

**IN RE: MOTION TO CORRECT ORIGINAL CERTIFICATE OF TITLE NO. P-672 COVERING LOT NO. 4569 CAUAYAN CAD. FRANCISCA SOTO, PETITIONER-APPELLANT, VS. MARINA S. JARENO, JOSEFINA S. MEDEL...**

*G.R. No. L-38962. September 15, 1986*

Ponente: CRUZ, J.

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**CRUZ, J.:**

Originally elevated to the Court of Appeals, this case has been referred to us because it raises the following (and only) question of law:

Does the trial court have jurisdiction to order an amendment of a certificate of title without previous exhaustion of administrative remedies?

Specifically, the change sought is in the civil status of the registered owner, whom the petitioner wants to be described in the certificate of title as married to her rather than as a widower.[1]

The said registered owner was Sergio Serfino, who was married in January 1933 to the petitioner.[2] In 1939, he filed an application for a homestead patent, describing himself as "married to Francisca Soto,"[3] but in 1953, when the original certificate over the homestead was issued, it was in favor of "Sergio Serfino, widower." [4] Serfino died in 1965,[5] and soon thereafter the petitioner filed a motion with the Court of First Instance of Negros Occidental praying that his description as a "widower" be changed to "married to Francisca Soto." [6] Two daughters of the couple opposed the motion.[7]

While conceding that their parents were married in 1933, the oppositors nonetheless pointed out that their mother had abandoned them in 1942 to live with another man. Later, they said, she had adulterous relations with still a second man by whom she begot eleven children. According to these oppositors, it was their father himself who had described himself as a widower in 1953 because he had not heard from the petitioner since 1942.[8]

Their purpose, obviously, was to prevent the land from being considered conjugal and therefore equally owned by the spouses.

The trial court originally granted the motion and ordered the change prayed for, but later it reconsidered its decision and held itself without jurisdiction to act on the matter. Its reason was that there was no observance of the doctrine of exhaustion of administrative remedies.[9]

Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it.[10]

Moreover, the doctrine of exhaustion of administrative remedies is not applicable to private lands, as also settled in a number of decisions rendered by this Court.<sup>[11]</sup> Once registered, the homestead granted to Sergio Serfino ceased to have the character of public land and so was removed from the operation of the said doctrine.

But notwithstanding the above principles, the petition will still have to be dismissed because the change sought is not authorized under Section 112 of Act 496, as interpreted by this Court.

According to *Tanganan v. Republic*,<sup>[12]</sup> the amendment of a certificate of title is allowed under this section only "if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs."

In another case, it was held that "it is not proper to cancel an original certificate of Torrens title issued exclusively in the name of a deceased person, and to issue a new certificate in the name of his heirs, under the provisions of Section 112 of Act 496, when the surviving spouse claims right of ownership over the land covered by such certificate."<sup>[13]</sup>

It is obvious that in asking for the amendment of the certificate of title issued exclusively in the name of Sergio Serfino, the petitioner was seeking to reserve the title to one half of the subject land as her conjugal share. Appellees, for their part, reject this claim. Clearly, therefore, Section 112 of Act 496 is not applicable in this case.

The proper procedure is to institute the intestate proceedings of the Sergio Serfino, where the appellant may file against its administrator the corresponding ordinary action to claim her alleged rights over the lot in question.

WHEREFORE, this appeal is dismissed, with costs against the appellant. It is so ordered.

Yap, (Chairman), Narvasa, Melencio-Herrera, and Feliciano, JJ., concur.

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[1] Record on Appeal, p. 4.

[2] *Ibid.*, p. 2.

[3] *Id.*, p. 3.

[4] *Id.*

[5] *Id.*, p. 2.

[6] *Id.*, p. 4.

[7] *Id.*, p. 9.

[8] *Id.*, pp. 10, 12.

[9] *Id.*, pp. 24-25.

[10] *C.N. Hodges v. Municipal Board of Iloilo*, G.R. No. L-18276, 19 SCRA 28; *Municipality of La Trinidad, et al. v. CFI of Baguio-Benguet, et al.*, L-33899, 123 SCRA 81; *Pineda v. CFI of Davao*, 1 SCRA 1020, 1027; *Atlas Consolidated Mining and Development Corp. v. Mendoza*, 2 SCRA 1064.

[11] *Ramoso v. Obligado, et al.*, 70 Phil. 86; *Pamintuan v. San Agustin*, 43 Phil. 558, 561; *El Hogar Filipino v. Olviga*, 60 Phil. 17, 18.

[12] 94 Phil. 171.

[13] Jimenez v. De Castro, 67 Phil. 398.

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