

MARCOS B. COMILANG, PETITIONER-APPELLANT, VS. HON. GENEROSO A. BUENDIA, JUDGE OF THE CITY COURT OF BAGUIO; ABDON DELENELA, GUILLERMO PEREZ AND THE PROVINCIAL SHERIFF OF BAGUIO A...

G.R. No. 24757. October 25, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

On appeal from an order of the Court of First Instance of Baguio City, in Civil Case No. 1440, denying the petition of Marcos Comilang to annul the order of the Municipal Court of Baguio City, in Civil Case No. 1433, dated August 11, 1964, directing the sheriff of Mountain Province to place Abdon Delenela and Guillermo Perez in possession of a parcel of land occupied by the petitioner.

The antecedents of the controversy which culminated in this appeal are as follows:

About the year 1908, Nicolas Comilang staked a mining claim known as the "Bua Fraction Mineral Claim" over a parcel of land in Tuding, Benguet, Mountain Province, with an area of 76,809 square meters, more or less. His exploration works in the mining claim did not last for long, for he abandoned it, and stopped the exploration, but he continued to live in the house he built on a portion of the land with his wife, brothers and sisters.

In the year 1918, Macario Comilang also settled on a portion of the land with an area of about one (1) hectare, for residential and agricultural purposes. After his death, his daughter, Fabiana Comilang Perez remained to live in the house built by her father on the land. Still later, other relatives of the old Nicolas Comilang settled and built their own houses over other portions of the land, one of which houses was acquired by Abdon Delenela who now resides on the land with the other Comilang heirs.

Surface rights over the area embraced in the original Bua Fraction Mineral Claim of Nicolas Comilang soon became the subject of litigation in the Court of First Instance of Baguio City (Civil Case No. 250 - Action to Quiet Title, instituted by the heirs of Guillermo, Marcelina, Julian, Timoteo, Melecio and Macario, all surnamed Comilang, against appellant herein Marcos Comilang who claimed to have bought the rights and interest of Nicolas Comilang in the old mining claim. In a decision rendered in said case No. 250, dated November 26, 1952, the court dismissed both claims of ownership of the plaintiffs and the defendant and declared the area public land. The court, however, recognized the possession of the parties over certain specified portions of the area, among which was an area of about one and one-half (1-1/2) hectares in possession of Marcos Comilang, which has been declared for taxation purposes in his name. This decision was affirmed by the Court of Appeals in CA- G.R. No. 11157-R on October 29, 1955.

In the same year, the 1-1/2 hectares of land occupied by Marcos Comilang, then declared under Tax Declaration No. 4771 in his name, was levied upon and sold at public auction by the sheriff of Mountain Province to satisfy a judgment for a sum of money obtained by the spouses Jose Coloma and Eugenia Rumbaoa against Marcos

Comilang in the Court of First Instance of Baguio, in Civil Case No. 1433. The judgment creditors were the purchasers at the auction sale, and a certificate of sale was executed in their favor by the sheriff on June 1, 1957.

In the meantime, an application for lode patent covering the Bua Fraction Mineral Claim was filed with the Bureau of Mines. Abdon Delenela and his co-heirs filed their opposition to the application. Pending the controversy before the Bureau of Mines, Delenela and his co-heirs instituted an action for determination of their rights on the land in the Court of First Instance of Baguio City, docketed as Civil Case No. 735. The parties submitted an amicable settlement recognizing co-ownership among themselves of the Bua Mineral Claim. In a decision rendered in said Case No. 735, dated March 3, 1958, the court awarded one-half in undivided share in the mineral claim in favor of Marcos Comilang, and the other half also in undivided share in favor of Ab-don Delenela and co-heirs.

Later, in the exercise of their right as co-owners, Abdon Delenela and Guillermo Perez, with the knowledge and conformity of Marcos Comilang, redeemed and bought from the Colons spouses, the latter's rights, title, interest and claim to the 1-1/2 hectares of land acquired under the certificate of sale thereof executed in the latter's favor by the sheriff on June 1, 1957. This redemption sale took place on June 11, 1958.

