

CRISANTO VICENCIO, PETITIONER, VS. PEDRO MA. SISON, JUDGE OF FIRST INSTANCE OF THE PROVINCE OF RIZAL, ET AL., RESPONDENTS.

G.R. No. 43892. October 14, 1935

Ponente: DIAZ, J.

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DIAZ, J.:

In these certiorari proceedings, the petitioner alleges that Pedro Ma. Sison, Judge of the Court of First Instance of Rizal, exceeded his jurisdiction and abused his discretion in entering in civil cases Nos. 4450, 4466, 4467, 4468, and 4469 of the said court, docketed on appeal to this court under G. R. Nos. 39853, 39854, 39855, 39856, and 39857, certain orders which, if complied with to the letter, would cause him irreparable damages.

Said orders, dated July 28, 1934, October 24, of the same year, and June 15, 1935, are couched respectively in the following language:

"Plaintiffs' motion in the above-entitled cases having been heard and found meritorious:

"The order of July 23, 1934, is hereby confirmed, authorizing the clerk of this court to receive by way of deposit and to issue the official receipt for the amount of P1,287.59, deposited by the plaintiffs, and the clerk is ordered to retain said amount in favor and for the benefit of the defendant, withholding, however, the payment thereof to the defendant until the latter furnishes him with notice from the register of deeds that there are available, upon payment of their fees, the titles of said plaintiffs to the land in contention in this case, and to this end the defendant is ordered to deliver to the register of deeds the corresponding registerable deeds within ten (10) days from notice hereof;

"The clerk is likewise ordered, on petition of the attorney for the plaintiffs, to pay to the latter the costs to which they are entitled, as it appears in the statement of costs, deducting the amount thereof from the amount deposited." (Order of July 28, 1934.)

"The defendant, in a motion dated September 22, 1934, prayed the court to hold that the plaintiffs have lost their right to compel him to execute the deed of conveyance ordered in these cases, principally because the order of this court of July 20, 1934, requires, among other things, that the defendant turn over to the register of deeds, within ten days from notice of said order, registerable deeds of conveyance, and intimated that the defendant would have to incur an expense amounting to more than P0.06 per square meter in order to comply with this part of the order.

"The lands in litigation have a Torrens title. The decisions rendered in these cases require the defendant to execute In favor of the plaintiffs a deed of conveyance of the lands in question, upon deposit by said plaintiffs of the amount of P0.06 a square meter. In the body of the decision it appears that to reach the amount of P0.06 a square meter, there was included an item of P800 for surveyors. These are only five cases * * *. The lots are small and near to each other. The court is, therefore, of the opinion that the defendant has recovered from the plaintiffs the cost of the survey of their lots and that he should execute registerable deeds of conveyance. In truth, nonregisterable deeds of conveyance of land with a Torrens title would be of little use to the purchasers.

"In view of the foregoing, the defendant's motion of September 28, 1934, is denied, and said defendant is directed to comply with the order entered in the above-entitled cases under date of July 28, 1934." (Order of October 24, 1934.)

"On the 11th instant, in the above-entitled five cases, Attorney Ramon Diokno, in behalf of the plaintiffs, filed a motion praying, for the reasons therein given, that in the subdivision of lot 6-e in question in the said five cases, the proposition of Surveyor Antonio Gamboa be accepted, to the effect that he be paid the sum of P385 to make the said subdivision; that the clerk of this court be ordered to pay over to said Surveyor Antonio Gamboa, out of the amount deposited by the plaintiffs with the clerk's office the sum of P192.50, on account of his fees of P385, the remainder to be paid after the plans to be prepared by him are duly approved by the General Land Registration Office.

"In view of the nature of the case, from which it appears that at the time the defendant purchased lot 6-e described in the complaint, he had agreed to convey and resell to the plaintiffs the portions which they then respectively occupied. It is only just and natural that the cost of the subdivision, to make possible the conveyance or resale to the plaintiffs of their respective portions under their prior agreement with the defendant, be prorated among the said plaintiffs, because they are the only ones benefited by the conveyance in their name of the said portions, hence, they should bear the cost of the said subdivision. And as the plaintiffs, on the other hand, have deposited with the clerk of this court a certain sum of money amounting to the value of the land in question at P0.06 a square meter, the two prayers in the aforesaid motion are well founded.

"Wherefore, the court authorizes the plaintiffs to accept the offer of Surveyor Antonio Gamboa, and for this purpose, the clerk is ordered to turn over to said surveyor the amount of P192.50, on account of his fees." (Order of June 15, 1935.)

