

Iloilo City is for a fixed period as provided for in the original charter (Com. Act No. 57), and this has continued unchanged despite subsequent amendatory acts (Com. Act No. 158; Rep. Acts Nos. 276 and 365).

The legislative department having provided for an office tenure of six years for the Mayor of Iloilo City, the President cannot remove the petitioner without cause as provided by law.<sup>3</sup> The petitioner not having been removed in accordance with the provisions of the Revised Administrative Code referred to, his relief or removal from office is unauthorized and illegal. Hence the designation of the respondent as acting Mayor is also without authority of law.

Petition granted. (*Dominador Jover, Petitioner, vs. Juan Borra, Respondent, G. R. No. L-6782, Promulgated July 25, 1953.*)

#### LAND REGISTRATION

PETITION UNDER SEC. 112 OF ACT NO. 496 WILL BE GRANTED WHERE THERE IS NO OPPOSITION BUT CONFORMITY ON THE PART OF THE CO-HEIRS.

FACTS: In 1932 Ortigas, Madrigal & Co. sold to Simeon de la Cruz, married to Nicolasa Santos, a parcel of land described in Transfer Certificate of Title No. 17035 on a ten-year installment basis. Simeon de la Cruz died in 1939 and Nicolasa Santos in 1942, leaving Apolinaria, Eufemia, Cornelia and Regino Cruz as legal heirs. After full payment, the Transfer Certificate of Title No. 17035 was issued in the name of the deceased buyer, Simeon de la Cruz and recorded in the Registry of Deeds on January 23, 1950. Two years after the registration, Regino Cruz filed a petition with the Court of First Instance of Rizal, under the same case in which the original decree was issued, praying that the Court order the Register of Deeds of Rizal to correct, under Sec. 112 of Act No. 496, the Transfer Certificate of Title No. 17035, substituting the name of Regino de la Cruz as owner of said lot sold by Ortigas,

<sup>3</sup> Sec. 4, Art. XII, Constitution of the Philippines; Secs. 64-b, 694 and 2078, Rev. Adm. Code.

Madrigal & Co., in lieu of Simeon de la Cruz, for the reason that he acquired said lot by purchase prior to the death of his father and that he continued paying the installments until its full payment. Said petition bore at the bottom thereof the conformity of Apolinaria, Eufemia and Cornelia Cruz to the petition.

The Court denied the petition as well as the motion for reconsideration, saying that the substitution cannot be made under the law invoked, but in an ordinary action.

Hence, this appeal.

HELD: The petitioner made a mistake in asking for the substitution of his name to that of Simeon de la Cruz. He should have prayed for the cancellation of the transfer certificate of title and the issuance of another in its place.

The danger mentioned by the lower court that other interested parties may be deprived of their rights, hence the necessity of an ordinary action, is remote, for the three co-heirs of the petitioner have expressed their conformity to the petition. The institution of an intestate proceeding is unnecessary if the co-heirs can amicably make the partition and the deceased has no known debts; they are not obliged to institute an intestate proceeding (Sec. 1, Rule 74). Neither is it necessary to institute an ordinary civil action (*Cavan vs. Wislizenus, 48 Phil. 671*).

Sec. 112 of Act No. 496 authorizes the Court, on petition and with notice to interested parties, to order the cancellation of a transfer certificate of title and the issuance of another. This was the prayer of the petitioner and there having been no opposition but conformity by the co-heirs, instead, the petition should have been granted.

The order appealed from is therefore annulled and the lower court is ordered to issue another in conformity with the prayer of the petitioner. (*Regino Cruz, Petitioner, vs. Hon. Bienvenido Tan, etc., Respondents, G. R. No. L-5704, Promulgated June 17, 1953.*)

SUMMARY PROCEDURE CONTEMPLATED IN SECTION 112 OF ACT NO. 496 NOT AVAILABLE WHERE PETITION IS NOT FREE FROM CONTROVERSY.

