

BASILISA ZAFRA VDA. DE ANCIANO, MOVANT AND APPELLANT, VS. FAUSTINA CABALLES, OPPOSITOR AND APPELLEE.

G.R. No. L-5040. September 29, 1953

Ponente: TUASON, J.

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TUASON, J.:

This appeal is from an order of Honorable Florentino Saguin, Judge of the Court of First Instance of Cebu, dismissing appellant's motion for reconsideration of a certificate of title filed in a cadastral proceeding. Brief but containing the relevant allegations as well as the court's opinion, the order is here copied in full.

"Se trata de una mocion para la reconstitucion del certificado original de titulo No. 1728 del lote No. 6100 de la medicion catastral de Cebu.

"En la solicitud se alega que el referido lote No. 6100 fue registrado a nombre de los esposos Macario Salaver y Faustina Caballes; que tanto el original asi como el duplicado del certificado de titulo de dicho lote se habian extraviado durante le guerra; y que el 6 de noviembre, 1935, dichos esposos vendieron el citado lote a favor del finado Narciso Anciano, esposo de la solicitante. Como remedio se pide que se ordene la reconstitucion del certificado de titulo en cuestion a nombre de la solicitante Basilisa Zafra y de su esposo Narciso Anciano.

"Faustina Caballes, viuda del finado Macario Salaver, presento una oposicion a la solicitud alegado, entre otras cosas, que tanto ella como su difunto esposo nunca vendieron o enajenaron el lote en cuestion a favor de los esposos Narciso Anciano y Basilisa Zafra ni a favor de cualquiera otra persona; que ella y su finado esposo han estado siempre en posesion del mencionado lote hasta el fallecimiento de este ultimo, y despues de dicho fallecimiento ella continuo en dicha posesion hasta la presente; que hasta hoy ella sigue pagando las contribuciones territorialesw del mismo; y que a supuesta venta alegada en la solicitud es fraudulenta.

"El Juzgado es de opinion que resulta innecesaria la vista de la mocion en su fondo. En primer lugar, porque no se puede reconstituir un certificado de titulo de un terreno a favor de una persona distinta del dueño registrado; y, en segundo lugar, habiendo una controversia debe plantearse y resolverse en una accion ordinaria sobre propiedad y no por medio de una mera mocion presentada en un expediente catastral.

"POR TANTO, sin perjuicio del derecho de las partes de poder entablar la accion que crean conveniente;

"Se deniega la mocion de autos."

Judge Saguin was right. Reconstitution or reconstruction of a certificate of title literally and within the meaning of Republic Act No. 26 denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. Appellant's motion was not to restore a lost registered certificate of title but to re-register and issue a new certificate in the names of herself and her deceased husband in lieu of one originally registered in the names of Macario Salaver and Faustina Caballes.

Indeed, there are at least indications that the supposed lost certificates of title were extant. Movant's Exhibit A, which is her and her husbands' deed of sale and which was presented only on January 29, 1947, in the office of the register of deeds, carries at the bottom thereof over the register of deeds' signature, the annotation "that this

instrument has been duly registered, proper memorandum thereof made on original certificate of title No. 1798 and on its owner's duplicate," which seems to contradict the allegation that these documents had perished. It was the number of the registration book that was left in blank in the registrar's note or memorandum, indicating that it was that book only which was probably missing.

Under section 195 of the Revised Administrative Code and section 8, paragraph 3, of the "Regulations for the Uniformity of Register of Deeds," it is the duty of the register of deeds "to enter and issue new certificates and duplicate certificates of title" to the transferees upon the presentation and entry of deeds of conveyance. Why the movant had to come to court for the issuance of a new certificate of title has not been explained.

However the case may be, the court below properly declined to proceed with the hearing of the motion under consideration if for no other reason than that this motion and the opposition thereto directly involved complicated questions of land ownership which can only be litigated and adjudicated in an ordinary action.

The order is affirmed with costs against the appellant.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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