On February 9, 1959, the Director of Mines recommended the issuance of a lode patent over the Bua Mineral Claim in favor of Marcos Comilang, Delenela, and the other claimants in the proportion of one-half (1/2) in undivided share in favor of Marcos Comilang, and the other one-half (1/2) also in undivided share in favor of Delenela and the other heirs in pursuant to the decision of March 3, 1958, aforementioned, in Civil Case No. 735.

On August 12, 1959, upon motion of Abdon Delenela and Perez, who have thus acquired and succeeded to the rights of the Coloma spouses on the 1-1/2 hectares, the Municipal Court of Baguio City issued a writ of possession in their favor directing the sheriff of Mountain Province to evict Marcos Comilang and his wife from the 1-1/2 hectares of land sold in the execution sale.

In a petition for certiorari with preliminary injunction filed in the Court of First Instance of Baguio City, docketed as Civil Case No. 897, Maxima Nieto de Comilang, wife of Marcos Comilang questioned the power of the Municipal Court to issue said writ of possession on two grounds, namely: (1) that conjugal property had been levied upon and sold in the execution sale, and her share therein is affected; and (2) that there can be no severance of surface rights over a mineral claim located under the Philippine Bill of 1902, and petitioner argued that the sheriff could not have validly sold the surface rights in the execution sale of June 1, 1957. On February 23, 1961, the court rendered a decision in said case, holding that the writ of possession issued by the respondent Municipal Judge was within his competence and jurisdiction. On appeal to the Supreme Court, docketed as G. R. No. L-18897, a decision was rendered on March 31, 1964, the dispositive portion of which is as follows:

"For the foregoing considerations the judgment appealed from is hereby affirmed insofar as it denies the petition of Maxima Nieto de Comilang to exclude from the sale, or annul the sale on execution of the residential lot formerly owned by her husband, of 1-1/2 hectares covered in the final certificate of sale; but that part of the appealed decision holding that the sale at public auction included the 1-1/2 undivided share of Marcos Comilang to the Bua Mineral Claim, is hereby set aside and said mineral rights of Marcos Comilang are hereby declared free from the execution or sale on execution."

The decision having become final, Abdon Delenela and Guillermo Perez reiterated their motion in the Municipal Court of Baguio City in Civil Case No. 1433, praying that an alias writ of possession be issued to evict Marcos Comilang and his wife from the 1-1/2 hectares of land in question. On August 11, 1964, over the objection of Marcos Comilang, the court issued the writ prayed for.

For a second time, a petition for certiorari and mandamus with preliminary injunction was instituted by Marcos

Comilang in the Court of First Instance of Baguio City seeking the annulment of the order granting the alias writ of possession in favor of Delenela and Perez, and again the Court of First Instance of Baguio threw out the petition in its order dated October 22, 1964. The court expressed its views in the following rationale:

"The one and one-half hectares of land referred to therein (S. C. decision) is the same parcel of land and house above-described which was already sold at public auction to the respondents, Guillermo Perez and Abdon Delenela.

"The said judgment is res adjudicata and the consequent execution, and the writ of possession is but its necessary consequence.

"All the authorities cited by the petitioner were no longer of any value because they were necessarily passed upon and disposed of in the course of finally deciding the case.

"Wherefore, the petition for certiorari is hereby denied."

Marcos Comilang is now before Us on appeal from this last decision.

Appellant contends that the lower court erred in denying his petition on the ground of res adjudicata, arguing that it was his wife Maxima Nieto de Comilang, and not he, the party in the former case appealed to the Supreme Court in G. R. No. L-18897. Therefore, it is claimed, one of the requisites of res adjudicate is lacking. We find no merit in the argument. As husband and wife and before the dissolution of their marital union, their interest in the said property is one and the same. The fact that the wife was the party in the former case while it is now the husband who is the pe-titioner in the instant case, when admittedly both actions were instituted for the protection of their common interest therein, is no argument to the proposition that there is no identity of parties in these cases. Such identity of interest is enough to hold that they are privy to one another, having a common interest in the property. Neither is it to able to contend that the issue involved in the two cases are not identical. It cannot be disputed that in both cases, the main relief sought is the annulment of writs of possession issued by the Municipal Court of Baguio City directing the sheriff concerned to evict the spouses Comilang from the land, and the questions involved in both cases pertain to the legality or validity of those writs aforementioned. In the decision in L-18897, this Court sustained the validity of the execution sale. There can be no doubt, therefore, that the judgment in the former case is binding in the instant proceeding.