FACTS: Vicente Miraflores died intestate in 1927, survived by his

second wife Hermenegilda Tan and their only child Aurelia Miraflores, and Antero Miraflores, his only child with his first wife (deceased). Prior to his death, Vicente Miraflores commenced in the Court of First Instance, Case No. 140, G. L. R. O. Rec. 32440, for the registration of a parcel of land acquired by him during the lifetime of his first wife. As the case was terminated after his death, registration was decreed in favor of Aurelia and Antero Miraflores, for which certificate of title No. 2889 was thereafter issued.

Antero Miraflores having died without issue in 1941, Aurelia Miraflores and her mother filed in said case No. 140, on May 15, 1951, a petition alleging that there existed no known claim against the estate of the deceased and that she was willing to have his property adjudicated to her. Invoking Sec. 112 of Act No. 496, the petition prayed that original certificate of title No. 2889 be cancelled and a new one be issued in name of petitioner.

After hearing, the court rendered an order, dated August 10, 1951, decreeing the cancellation of the original certificate of title and the issuance in its place of a new certificate in the name of Aurelia Miraflores, subject to the claims mentioned in section 4, Rule 74 and the usufructuary rights of the surviving spouse Hermenegilda Tan.

On September 10, 1951, Geronimo Miraflores appeared and filed a motion, alleging that Antero Miraflores who died without issue was survived by an only ascendant Catalina del Fierro, his grandmother, who was the only heir to the exclusion of Aurelia; that Catalina del Fierro had sold to Geronimo Miraflores her share on July 3, 1946; that neither Catalina del Fierro nor Geronimo Miraflores was notified by publication or otherwise of the petition of Aurelia Miraflores and that it was only early in September, 1951, that movant learned of the order granting the petition. The movant prayed that said order be reconsidered and set aside, and a new one entered for the registration of the deed of sale in his favor and the issuance of the corresponding transfer certificate of title in his name. The court denied the above motion on September 21, 1951, holding that the question raised cannot be determined in the registration case, so that what the movant should do was to file the proper action in court for the protection of his rights, if any.

**Held:** It is obvious from the record that the petition of Aurelia Miraflores was heard and decided without publication or notice to all

parties whose interest may be affected thereby. But it is contended that the court had jurisdiction to hear and determine said petition without notice to any adverse claimant of whose existence the court was not aware, the respondents citing as authority the case of *Government of the Philippine Islands vs. Serafica et al.*, 61 Phil. 93, where resort to section 112 of Act No. 496 to effect the transfer of title to land from the registered owners who were already dead, to their heirs, was sanctioned. In this cited case there was no controversy among the heirs, so that a petition of that kind came within the scope of section 112 of the Land Registration Law. The heirs were in agreement, hence there was no need for the institution of an ordinary civil action.

As it did not involve any controversy at all, the case cited is no authority for the application of section 112 of Act No. 496 to the present case where a substantial controversy has arisen because of the claim of ownership asserted by Geronimo Miraflores, grantee of Catalina del Fierro, alleged sole heir of Antero Miraflores, co-owner of the land in dispute. That is a controversy that pertains to an ordinary civil action. It is not a mere incidental or routine matter that could summarily be disposed of by the Court of First Instance in the exercise of its special and limited jurisdiction as a land registration court under the section cited. As was said in the case of *Castillo et al. vs. Ramos et al.*, 45 Off. Gaz. 183, the remedy provided for in that section "is summary and not adequate for the litigation of issues pertaining to an ordinary civil action."

The respondent's claim to the inheritance of her deceased half-brother was not free from controversy and could not, therefore, be disposed of under the summary procedure contemplated in section 112 of Act No. 496.

The orders complained of are annulled without prejudice to the right of the parties to institute the proper action or proceeding for the enforcement of their respective rights. (*Geronimo Miraflores, Petitioner, vs. Hon. Eladio R. Leaño, etc., Aurelia Miraflores and Hermenegilda Tan, Respondents, G.R. No. L-6097, Promulgated July 13, 1953.*<sup>1</sup>)

<sup>1</sup> This is to be distinguished from the case of *Regino Cruz vs. Hon. Bienvenido Tan, etc.*, G. R. No. L-5704, promulgated June 27, 1953 (p. —) where Sec. 112 was applied because of the absence of a substantial controversy.