

HAW PIA, PETITIONER, VS. ROMAN A. CRUZ, JUDGE OF FIRST INSTANCE OF TAYABAS, ET AL., RESPONDENTS.*G.R. No. 48506. July 29, 1942*

Ponente: MORAN, J.

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In cadastral case No. 63 of the Court of First Instance of Tayabas, G. L. R. 0. Record No. 1019, a receiver was appointed by the respondent Judge to have possession of lot No. 8610 during the pendency of an appeal interposed by one of the adverse claimants. Haw Pia, one of the claimants, filed the present petition for certiorari and prohibition, praying that the order of receivership be declared null and void, it having been issued without jurisdiction.

The jurisdiction of Courts of First Instance in cadastral cases is special and limited. As such, they can exercise no powers, which have not expressly been granted them by law. And there is no provision of law which authorizes a court to appoint a receiver in a cadastral proceeding. Cadastral courts have been created for the only purpose of settling and adjudicating titles to lands. (Sections 1, 5 and 11 of Act No. 2259.) Questions of possession, other than that which is merely incidental to title, or questions as to enjoyment of fruits are without their sphere of power and should be settled in a separate proceeding.

A motion for contempt has been filed in this case by the petitioner charging respondent Aurelia Altea and receiver Andres Parco with having violated the preliminary injunction issued by this Court. The affidavits filed by the parties fail to show the guilt of Aurelia Altea and, as to the receiver, his acts are shown to have been performed in good faith. Upon knowing the true meaning of the order issued by this Court, he immediately ceased possessing the property and delivered the fruits thereof to the Chief of Police.

The order issued by the respondent Judge appointing a receiver is hereby set aside, with costs against respondent Aurelia Altea. The motion for contempt filed by the petitioner is hereby dismissed.

Yulo, C. J., Ozaeta and Bocobo, JJ., concur.

DISSENTING**PARAS, J.,**

I am of the opinion that in cadastral proceedings the court has jurisdiction to appoint a receiver in proper cases.

Under section 173 of the Code of Civil Procedure, now section 1, Rule 61, of the Rules of Court, the Judge of the Court of First Instance may appoint one or more receivers of the property, real or personal, which is the subject of the action. The answers in cadastral proceedings partake of an action to recover title, as real rights are claimed therein. (Dais vs. Court of First Instance of Capiz, 51 Phil., 596.) Commissioners of partition may even be

appointed in such proceedings.

Receivership is an ancillary remedy, and there is no legal provision expressly withholding its availability in cadastral proceedings. Indeed, by analogy, the extension of the remedy is reasonable when we bear in mind that it is allowed in ordinary land (reivindicacion) cases and that in land registration cases a writ of execution (which is a more drastic step) may be issued even before the judgment becomes final.

It is true that a receiver should be appointed with extreme caution, but this does not amount to a prohibition for his appointment in cadastral proceedings; and when already made, the appellate court should correspondingly be slow in annulling the appointment, a power to be exercised only when there is excess of jurisdiction on the part of the lower court.

I need not express any opinion as to the merits of the instant case, for the reason that there is another appeal pending in this Court between the same parties. Order set aside and motion for contempt dismissed.

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