It is argued further by the appellant that the final certificate of sale conveying the land described in Tax Declaration No. 4771 to the purchasers in the execution sale is not a valid disposition of a portion of the public domain, and specially in view of the subsequent issuance of a mineral lode patent over the Bua Mineral Claim by the Director of Mines (Patent issued on November 7, 1966) whereby full ownership not only of the minerals therein but also of the surface ground have been conveyed to the patentee thereof, and, there-fore, the Municipal Court of Baguio City may no longer eject them from the land.

We do not agree with the contention of the appellant.

The Court has not overlooked the doctrines heavily relied upon by the appellant that the moment the locator discovered a valuable mineral deposit on the land located, and perfected his location in accordance with the provisions of the Philippine Bill of 1902, the power of the Government to deprive him of the exclusive right to possession of the located claim was gone, the land had become mineral land and they were excepted from the lands that could be granted to any other person (*McDaniel v. Apacible and Cuisia*, 42 Phil. 749, 756); and that when a location of a mining claim is perfected under said law, it has the effect of a grant by the United States of the right of present possession, with the right to the exclusive enjoyment of all the surface ground as well as of all the minerals within the lines of the claim (*Gold Creek Mining Corporation vs. Rodriguez*, 66 Phil. 259). We are

also cognizant of the rule invoked by the appellant that when circumstances have arisen subsequent to the remanding of the record from the Supreme Court to the trial court, a stay of execution may be allowed on grounds which are in their nature peculiarly equitable, as for instance, to give defendant an opportunity to set off a claim against plaintiff (*Chua A. H. Lee v. Mapa*, 51 Phil. 624); or when after judgment has been rendered and it has become final, facts and circumstances transpire which render its execution impossible and unjust, the interested party may ask the court to alter or modify the judgment to harmonize the same with justice and the facts (*De la Costa v. Cleopas*, 67 Phil. 686; *Realiza v. Duarte*, L-25027, 20528 & 20529, August 31, 1967); and this remains true, notwithstanding affirmance of the judgment by the Supreme Court, which imparts no higher quality than to a final judgment unappealed from, except that it cannot be questioned or reviewed (*Chua A. H. Lee v. Mapa*, supra). However, these authorities, by no means, render the argument of herein appellant unassailable. There are factual differences in the settings of the case cited and the one at bar, the equities of which require the application of a different rule.

To begin with, the 1-1/2 hectares portions of the Bua Fraction Mineral Claim described in Tax Declaration No. 4771 in the name of herein appellant was levied upon and sold at public auction to satisfy the money judgment against him in Civil Case No. 1433 of the Municipal Court of Baguio City, and the corresponding certificate of sale was issued in favor of the judgment creditors. Interest acquired under like certificates of sale alone has been described as more than a lien on the property, more than an equitable estate, an inchoate legal title to the property. (21 Am. Jur., section 264, p. 133). The validity of that sale was questioned when the Municipal Court ordered the eviction of appellant from the land sold on execution, and the Supreme Court declared in L-18897 that the sale was valid. The sale operated to divest appellant of his rights to the land which vested in the purchasers at the auction sale. The parties herein subsequently litigated their rights to the mineral claim in Civil Case No. 735 of the Court of First Instance of Baguio City, and on the basis of their amicable agreement (appellant was a party in the case), the court declared the Bua Mineral Claim co-ownership property of the parties thereto "except the improvements existing thereon" (p. 9, appellant's petition). There is no room for doubt, therefore, that the right to possess or own the surface ground is separate and distinct from the mineral rights over the same land. And when the application for lode patent to the mineral claim was prosecuted in Bureau of Mines, the said application could not have legally included the surface ground sold to another in the execution sales: Consequently, We have to declare that the patent procured thereunder, at least with respect to the 1-1/2 hectares sold in execution, pertains only to the mineral right and does not include the surface ground of the land in question.

