

EUGENIANO MONTECINES, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF LAGUNA AND FORTUNATA ZORRILLA, RESPONDENTS.

G. R. No. 45668. September 27, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

This is an original petition filed with this court for a writ of certiorari to nullify the order alleged to have been issued by the respondent Court of First Instance of Laguna in cadastral case No. 20, G. L. R. O. Record No. 738, lot No. 1784, without or in excess of its jurisdiction. The dispositive part of the challenged order, dated June 11, 1937, is as follows:

"Por las consideraciones arriba expuestas, el Juzgado encuentra bien fundadas las alegaciones contenidas en la petition de fecha 27 de octubre de 1936, y por tanto, previa desestimacion de la oposicion de la representaci6n de Eugenio Montecines, y previa reconsideracion de la orden de fecha 13 de febrero de 1934;

"Por el presente, se ordena al Registrador de Titulos de esta Provincia de Laguna que, previo pago de los derechos correspondientes, cancele el Certificado de Transferencia de Titulo No. 12334 expedido a nombre de Eugenio Montecines, y, en su lugar, expida otros 4dos nuevos, uno a favor de dicho Sr. Montecines sobre las porciones 1784-C y 1784-D-3 del piano Psd-7991, y otro a favor de Fortunata Zorrilla sobre la portion 1784-D-4 del mismo piano Psd7991."

It appears from the allegations in the pleadings that on December 2, 1924, a tract of land situated in the municipality of Majayjay, Province of Laguna, and described in paragraph 2 of the petitioner's complaint, was sold with pacto de retro by Alberta Zorrilla and her husband Fortunato Romera to Eugenio Montecines, the petitioner herein. The transaction was effected before the cadastral survey of that municipality, and there seems to be disagreement as to the boundaries of the property sold, judging from paragraph 1 of the answer filed by the respondents. The property alienated appears to be a part of a more extensive property which was later designated as lot No. 1784 of cadastral case No. 20, G. L. R. O. Record No. 738, of the municipality of Majayjay, Province of Laguna. Original certificate of title No. 10343, covering this lot No. 1784, was issued on February 19, 1930 in the name of Alberta Zorrilla, married to Fortunato Romera, and Fortunata Zorrilla, married to Cirilo Rubin, one-half share each pro indiviso with the encumbrance of a mortgage for P2,000 in favor of Eugenio Montecines. At the instance of Montecines, the character of the encumbrance annotated was changed from mortgage to sale with the right to repurchase. The period for repurchase having expired, Montecines consolidated his ownership and obtained the cancellation of the original certificate of title No. 10343 and the issuance in his favor of transfer certificate of title No. 11187.

It should be observed that the sale with pacto de retro to Eugenio Montecines was made by Alberta Zorrilla and her husband, notwithstanding the fact that said lot was the common property of Alberta and her sister Fortunata Zorrilla, and that the sale was only of a portion of lot No. 1784. Fortunata Zorrilla who, during all this time, was residing in the Province of Bukidnon, Mindanao, when informed of what had transpired regarding their common property, instituted civil case No. 5853 in the Court of First Instance of Laguna and asked for the partition of lot

No. 1784 between her and her sister, Alberta. At the trial of the case the stipulation embodied in the following decision of the court was entered into by the parties assisted by their respective counsel:

"DECISION

"Llamada a vista esta causa comparecieron el abogado Nazario G. Cruz por los demandantes y el abogado Aurelio Palileo por la demandada Alberta Zorrilla, Palileo manifesto al Juzgado lo siguiente:

"Ambas partes, por medio de sus respectivos abogados convienen en que se dicte decision en este asunto declarando que ia mitad de los lotes 1784-C y 1784-D pertenece en propiedad a la demandante Fortunata Zorrilla, y que para determinar la mitad de cada uno de estos lotes que corresponde a este demandante, las partes convienen en que lo haran privadamente, sin costas.

"Esta manifestation de Palileo ha si do confirmada en Corte abierta por el abogado Cruz.

