered.

"With reference to the petition for a review filed by Roman Portaje, the same is without merit, because he was never a party herein and has never filed a cadastral answer.

"WHEREFORE, the motion for reconsideration is hereby denied."

On December 10, 1953, Attorney Penaredondo, in behalf of the claimants Adelantes and of Portaje, again submitted a motion for reconsideration and petition for review, which was later amended on January 8, 1954 in a motion entitled "Amended Motion for Reconsideration and Amended Petition for Review and Motion to Lift the Writ of Possession". This amended motion and petition Aventura accordingly opposed, and on January 19, 1954, the Court, through Judge Ibañez, denied the amended motion for reconsideration of January 8, 1954 for lack of merit.

On February 5, 1954, counsel for the Adelantes filed a motion to lift the writ of possession and to give due course to the amended petition for review of judgment. Aventura opposed the motion on the same day. This motion was again denied by Judge Ibañez on February 16, 1954 for lack of merit.

It appears, though, that before the Court issued its order of denial of February 16, 1954 aforesaid, Attorney Peñaredondo had again submitted in behalf of the Adelantes, on February 11, 1954, another motion entitled "Motion to Put Up Bond and to Lift Order of the Writ of Possession", claiming, inter alia, that the Court had not yet passed upon the additional grounds for review of decree presented in movants' amended petition for review of January 8, 1954. This last motion Judge Ibanez set for hearing on March 19, 1954 "por razones de equidad y justicia". Aventura sought to reconsider the order of hearing but failed. The scheduled hearing was continued from March 19, 1954 to May 21, 1954 and thence to June 17, 1954. The record does not show, however, that any hearing was held, as scheduled, on June 17, 1954, because Cadastral Judge Roman Ibañez was legislated out of office by Republic Act No. 1186.

Three years later, on June 16, 1957, adjudicatee Pedro Aventura and his wife Anaclea Galan filed in the case a

"petition to terminate proceedings", raising the Question of lack of jurisdiction of the Court to further act in the case. Said petition was ordered stricken off the record "for being unnecessary" by Judge Pantaleon Pelayo. Whereupon, Aventura and his wife Galan moved on September 3, 1957 "to set aside court's order of March 11, 1954 and to issue order for the enforcement of the writ of possession". Judge Pelayo denied this motion and ordered the clerk of court to set the case for hearing as soon as possible. Then, on February 17, 1958, petitioners Aventura submitted a "Petition for the Annulment of the Orders of May 5, 1954, May 20, 1954 and September 16, 1957" for lack of jurisdiction". Again Judge Pelayo denied this petition and ordered the case scheduled for hearing with notice to all the parties.

Claiming that Judge Pelayo's order of March 18, 1958 is void for having been issued without or in excess of the court's jurisdiction, since more than five years have elapsed from the entry of the decree of registration in their favor, the adjudicatee Pedro Aventura and his wife Anaclea Galan presented the present petition for certiorari before this Court to annul said order.

We think the petition should be granted, for the following reasons:

First. There appears no further necessity for the lower court to hear respondents Adelantes' "Motion to Put Up Bond and to Lift Order of the Writ of Possession" of February 13, 1954, the only incident, that the respondent Judge in his answer claims was set for hearing in his questioned order of March 18, 1958. Note that this motion of the Adelantes simply reiterates their motion to lift the writ of possession issued in favor of petitioners, which had already been previously denied several times by Judges Makalintal and Ibañez. It is true that the motion also alleges that the court had not yet ruled on the additional grounds for a review of the decree presented by the Adelantes in their petition of January 8, 1953 (should be 1954), and urges that said grounds should be passed upon. This second claim is, however, likewise untenable, because in his order of January 19, 1954, Judge Ibanez denied the Adelantes' motion for reconsideration of January 8, 1954 for lack of merit, and as their amended petition for review, with its supposed additional grounds, was embodied in the same pleading of January 8, 1954, denial of the pleading must have been in its entirety; that is, denial of the motion for reconsideration of the writ of possession included as well as denial of the amended petition for review. This denial by Judge Ibanez of the amended petition for review of respondents Adelantes was reiterated and confirmed when he issued his subsequent order of February 16, 1954, also denying for lack of merit the Adelantes' motion of February 5, 1954.

