

IN RE: PETITION FOR ISSUANCE OF SEPARATE CERTIFICATE OF TITLE.

G.R. No. 20136. June 23, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petitioner Jose A. Santos y Diaz seeks the reversal of an order of the Court of First Instance of Albay, denying his petition, filed in Cadastral Case No. M-2197, LRC Cad. Rec. No. 1035, for the cancellation of original certificate of title No. 1035, for the cancellation of original certificate of title No. RO-3848 (25322), issued in the name of Anatolio Buenconsejo, Lorenzo Bon and Santiago Bon and covering Lot No. 1917 of the Cadastral Survey of Tobacco, Albay, and the issuance, in lieu thereof, of a separate transfer certificate of title in his name, covering part of said Lot No. 1917, namely, Lot No. 1917-A of Subdivision Plan PSD-63379.

The main facts are not disputed. They are set forth in the order appealed from, from which we quote:

It appears that the aforementioned Lot No. 1917 covered by Original Certificate of Title No. RO-3848 (35233) was originally owned in common by Anatolio Buenconsejo to the extent of ½ undivided portion and Lorenzo Bon and Santiago Bon to the extent of the other ½ (Exh. B); that Anatolio Buenconsejo's rights, interests and participation over the portion above-mentioned were on January 31, 1961 and by Certificate of Sale executed by the Provincial Sheriff of Albay, transferred and conveyed to Atty. Tecla San Andres Ziga, awardee in the corresponding auction sale conducted by said Sheriff in connection with the execution of the decision of the Juvenile Delinquency and Domestic Relations Court in Civil Case No. 25267, entitled 'Yolanda Buencosejo, et al. vs. Anatolio Buenconsejo; that on December 26, 1961 and by a certificate of redemption issued by the Provincial Sheriff of Albay, the rights, interest, claim and/or participation which Atty. Tecla San Andres Ziga may have acquired over the property in question by reason of the aforementioned auction sale award, were transferred and conveyed to the herein petitioner in his capacity as Attorney-in-fact of the children of Anatolio Buenconsejo, namely, Anastacio Buensejo, Elena Buenconsejo and Azucena Buenconsejo and Azucena Buenconsejo (Exh. C)."

It would appear, also, that petitioner Santos had redeemed the aforementioned share of Anatolio Buenconsejo, upon the authority of a special power of attorney executed in his favor by the children of Anatolio Buenconsejo; that relying upon this power of attorney and redemption made by him, Santos now claims to have acquired the share of Anatolio Buenconsejo in the aforementioned Lot No. 1917; that as the alleged present owner of said share, Santos caused a subdivision plan of said Lot No. 1917 to be made, in which the portion he claims as his share thereof has been marked as Lot No. 1917-A; and that he wants said subdivision Lot No. 1917-A to be segregated from Lot No. and a certificate of title issued in his name exclusively said subdivision Lot No. 1917-A.

As correctly held by the lower court, petitioner's claim is clearly untenable, for: (1) said special power of attorney authorized him to act on behalf of the children of Anatolio Buenconsejo, and, hence, it could not have possibly vested in him any property right in his own name; (2) the children of Anatolio Buenconsejo had no authority to execute said power of attorney, because their father is still alive and, in fact, he and his wife opposed the petition

of Santos; (3) in consequence of said power of attorney (if valid) and redemption, Santos could have acquired no more than the share pro indiviso of Anatolio Buenconsejo in Lot No. 1917, so that petitioner can not—without the conformity of the other co-owners (Lorenzo and Santiago Bon), or a judicial decree of partition issued pursuant to the provisions of Rule 69 of the new Rules of Court (Rule 71 of the old Rules of Court) which have not been followed by Santos—adjudicate to himself in fee simple a determinate portion of said Lot No. 1917, as his share therein, to the exclusion of the other co-owners.

Inasmuch as the appeal is patently devoid of merit, the order appealed from is hereby affirmed, with treble costs against petitioner-appellant Jose A. Santos y Diaz. It is so ordered.

Bengzon, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

Order affirmed with treble costs.

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