"Por tanto, el Juzgado aprueba este convenio y declara que la demandante Fortunata Zorrilla es dueia de una mitad de los lotes 1784-C y 1784-D que se describe en la demanda y tiene derecho a la posesion de estas dos mitades, tan pronto como las partes lleguen a un acuerdo sobre la portion que ha de corresponder a cada uno de ellas, sin costas. Asi se ordena.

"Santa Cruz, Laguna, 20 de noviembre de 1931.1

(Fdo.)

"PEDRO MA. SISON

"Juez"

Pursuant to the above-quoted order of the court, a commissioner was appointed who submitted his, report containing a project of partition. The report of the commissioner was approved by the court. Accordingly, portions indicated as 1784-C and 1784-D-3 (containing 10,476 square meters) on plan Psd-7991 were awarded Eugeniano Montecines and that indicated as 1784-D-4 (also containing 10,476 square meters) on the same plan went to Fortunata Zorrilla. Thus ended civil case No. 5853 in the Court of First Instance of Laguna.

Subsequently, however, Eugeniano Montecines and Mateo Zornosa, the latter also a purchaser of another portion (indicated as 1784-A, subdivision plan Pcs-378) of lot No. 1784 filed a joint petition for subdivision in the original cadastral case so that the regadio portion (1784-A) would correspond to Zornosa and the cocal portion (1784-B, subdivision plan Pcs-378) to Montecines. This joint petition was granted by the court on February 13, 1934, notwithstanding the above-mentioned agreement had by the parties in civil case No. 5853 on November 20, 1931. This happened because of the failure of Eugeniano Montecines, who was a party to that civil case, or his lawyer to call the attention of the court to this fact when Montecines and Zornosa filed their joint petition in the cadastral case. In this way, Eugeniano Montecines succeeded in more than doubling the area of the property acquired by him from Alberta Zorrilla for, according to the agreement subscribed to by him and his counsel in open court in civil case No. 5853, he was to have portions 1784-C and 1784-D-3 containing only 10,476 square meters whereas under the order of the court of February 13, 1934 in the cadastral case, he was given portion 1784-B containing an area of 24,163 square meters.

It was this order of February 13, 1934 adjudicating to Eugeniano Montecines, the petitioner, portion 1784-B in the cadastral case that, upon petition of Fortunata Zorrilla, was reconsidered by the court in its order of June 11, 1937, the dispositive part of which is inserted in the beginning of this opinion.

The principal point raised by the petitioner is that the respondent court, in issuing its order of June 11, 1937, acted

without or in excess of jurisdiction. According to him, more than one year had elapsed from February 13, 1934, when an order was issued directing the issuance in his favor of transfer certificate of title No. 12343 for lot No. 1784-B, to June 11, 1937, when the order complained of canceling said title was issued. It should be observed, however, that section 38 of Act No. 496 speaks of a decree of registration entered "If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, * * *." The joint petition of Mateo Zornosa and Eugenio Montecines filed in the cadastral case was neither an application for registration nor an adverse claim; it was merely a petition to cancel a transfer certificate of title to a lot already registered, and to issue another certificate in lieu thereof. The legal provision also makes reference to a hearing which implies requisite legal notice. The order of the court of February 13, 1934, directing the issuance of a new certificate or certificates in lieu of another that was cancelled, is riot a decree of registration contemplated in section 38 of Act No. 496.

Fortunata Zorrilla, in her motion to set aside the order of February 13, 1934, did not ask for a right that was to be established for the first time. That right was already hers by virtue of the decision rendered in civil case No. 5853 on November 20, 1931, that is to say, long before Zornosa and Montecines filed a joint petition to undermine that right. Petitioner Montecines does not seriously contend that he has a rightful claim to lot No. 1784-B title to which was given him by the court's order of February 13, 1934. Indeed, he could not properly put forward such contention in the face of his express agreement in civil case No. 5853 that he was only entitled to something much less. The order of the respondent court of June 11, 1937, which he now attacks has really not worked any injury upon his right. It gave him that to which he was entitled and which he agreed to receive.

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

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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