

MANUEL RODRIGUEZ, PETITIONER, VS. HONORABLE JULIO LLORENTE, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, JOSE TUPAS, REGISTER OF DEEDS, AND JULIAN MORENO, RESPONDENTS.

G. R. No. 26615. December 26, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of certiorari to the Judge of the Court of First Instance of Rizal, the register of deeds of the same province, and one Julian Moreno. The respondents filed a lengthy answer in which they, without specifically denying any of the allegations of the petition, set forth very fully their version of the facts of the case. To this answer the petitioners demurred, but upon hearing, counsel for the petitioners moved for judgment on the pleadings, which is equivalent to a withdrawal of the demurrer.

The rule as to the effect of a motion for judgment on the pleadings is thus stated by this court in the case of Bauermann vs. Casas (10 Phil., 386): "One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (La Yebana Company vs. Sevilla, 9 Phil., 210.)" Following this rule, it becomes necessary to examine the respondents' answer in detail.

In the answer the respondents allege, in substance, that the respondent Julian Moreno, by virtue of a contract with one Juan Cruz Sanchez, which contract is not in evidence, became entitled to a conveyance to him of a portion of the land described in transfer certificate of title No. 8164, issued by the register of deeds of the Province of Rizal in pursuance of a final decree entered in land registration case No. 4429 and a subsequent transfer to said Juan Cruz Sanchez; that the respondent Julian Moreno applied to the court for an order segregating from said certificate of title the land to be conveyed to him by Juan Cruz Sanchez; that, after several hearings, an order was finally issued in the aforesaid land registration case on March 31, 1925, directing the respondent register of deeds of Rizal to issue a new certificate of title in favor of the respondent Julian Moreno for the portion claimed by him, and to note upon said certificate that Julian Moreno would pay the expenses involved in making the segregation of said portion from the rest of the land; that the respondent register of deeds on March 31, 1925, received a duly certified copy of said order, together with a plan and technical description of the portion segregated, and a plan and technical description of the remaining portion; that said register of deeds entered in his entry book the receipt of said order setting forth in said entry that the order was received on May 31, 1925, at twenty minutes past eleven of the forenoon of said day; that, by reason of the fact that the plans and technical descriptions had not been approved by the General Land Registration Office, as required by the regulations of that office, the register of deeds was unable immediately to issue a certificate of title in favor of Julian Moreno; that, thereupon, the plans and technical descriptions, together with Juan Cruz Sanchez' duplicate certificate of title, were transmitted to the

General Land Registration Office for affirmation and approval, and said office approved said plans and descriptions under the date of October 5, 1925; that in the meantime, on the 9th day of June, 1925, the herein petitioner filed with the respondent register of deeds a deed of conveyance executed by Juan Cruz Sanchez in favor of the petitioner for all of the land included in the transfer certificate of title No. 8164, and that, thereupon, transfer certificate of title No. 9392 was issued in favor of said petitioner, but through the negligence of one of the clerks in the office of the respondent register of deeds, no memorandum of the order of March 31, 1925, was entered upon said certificate of title No. 9392; that the petitioner is a relative of his vendor Juan Cruz Sanchez and that he did not present the latter's certificate of title to the register of deeds before said transfer certificate No. 9392 was issued; that, thereafter, the respondent judge, on November 19, 1925, issued an order directing that the petitioner herein, the respondent Julian Moreno, the administrator of the estate of Juan Cruz Sanchez, and the register of deeds be notified to appear before said court on the 28th of the same month at 8.30 a. m. for the hearing of the question as to whether or not the sale by Juan Cruz Sanchez to Julian Moreno should be set aside; that, thereafter, the respondent judge, upon having called the matter for hearing at the time mentioned, entered an order on the same date directing the respondent register of deeds to annul transfer certificate of title No. 9392 in regard to the portion claimed by Julian Moreno.

The respondents further allege that the register of deeds having obtained possession of certificate of title No. 9392, said certificate was in compliance with the order of November 28th, cancelled in regard to the portion claimed by Julian Moreno, and transfer certificate No. 10006 issued in the latter's favor for said portion; that, subsequently, on June 18, 1926, a mortgage executed by Julian Moreno in favor of the Bureau of Lands for the sum of P10,000 and interest, was entered on said transfer certificate No. 10006 by memorandum.

The following allegations in the petition before us have not been denied and must therefore be considered admitted by the respondents: That the petitioner was not notified of the order of November 19, 1925 or of the hearing had on the 28th of the same month; that the petitioner in compliance with an order of the court dated October 19, 1925 and issued in an action brought against him by one Ocampo, surrendered his certificate of title to the register of deeds for the purpose of the entry thereon of a notice of *Lis pendens* and that it was only when the certificate was returned to him several months later that he learned from memoranda entered on the certificate without his knowledge and consent that orders had been issued for a partial cancellation of the certificate and for the issuance of another certificate in favor of Julian Moreno.

The facts stated reveal gross negligence and irregularities on the part of the register of deeds and if the petitioner were a holder in good faith of his transfer certificate of title, he would unquestionably be entitled to the relief here demanded. But it must be considered admitted that the certificate was issued to him without the presentation to the register of deeds of the owner's duplicate certificate of title held by his vendor or of an order of the court authorizing the issuance of a new certificate. If so, he cannot be regarded as having taken his certificate of title in good faith.

Section 55 of the Land Registration Act provides among other things that:

"No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the clerk, or by any register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such indorsement, except in cases expressly provided for in this Act, or upon the order of the court, for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate."

The register of deeds was therefore without authority to issue the certificate in question and as the petitioner is presumed to have known the law, he must also be presumed to have known that the register of deeds in thus issuing the certificate committed an illegal and unauthorized act and that the certificate suffered from the defect of

having been issued without authority. He is consequently not entitled to the protection of section 39 of the Land Registration Act, but stands in the shoes of his vendor and holds the title subject to the order of March 81, 1925, issued against the vendor and in which the respondent judge provided for the segregation of the land claimed by Moreno and ordered that a transfer certificate of title be issued in favor of the latter for the portion thus segregated. In so ordering, the respondent judge acted within his jurisdiction under section 112 of the Land Registration Act, and a writ, of certiorari will therefore not lie.

The petition is therefore denied with the costs against the petitioner. So ordered.

Avanceña, C. J., Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

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