

GUTIERREZ HERMANOS, PETITIONER, VS. JUAN G. LESACA, JUDGE OF THE COURT OF FIRST INSTANCE OF ALBAY, AND LIM KATIAM, RESPONDENTS.

G.R. No. 46573. October 05, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

This is a petition for certiorari filed by the petitioner Gutierrez Hermanos to question the validity of the order of the respondent Judge of September 3, 1938, issued in cadastral case No. 1 of the Province of Albay, G. L. R. O. Cadastral Record No. 88, relative to the parcel of land described therein as lot No. 1629. In said order, the respondent Judge, upon petition of Lim Katiam directed the cancellation of transfer certificate of title No. 2686 issued in the name of the petitioner so that it may be substituted by other two certificates, one in the name of said petitioner to which he adjudicated but half of the land in question, lot No. 1629, and another in the name of said Lim Katiam to whom he adjudicated, in turn, the remaining half thereof but without exactly specifying said two halves by giving their respective areas, outlines, boundaries and other descriptions.

The facts of the case, which are not disputed by the parties, are as follows: The petitioner brought an action, civil case No. 4518 of the Court of First Instance of Albay, against Yap Tec Teng for the recovery of a certain credit which it had against the latter. It obtained judgment in its favor and as soon as said judgment became final, it asked for the execution thereof. Said execution was to be carried out by having the provincial sheriff of Albay sell at public auction the land described in the above-mentioned cadastral case as lot No. 1629, which then appeared to be the property of Yap Tec Teng, so that the proceeds of the sale thereof might be applied to the amount of the judgment. Lim Katiam, however, filed a third party claim for the purpose of enforcing his lien on one half of said lot, in the form of a mortgage noted at the back of the certificate of title of the land in question. Notwithstanding the failure of Gutierrez Hermanos to file the bond prescribed by law, the sale of the land in question was carried out as above-stated. The petitioner itself, which turned out to be the highest bidder, acquired said land but with one half thereof subject to the mortgage credit of Lim Katiam against Yap Tec Teng. The redemption period of one year having elapsed without Yap Tec Teng's exercising his right of redemption, the final certificate of sale was issued in favor of Gutierrez Hermanos, which was followed later by the issuance of transfer certificate of title No. 2686 in its name. Lim Katiam's mortgage lien on said half of the lot in question was noted on this latter certificate of title as well as in the register of the Province of Albay. At this juncture, Lim Katiam instituted civil case No. 6303, entitled Lim Katiam vs. Yap Tec Teng, for the foreclosure of the mortgage which he held against the latter, but although he was aware of the fact that Gutierrez Hermanos had already acquired all the rights of Yap Tec Teng and that said transfer certificate of title No. 2686 had been issued in its favor, he failed to join it as a party in the complaint and, naturally, the judgment later rendered therein was exclusively against Yap Tec Teng. After said judgment had become final, Lim Katiam asked for the execution thereof. When the petitioner was informed of this fact, it intervened in the case by filing the corresponding petition of intervention. The, respondent Judge, before whom the question was raised, decided it against Lim Katiam and at the same time denied the

latter's petition that Gutierrez Hermanos be directed to surrender its transfer certificate of title No. 2686 to the Register of Deeds so that the rights acquired by him as purchaser at public auction of Yap Tec Teng's interest in half of the land referred to in said title might be noted therein. Then, on April 20, 1938, Lim Katiam filed a petition in cadastral case No. 1 of the Province of Albay, G. L. R. O. Cadastral Record No. 88, asking that in lieu of transfer certificate of title No. 2686, another certificate be issued to him adjudicating him one half of lot No. 1629 and a second one to the petitioner adjudicating it the remaining half. The court denied the petition so presented on the ground that Gutierrez Hermanos had not been a party to civil case No. 6303 where the judgment in favor of Lim Katiam was rendered. Lim Katiam asked for the reconsideration of the order and the respondent Judge did so, issuing to that effect the order against which the present petition for certiorari has been filed.

It is an elementary principle that no person may be deprived of his property without due process of law (Article III, section 1, paragraph 1, Constitution) ; but this principle was openly violated in the present case, because, notwithstanding the requirement of the law that in all actions for the recovery of a mortgage credit, the complaint must set forth as necessary parties all persons having or claiming an interest in the land supposed to be subject to a mortgage lien, Lim Katiam failed to include Gutierrez Hermanos as such party in his complaint. The law on this matter, which is section 255 of Act No. 190, provides as follows:

"In an action for foreclosure of a real estate mortgage, or other incumbrance upon real estate, the complaint shall set forth the date and due execution of the mortgage, its assignments, if any, the names and residences of the mortgagor and mortgagee, a description of the mortgaged premises, a statement of the date of the note or other obligation secured by the mortgage, and the amount claimed to be unpaid thereon, and the names and residences of all persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage, all of whom shall be made defendants in the action."

Undoubtedly, the respondent Judge, in reconsidering his order denying the petition of Lim Katiam by issuing that of September 3, 1938, acted in excess of his authority on the ground that he caused the petitioner, who was not a party to civil case No. 6303 of Albay, to suffer the consequences of the judgment rendered exclusively against Yap Tec Teng. And to this let it be added that neither in said case nor in the cadastral case has it been determined which half is to belong to Lim Katiam and which to Gutierrez Hermanos. Before the latter can be deprived of any portion of lot No. 1629, it has the right to be heard and to refute the claims of Lim Katiam.

For the foregoing reasons, the order of September 3, 1938, is hereby reversed, with the costs to the respondent Lim Katiam. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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