Viewed from another perspective, We have arrived at the same conclusion. In his letter to the Secretary of Agriculture and Natural Resources, dated February 9, 1959, recommending the approval of Mineral Lode Patent No. V-24, the Director of Mines said that applicants Marcos Comilang, et al. had acquired vested rights on the Bua Fraction Mineral Claim before the Constitution of the Philippines was approved on November 15, 1935. Under the doctrines laid down in *McDaniel v. Apacible*, and in *Gold Creek Mining v. Rodriguez*, supra, said vested rights include the ownership of both the minerals and the surface ground; that such was the locator's right before as well as after the issuance of the patent; and that such was vested property although fee remains in the Government until patent issues. Such vested right of herein appellant passed to the appellees under the sale on execution aforementioned of the 1-1/2 hectares portion of the mineral claim. The subsequent issuance of the Lode Patent to the entire area of the Bua Mineral Claim did not militate against that acquired rights, for Sec. 45 of the Philippine Bill of 1902 expressly provides that nothing in said Act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of the patent. Moreover, it is significant to note that the very Lode Patent No. V-24 aforementioned expressly declares on its face that "the mining premises hereby conveyed shall be held subject to all vested rights and accrued rights, the legal import of which is that the patentee Marcos Comilang, shall hold the 1-1/2 hectares portion of the area embraced in the patent as described in the

Tax Declaration No. 4771, in trust for the appellees.

Apart and independent of the statute, there is a rule in American Law known as the "Doctrine of Relation", to the effect "that all parts and ceremonies necessary to complete a conveyance shall be taken together as one act, and operate from the substantial part by relation." This "substantial part" is recognized as the "original act" which is to be preferred, and to this all subsequent acts are to have relation. This doctrine of relation appears to have been often applied to the adjudication of real actions by American courts.

The case of *Landes v. Brant*, 10 How. 348, U. S. 13 Law ed., 449, broadly asserts this doctrine of relation. In that case, a Spanish claim of land was acquired by Clamorgan under Dodier, the original claimant, by virtue of ten consecutive years possession prior to December 20, 1903. Such claim was authorized by the Act of Congress. Clamorgan was entitled to a patent by virtue of a certificate of confirmation made by commissioners. His petition for such confirmation was filed in December, 1805. In 1808 judgment was recovered against Clamorgan, the claim was sold, and the sheriff's deed executed to McNair. It was held that the execution sale passed to the purchaser all the title that could have passed from Clamorgan to McNair by a quitclaim deed; that applying the doctrine of relation and taking all the parts and ceremonies necessary to complete the title together as one act, then the confirmation of 1811 and the patent of 1845 must be taken to relate to the first act; that of filing the claim in 1805. On this assumption, intermediate conveyances made by the confirmer or by the sheriff on his behalf, of a date after the first substantial act, are covered by the legal title and pass that title to the alienee. And on this ground, the deed made by the sheriff to McNair is valid. This doctrine has been applied in a great number of decisions.

Applying the same rule to the case before Us, it is seen that the original act that ripened into Mineral Lode Patent No. V-24 was the location of the mineral claim and the recording thereof in the Mining Recorder of Mt. Province sometime in 1922. Vested right to the property accrued to the locator before 1935, although patent was issued only recently November 7, 1966). This Patent cannot nullify the intermediate conveyance of that right in the execution sale of 1958 to herein appellees.

Finally, the argument that the proceedings for the issuance of a writ of possession, as has been resorted to by the appellees, is not the proper court procedure, the appellant intimating that it should be by a proper action. The contention does not deserve serious consideration. The corresponding rights of the parties to the property in question had been ventilated in the various cases affecting it, and the decisions in those cases have sustained the validity of the sale. It is now a matter of right on the part of the appellees to be placed in possession of the land by clear mandate of Sec. 35, Rule 39 of the Rules of Court which requires that upon execution and delivery of the final deed of sale in execution the possession of the property shall be given to the purchaser or last redemptioner unless a third party is actually holding the property adversely to the judgment debtor. As this Court said in *Tan Soo Huat v. Ongwico*, 63 Phil. 747:

"There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. There is neither legal ground nor reason of public policy precluding the court from ordering the sheriff in this case to yield possession of the property purchased at public auction where it appears that the judgment debtor is the one in possession thereof and no rights of third persons are involved."

WHEREFORE, the decision appealed from is affirmed. Costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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