

AMADEO CAVAN, PETITIONER, VS. THE HONORABLE ADOLPH WISLIZENUS, JUDGE OF FIRST INSTANCE OF CEBU, EPIFANIA VASQUEZ AND TEEESO DOSDOS, REGISTER OF DEEDS, RESPONDENTS.

G.R. No. 24768. January 21, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

In civil case No. 3998 of the Court of First Instance of Cebu, the herein respondent, Epifania Vasquez, on February 28, 1924, obtained a judgment against the herein petitioner, Amadeo Cavan, and one Mateo Filomeno jointly and severally for the sum of P500, with legal interest. On April 19, 1924, a writ of execution was issued under which a parcel of land, for which Amadeo Cavan and his wife Maria Abella held Torrens certificate of title No. 1417, was levied upon and sold by the sheriff to Epifania Vasquez, the sale being entered by memorandum on the certificate of title on May 29, 1924. On March 28, 1925, the deputy sheriff, Anastasio Vidal, executed and delivered to Cavan the following document:

"(Caption and title)

"By virtue of the order of the court dated March 24, 1925, amending the judgment by striking out in the findings of fact the words jointly and severally and the defendant Amadeo Cavan having, on the 25th of March, paid to the sheriff the sum of P272.06, which is the part he is bound to pay under the aforesaid amended judgment, I do hereby state that the said defendant is completely relieved therefrom.

"And the sheriff having sold at public auction a land of the said Amadeo Cavan whose description and other circumstances are as follows: Lot No. one thousand four hundred eleven, original title No. one thousand four hundred seventeen, bounded on the NE. and NW. by lot No. 1410; on the SE. by Calle Gran; and on the SW. by calle, with a bamboo and nipa house thereon of 50 meters (sic), area, 1 are, 24 square meters. Assessed value, P330.

"I, Anastasio Vidal, deputy sheriff of the Province of Cebu, by authority of the provincial sheriff, the Honorable Arsenio Climaco, do hereby declare dissolved the attachment levied upon the land above described as though said attachment had never been levied.

"In testimony whereof, I hereunto affix my signature in Cebu, this 28th of March, 1925.

"ARSENIO CLIMACO

"Sheriff.

"By (Sgd.) ANASTASIO VIDAL

"Deputy Sheriff. "

(Acknowledgment)"

On the strength of this document the register of deeds, on May 31, 1925, cancelled the memorandum of May 29,

1924. On June 29, 1925, Epifania Vasquez filed a motion in the Court of First Instance in said civil case No. 3998, asking that the certificate of title of Amadeo Cavan and his wife for the land in question be cancelled and a new certificate issued in favor of Epifania, on the ground that the time for redemption from the sheriff's sale had expired and that the sheriff had executed a final deed of sale in her favor on June 20, 1925. No notice of this motion was given Amadeo Cavan and his wife and no hearing was had, but the court nevertheless on the same date issued an order in said civil case No. 3998 directing the register of deeds to cancel the existing certificate of title and issue another in favor of the movant, in accordance with her motion.

On July 8, 1925, Amadeo Cavan, on being informed of the order of June 29, presented a motion to the court asking that the order be revoked on the ground that he had not been notified of the motion upon which it is based and that in any event the motion should have been presented in the land registration case in which the registration of the land was decreed. On August 5, 1925, this motion was denied. It further appears from the record that some attempt was made on the part of Amadeo Cavan to appeal and that the bill of exceptions was filed, but that the court refused to certify the same.

The petition in the present case was filed on September 11, 1925, the petitioner alleging most of the facts herein-before set forth and asking that a writ of certiorari issue and that it be declared that the court below exceeded its jurisdiction in issuing the order of June 29, 1925, in civil cause No. 3998, which directed the register of deeds to cancel certificate of title No. 1417 and to issue a new certificate in favor of the respondent Epifania Vasquez.

The petition must be granted. The land in question is registered under Act No. 496 and the motion and order of June 29, 1925, involved the cancellation of an existing certificate of title and the issuance in its stead of a new certificate, on the ground that the period of redemption from the sheriff's sale had expired. Section 78 of the Land Registration Act provides that "upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description, the person claiming under the execution or under any deed or other instrument made in the course of proceedings to levy such execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted * * *"

The last paragraph of section 112 of the same Act reads as follows:

"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."

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.

In the case under consideration the court also erred in ordering the cancellation of the petitioner's certificate of title without giving him an opportunity to be heard, but in view of what has been said, it is unnecessary here to decide whether that error would in itself justify the issuance of a writ of certiorari.

The petition is granted and the above mentioned order of June 29, 1925, as well as the subsequent proceedings thereunder, are hereby declared null and void, without prejudice to the right of the respondent Epifania Vasquez to file a motion in the original land registration case for the cancellation of the petitioner's certificate of title and the issuance of a new certificate in her favor, said motion to be disposed of upon notice to the opposing party and due hearing. The respondent Epifania Vasquez will pay the costs of this action. So ordered.

Avancena, C. J., Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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