

MANUEL RODRIGUEZ, PETITIONER, VS. LEOPOLDO ROVIRA, JUDGE OF FIRST INSTANCE OF CAVITE, DANIEL TIRONA AND RODOLFO TIRONA, RESPONDENTS.

G. R. No. 45252. September 24, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition filed by Manuel Rodriguez for the issuance of a writ of mandamus ordering the respondent Leopoldo Rovira, Judge of First Instance of Cavite, to approve the bill of exceptions filed by said petitioner, and of a writ of preliminary injunction restraining said judge from passing upon and deciding the amended application for a writ of possession filed by the other respondents Daniel Tirona and Rodolfo Tirona, and praying for any other remedy which this court deems just and equitable, with costs.

On December 17, 1935, the petitioner Manuel Rodriguez filed a motion in the Court of First Instance of Cavite, praying for the approval of a subdivision plan of lot No. 1128 of the Cavite cadastre, so that said lot would be understood as subdivided into two lots Nos. 1128-A and 1128-B, the cancellation of original certificate of title No. 443, and the issuance of two new certificates of title in lieu thereof, one in favor of said petitioner Manuel Rodriguez covering lot No. 1128-A, and the other in favor of Daniel Tirona covering lot No. 1128-B. Daniel Tirona opposed said motion in his pleadings dated January 9 and 11, 1936, respectively. After due hearing the Court of First Instance of Cavite, on January 17, 1936, issued an order denying said motion on the ground that it no longer had jurisdiction to amend the decision rendered in registration case No. 3, G. L. R. O. Record No. 9532, wherein original certificate of title No. 443 of the registry of deeds of Cavite had been issued, because said lot No. 1128 had been adjudicated to the conjugal partnership of the spouses Daniel Tirona and Felisa Osorio on March 18, 1915 and the corresponding decree of registration was issued on July 28, 1916, and therefore the one year period fixed by section 38 of Act No. 496 for the review of decrees had elapsed. On January 20, 1936, the petitioner Manuel Rodriguez received a copy of said order and on January 31, 1936, he filed a motion for reconsideration of said order of January 17, 1936, on the following ground:

"That this court has jurisdiction to hear and pass upon petitioner's motions of December 17, 1935, and January 8, 1936."

On January 6, 1936, Daniel Tirona and Rodolfo Tirona filed an application praying for the issuance of a writ of possession. - The petitioner Manuel Rodriguez opposed the motion in question in a pleading dated January 10, 1936, on the ground that the respondent judge had no jurisdiction to grant said application for a writ of possession. On January 17, 1936, the Court of First Instance of Cavite denied the aforesaid application for a writ of possession. On the 24th of said month and year, Daniel Tirona and Rodolfo Tirona filed an amended petition for a writ of possession. On January 31, 1936, the petitioner Manuel Rodriguez opposed said amended petition for a writ of possession, by reproducing his pleading of opposition of January 10, 1936.

In an order of February 13, 1936, the respondent judge denied the petitioner's motion for reconsideration of

January 30, 1936, praying for the reconsideration of the order of January 17, 1936, at the same time declaring in said order that he had jurisdiction to pass upon the amended application for a writ of possession and setting the hearing thereof for March 5, 1936.

On February 18, 1936, said petitioner Manuel Rodriguez excepted to said order of the respondent judge, dated February 13, 1936, denying his motion for reconsideration, and also filed his notice of appeal. On February 26, 1936, said petitioner Manuel Rodriguez submitted his bill of exceptions to the court for approval. On February 27, 1936, the respondents Daniel Tirona and Rodolfo Tirona opposed the approval of said bill of exceptions on the ground that it was filed out of time. On February 23, 1936, the respondent judge disapproved said bill of exceptions on the ground that it had been filed out of time.

The motion for reconsideration filed by the petitioner Manuel Rodriguez on January 31, 1936, was based on the following ground: "That this court has jurisdiction to hear and pass upon petitioner's motions of December 17, 1935, and January 8, 1936." Inasmuch as the order denying the motion for subdivision filed by the petitioner Manuel Rodriguez was based on the ground that the respondent judge no longer had jurisdiction to amend the decision rendered in registration case No. 3, G. L. R. O. Record No. 9532, the ground of the motion for reconsideration filed by the said petitioner that the court had jurisdiction to hear and pass upon said motion for reconsideration is equivalent to the allegation that said order of the respondent judge denying said motion for reconsideration is contrary to law, which is one of the grounds for a new trial enumerated in section 145 of the Code of Civil Procedure. The law does not require that the grounds of a petition for a new trial provided therein be stated in the precise terms appearing in said Code, it being sufficient that they be stated in such a manner as to reflect the meaning contemplated by law. This court has repeatedly held that a motion for reconsideration based upon any of the causes enumerated in section 145 of the Code of Civil Procedure as grounds for a motion for a new trial has the same effect as a motion for a new trial, regardless of the fact that it is styled differently. (*Pascua vs. Ocampo*, 59 Phil., 48; *Blouse vs. Moreno and Garcia*, 60 Phil., 741; *Levett vs. Sy Quia*, 61 Phil., 847.)

Therefore the motion filed by the petitioner, based on the ground that the respondent judge had jurisdiction to pass upon the motion of subdivision, is equivalent to a motion for a new trial based on the ground that the order of the respondent judge denying the motion of subdivision is contrary to law and, consequently, it suspended the period of thirty days for perfecting the appeal by means of filing a bill of exceptions.

In the application for the issuance of a writ of mandamus, now under consideration, the petitioner at the same time prays for the issuance of a preliminary injunction addressed to the respondent judge, restraining him from passing upon the amended motion for a writ of possession filed by the respondents Daniel Tirona and Rodolfo Tirona. An injunction is by nature an ancillary remedy. The remedy prayed for herein has no bearing upon the extraordinary legal remedy of mandamus inasmuch as it is not addressed to the respondent judge to restrain him from disapproving; the bill of exceptions which is the subject matter of this petition.

Wherefore, the petition for a writ of mandamus is granted, the respondent judge is ordered to approve, certify and have the bill of exceptions which is the subject matter of this petition forwarded to this court, and the preliminary injunction applied for is denied, with the costs to the respondents Daniel Tirona and Rodolfo Tirona. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Recto, and Laurel, JJ., concur.

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