Second. Denial by Judge Ibanez on February 16, 1954 of respondents Adelantes' motion to give due course to their amended petition for review also implies that there has been no amended petition for review validly and properly filed in the case from February 16, 1954 up to the present. Indeed, after their first petition for review was denied by Judge Makalintal, respondents Adelantes could not have filed a second petition for review without leave of court, and this they admitted when they sought court authority to give due course to their amended petition. From the time their motion of February 5, 1954, to give due course to their amended petition, was denied by Judge Ibanez on February 16, 1954, respondents Adelantes never took any other steps to have their amended petition admitted. Not having been admitted by the Court, their amended petition for review did not interrupt the running of the one-year period for the review of the decree in favor of petitioners entered on April 17, 1953. When the respondent judge, in his order of March 18, 1958, set the Adelantes' motion of February 13, 1954 for hearing, therefore, the period of one year within which the decree of registration in the case may be attacked for review had long elapsed. Thus, the hearing set by the respondent judge to determine whether or not the court should rule on respondents Adelantes' amended petition for review would not serve any useful purpose, because the decree in favor of petitioners had already become final and indefeasible (Section 38, Act 496) and may no longer be modified, altered, or set aside (*Director of Lands vs. Gutierrez David*, 50 Phil., 707; *Cabanos vs. Register of Deeds*, 40 Phil., 620).

Third. Even assuming that respondent Adelantes could have filed an amended petition for review (i.e., a second petition for review because their first had already been denied) without leave of court and that, therefore, their amended or second petition was deemed filed for the consideration of the court on the date it was submitted on January 8, 1954, respondents Adelantes have nowhere shown that said amended or second petition was based on actual fraud (the only ground upon which a petition for review may be filed under Section 38, Act 496), or that the additional grounds alleged therein did not exist when their first petition was filed.[1] As a matter of fact, respondents Adelantes have not even made said amended or second petition part of the records of this case, so that we have no way of determining whether the same was based on proper and acceptable grounds. In view of this failure of respondents either to copy said petition into the records, or to explain the grounds thereof and the time they arose, it would be safe to assume that said petition was but a reiteration of the first,[2] or the same is founded on grounds that were available at the time of the filing of the first petition, and consequently, it is in the category of a pro forma petition that did not interrupt the running of the one-year period after which petitioners' decree had become conclusive and incontrovertible. For this reason, the hearing scheduled by the respondent judge would be but a superfluity and merely waste the valuable time of the court.

Fourth. Finally, respondents Adelantes have been guilty of laches in the prosecution of their motion of February 13, 1954 (the one set by the respondent judge for hearing) and may therefore, be considered to have abandoned and withdrawn the same. Being the parties interested in said motion, it was incumbent upon them to take the initiative and exercise diligence in seeing that said motion was promptly heard and resolved. But for three years respondents showed no further interest in said motion, and had not petitioners filed their petition to terminate the proceedings in June, 1957, respondents would not have awakened from their lethargy and called said motion to the attention of the court. It would do violence both to the dominant purpose of the Registration Act to render registered titles conclusive and indefeasible after one year as well as the need to expedite the disposal of cases and prevent the clogging of court dockets, to still hear said motion after respondents Adelantes had failed to prosecute the same for an unreasonable length of time.

All in all, we believe the respondent judge acted in grave abuse of discretion, amounting to excess of jurisdiction, in issuing his order of March 18, 1958 setting respondents' motion of February 11, 1954 for hearing. As petitioners' decree and title have, by this time, become final, conclusive, and indefeasible, there is nothing more left to be done in the case except to finally close and terminate these registration proceedings.

Wherefore, the order in question is set aside, and another one shall be entered ordering the final closure of Cadastral Case No. 88, G.L.R.O. Record No. 1565, with respect to Lot No. 2457 of the January, Iloilo Cadastre. Costs against respondents Esperidion Adelante, et al.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

[1] The settled rule is that grounds existing when a first motion attacking a pleading or proceeding was filed but not included therein are deemed waived and cannot be set up again in a second motion (Sec. 8 Rule 26, Rules of Court). This principle may be applied by analogy to land registration proceedings (Rule 132, supra).

[2] This is not improbable, since respondents Adelantes had in this case indulged in the undesirable practice of filing repetitious motions for reconsideration and for the lifting of the writ of possession.

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