It should be stated in passing that the herein petitioner was the defendant in the five cases referred to, and the respondents were plaintiffs therein as follows: Antonina Peralta was plaintiff in the first case; Emilio Fulgencio, Victoria Fulgencio and Agapito Buenaventura in the second case; Clotilde Cruz, Magno Peralta, Rosa Cruz and Ceferina Cruz in the third case; Susana Reyes and Eusebio Eusebio in the fourth case; and Esperanza Nicolas in the fifth case; and it should likewise be stated that the petitioner, as defendant in the said cases, objected and excepted to the orders in question, and in connection with the order of June 15, 1935, filed the following:

"Comes now the defendant Crisanto Vicencio, through his undersigned attorney, and respectfully excepts to the order of this Hon. Court granting the motion of the plaintiffs of June 11, 1935. The defendant also hereby signifies his intention of presenting a writ of certiorari to the Supreme Court of the Philippine Islands. Manila for Pasig, Rizal, P. L., June 15, 1935.

"SUMULONG, LAVIDES, SUMULONG "

(Sgd.) PASCUAL BAUTISTA

"Attorneys for the defendant"

The petitioner contends that the said orders of July 28, 1934, and June 15, 1935, in fact alter and modify the decisions of the lower court, which were affirmed by this court, because they impose new conditions not found in said decisions, namely:

- (a) That the petitioner file with the clerk of court a notice from the register of deeds to the effect that the transfer certificates of title issued in the name of the respondents are already available;
- (b) That the said notice should state that said transfer certificates of title can be obtained from said register of deeds, upon payment of the corresponding fees;
- (c) That the petitioner deliver to the register of deeds, within ten days from notice of the order of July 28, 1934, the deeds authorized and registerable in the registry; and

(d) That the clerk of court deduct the amount of the costs from the sum deposited with the clerk's office by the respondents. It is a fact that none of the said new conditions was found in the decisions of the lower court which, on appeal, were affirmed by this court.[1]

The dispositive parts of said decisions stated *mutatis mutandis* as follows:

"The defendant is ordered to execute in favor of the plaintiffs a deed of conveyance of the land described in the complaint, measuring * * * square meters, in accordance with the plan Exhibit 26, upon deposit by the plaintiffs of P0.06 per square meter. With costs to the defendant."

This court, after going over the record, relying upon the bill of exceptions filed by the appellant who was the defendant in the aforesaid five cases and the petitioner in the instant case, and after considering the arguments advanced by the parties in their respective briefs, entered the following judgment:

"In view of the foregoing, the five appealed judgments are affirmed, and we fixed the period of sixty days, from the promulgation of this decision, within which the plaintiffs and appellees should deposit with the clerk of the court of origin the value of the lands claimed by them, at the rate fixed by the trial court. With the costs to the appellant."

But the error, if it was error for the lower court to clarify and amplify its decisions in the manner alleged by the petitioner, after they had been affirmed by this court—and we do not believe it is since it was necessary and the court had jurisdiction and authority to do so—is certainly one which cannot be remedied or corrected by certiorari. This remedy, by its very nature, lies only when, the necessary facts warranting it being present, an appeal is not available because such remedy does not lie, or does not exist, or is not permitted by law, nor is there any other speedy and adequate remedy. (Sections 217 and 514, Act No. 190; *In re Prautch*, 1 Phil., 132; *Arzadon vs. Chanco and Baldueza*, 14 Phil., 710; *De Castro and Morales vs. Justice of the Peace of Boeaeue*, 33 Phil., 595; *Mayol vs. Blanco*, 61 Phil., 547; etc)

According to the evidence adduced by the respondents, consisting of a bill of exceptions filed in the aforesaid cases by the petitioner as defendant therein, said petitioner appealed from the orders in question, perfecting for that purpose the said bill of exceptions which was later elevated to this court; but for his failure to pay the corresponding fees and to make the deposit required by section 500 of Act No. 190 and rule 14, subsection (6), of the Rules, his appeal was dismissed for lack of prosecution. (Exhibits 8, 9, 10, 11, and 12.) This means that the remedy applied for by the petitioner is not well founded and, hence, untenable, being contrary to law, because there was a remedy by appeal; and it is known that the remedy by appeal and that by certiorari cannot co-exist in the same cause to correct the same error, nor is the latter the proper remedy to review the proceedings in an appealed case in this jurisdiction.

Moreover, the error, if in truth it was one, perhaps might have been corrected by a motion of reconsideration, even after the denial of petitioner's motion for a new trial, if the latter had so desired; but the fact remains that he did not avail himself of said remedy. He did not follow what this court said in the case of *Herrera vs. Barretto and Joaquin* (25 Phil., 245). It was stated in said case and reiterated in *Uy Chu vs. Imperial and Uy Du* (44 Phil., 27), that a writ of certiorari will not issue unless the error or irregularity complained of has been brought to the attention of the inferior court through a motion for reconsideration.

For the foregoing considerations, and finding no merit in the remedy prayed for by the petitioner, the petition is hereby denied, with costs. So ordered.

Abad Santos, Hull, Vickers, and Recto, JJ., concur.

Petition denied

[1] Peralta vs. Vicencio, G. R. Nos. 39853-30857, promulgated May 26, 1934 (60 Phil., 1013).

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