

RAYMUNDO CORDERO, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF LAGUNA, THE PROVINCIAL SHERIFF OF LAGUNA, THE REGISTER OF DEEDS OF LAGUNA, AND ROSARIO COSME DE MENDOZA, AS ADMI...*G.R. No. 45643. April 15, 1939*

Ponente: LAUREL, J.

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This is a petition for certiorari to review the decision of the Court of Appeals rendered in an original proceeding for the same legal remedy instituted there by Raymundo Cordero against the respondents named in the caption of this case. This case finds its origin in a contract of guaranty, by which the herein petitioner became one of the sureties for the then administrator of the intestate estate of Baldomero Cosme. As a result of a malversation committed by the administrator, the properties offered as security were sold on execution to the highest bidder, Rosario Cosme de Mendoza. No redemption was had within the statutory period and a final decree of sale was executed by the sheriff in favor of the purchaser.

The Petition here alleges that on November 6, 1936, the respondent Rosario Cosme de Mendoza filed a petition in cadastral cases Nos. 9, 13 and 14, praying that the certificates of title to the parcels of land covered by said cases, then in the name of the petitioner, be cancelled and transfer certificates issued in the name of the intestate, Baldomero Cosme, with a corresponding writ of possession; that on November 27, 1936, petitioner filed an opposition to the petition on the sole ground that the validity of the order of execution, and consequently of the sale itself was still pending determination in the Supreme Court; that on December 16, 1936, the respondent Court of First Instance entered an order in each of the three cases postponing the resolution of the petition to which Rosario Cosme de Mendoza objected; that on February 2, 1937, the respondent court, after setting aside its order postponing the resolution of the petition, granted the motion for the cancellation of the original certificates of title and the issuance of transfer certificates in the name of the respondent, Rosario Cosme de Mendoza, with the corresponding writ of possession; that on March 3, 1937, petitioner filed in each of the three cases a verified motion for reconsideration and new trial, praying that the order of February 2, 1937 be set aside on the ground that said order is contrary to law and unsupported by the evidence on record; that said motion for reconsideration and new trial was denied on May 14 1937; that on May 24, 1937, he filed with the Court of Appeals a petition for certiorari with preliminary injunction to review and set aside the order of the respondent court dated February 2, 1937 and all other orders and writs issued for the enforcement of the same, and that on June 23, 1937, the Court of Appeals rendered its decision, denying the writ of certiorari, with costs against the petitioner. Hence, this petition for review on certiorari by this court.

The petitioner argues that the registration court of Laguna had no authority to order the cancellation of the original certificates of title, and to decree the issuance of new ones in lieu thereof in favor of the purchaser at public auction when the validity of the order of execution and the deed of auction sale is disputed under oath by him. In support of this contention, he submits two arguments: (1) that a Court of First Instance, when exercising its land

registration jurisdiction, is a court of special and limited jurisdiction, and has only such powers as are expressly granted to it by law, and (2) that when the holder of the original certificates disputes under oath the legality of both the order of execution and the execution sale, the permissive power of the court to grant the application for the entry of a new certificate of title is abated and its exercise under the circumstances amounts to a gross abuse of discretion. The view taken by counsel for the petitioner that a Court of First Instance, in the exercise of its powers as a land registration tribunal is a court of special and limited jurisdiction is correct. But this does not argue against the existence of the power of such a court to order the cancellation of certificates of title and the issuance of new ones. Specific authority for this purpose is found in sections 78 and 112 of the Land Registration Act (Act No. 496).

"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: Provided, however, that every new certificate entered under the section shall contain a memorandum of the nature of the proceeding on which it is based: Provided further, That at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under executions or to enforce liens of any description." (Section 78, Act No. 496.)

"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." (Section 112, Act No. 496.)

More than that, "A motion for the cancellation of certificate of title and the issuance of a new certificate in its place must be filed and entitled in the original case in which the decree of registration was entered, and the Court of First Instance has no jurisdiction to entertain such motion in an ordinary civil case." (Cavan vs. Wislizenus, 48 Phil, 632.)

The petitioner argues, however, that the registration court of Laguna may not exercise the aforementioned power when, as in the present case, the validity of the order of execution and the execution sale is disputed. The law does not lay down any such limitation, and *A verbis legis non est recedendum*. And then, on March 3, 1937, when the petitioner filed his motion for reconsideration, the Supreme Court had already declared the legality of the order of execution of the probate court. Since the pendency of the above action in the Supreme Court was the only ground offered by the petitioner in opposing the said cancellation, it is evident that when the validity of the order was finally decreed, no other legal ground remained upon which the objection of the petitioner could be predicated.

The petitioner also contends that the issuance of a writ of possession against him is clearly beyond the jurisdiction of the registration court. By section 17 of Act No. 496, "The Court of Land Registration, in all matters, over which it has jurisdiction, may enforce its orders, judgments, or decrees in the same manner as orders, judgments, and decrees are enforced in the Courts of First Instance, including a writ of possession directing the governor or sheriff of any province, or the sheriff of the City of Manila, to place the applicant in possession of the property covered by a decree of the court in its favor." In the case of *Pasay Estate Co. vs. Del Rosario* (11 Phil., 391), we said:

By virtue of section 17 of the Land Registration Law, as amended by section 5 of Act No. 1108, the Court of Land Registration may, in cases falling within its jurisdiction enforce its orders, judgments or decrees in the same manner as Courts of First Instance, and in this connection it may issue writs of possession, ordering the governor or sheriff of any province or of the City of Manila to place the petitioner in possession of the property included in

the decree of the court rendered in his favor.

Also, in *Manlapas and Tolentino vs. Llorente* (48 Phil, 298), it was held that:

"After the registration of a land is decreed in favor of the applicant, the latter, as well as any subsequent purchaser of the property, has the right to the title and possession thereof, and to that end he may ask the proper court for the issuance of a writ of possession, provided the same has not been issued before."

But then the petitioner claims that the writ of possession may not be issued against him, he being the original registered owner. He says in part:

"In the present case, however, the successor (the respondent Rosario Cosme de Mendoza who is the purchaser at public auction) is the one who sought the issuance of a writ of possession, not against third persons other than the original registered owner who is her predecessor (the herein petitioner), but precisely against the registered owner and predecessor himself. Now, has the right of possession and ownership over the properties in question which arose after the properties have been decreed in the land registration proceedings already been settled and determined as between these two parties?"

The decision of this court of February 26, 1937, in the case of *Cosme de Mendoza vs. Pacheco and Cordero* (35 Off. Gaz., 1831), upholding the validity of the order of execution and the execution sale, settled the question of ownership and possession with reference to the parcels of land in question as between the purchaser-respondent and the petitioner. To assume that the respondent is the lawful purchaser by virtue of the sale on execution which had been declared legal by this court, and then deny him the right of possession and its incidents, is a contradiction of terms.

The petition is dismissed, with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Diaz, JJ., concur.

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