

CARLOS FRANCISCO AND CEFERINO FRANCISCO, PETITIONERS AND APPELLEES, VS. JOSE DE BORJA, OPPOSITOR AND APPELLANT.

G. R. No. L-1854. January 18, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from the order dated June 23, 1947, of the Court of First Instance of Rizal which denied the petition of the attorney for the appellant to admit as evidence for the reconstitution of the resolution of this Court on the second motion of reconsideration of the appellant, the depositions of Attorneys Vicente Francisco and Amado Salazar to the effect that in said resolution it was reserved to the oppositor appellant the right to institute a separate civil action on the question of ownership of the property involved in the case. The order appealed from reads in part as follows:

Petitioners appellees object to their admission on the following grounds:

"Los actos coetaneos y posteriores del opositor desmienten su pretendido derecho sobre los lotes cuestionados. Porque si es verdad que la Hon. Corte le reservo el derecho que se invoca en la desposicion desde el ano 1942, no se comprende que hasta ahora, no ha presentado esa demanda. Y si es verdad lo que se dice en la deposition de que esa demanda estaba ya preparada, pero que por dificultades del viaje en tiempo de la ocupacion, no se pudo presentar, tampoco se comprende porque no insto inmediatamente la reconstitucion del expediente despues de la liberation. Esto demuestra que tal reserva no ha existido jamas.

"En cuanto al derecho del opositor sobre los lotes cuestionados, el mismo plano Psu-96841 (No. 1 Reconstitucion) en que esta claramente descrito el terreno del opositor hacia el Este del Lote 5, no demuestra conflicto alguno entre las lineas limitrofes de ese terreno con los lotes en cueatidn, que para la debida information de este Hon. Juzgado, son los formados por los cantos 16, 17 y 18 del Lote No. 3, llamado Lote 4-A y una pequena portion hacia el Sur del Lote 6 del piano Psu-96841.

"Es mas la resoluci6n de este Hon. Juzgado de fecha 25 de enero de 1940 (No. 35 Reconstitucion) en su parrafo 2, este Juzgado dijo:

'practicadas las pruebas de los mocionantes, y de la declaration del testigo Santiago T. Masanga, que es un agrimensor, se desprende que los Lotes 4-A y 6 reclamados por el opositor Jose de Borja no se hallan incluidos en el certificado de Titulo No.12377 de este, * * *,'

"De esta resolution firme no ha apelado ni siquiera se ha excep-cionado el opositor. Que derechos sobre estos lotes puede aun invocar el opositor? Aun suponiendo, sift admitir, la existencia de esa reserva de marras, se somete respetuosamente que ni aun la Corte Suprema puede revocar eh 1942 ese prommciamento firme del Juzgado inferior, hecho en 25 de enero de 1940. Otro hecho que arguye en contra de la reserva de accion mencionada en la deposicion.

"In view of the foregoing observations which court finds well taken, the court considers that justice and equity would not be served by the admission of the proferred depositions and hereby declares that the proceedings and resolutions sought to be established thereby are non-existent.

"So ordered."

The appellant filed on July 5, 1947, a motion for reconsideration of the above quoted order, and prayed "that the reconstitution of the record be considered as still open, and that leave be granted to the herein oppositor to take the deposition of Mr. Justice Paras [who penned the resolution sought to be reconstituted] in accordance with the Rule of the Court." And the lower court denied the motion for reconsideration for lack of merits.

After considering the merits of this appeal, we are of the opinion, and so hold, that the lower court has committed no error in the resolution or order appealed from. The court was also right in denying appellant's motion for reconsideration of July 22, in which the appellant asked leave of the court to take the deposition of Mr. Justice Paras, because said deposition should have been taken and presented together with those of Attorneys Francisco and Salazar. Besides, if the depositions of said attorneys are admissible as evidence in this case, there would be no need of taking that of Mr. Justice Paras; and if the former is not admissible the latter is not admissible also for the same reasons.

The first paragraph of Sec. 59 of Act No. 3110 provides that judgment and resolution of the Supreme Court may be reconstituted by means of an authentic copy thereof, and according to Sec. 60 of the same Act, if no copy can be filed or found the parties shall substitute an agreement in lieu thereof. The law, by expressly including the authentic copies and agreement of the parties as the basis for reconstituting a resolution or judgment of the Supreme Court, has excluded all other means by which they may be reconstituted. *Inclusio unius est exclusio alterius*. Otherwise, the law would have provided, as in the second paragraph of Sec. 59 of the same Act 3110 which refers to destroyed documentary evidence, that they "shall be reconstituted by means of secondary evidence which may be presented to any judge of the Supreme Court or any other officer commissioned by said Court." (Italics ours.)

Besides, said Sec. 60 of Act No. 3110 prescribes that "in default of agreement of the parties which may substitute in lieu of an authentic copy of a resolution or judgment, the Supreme Court shall determine what may be proper in the interest of equity and justice, and may even consider the proceeding or document in question as non-existent, and reconstitute only that part of the case which can stand without such proceeding or document." According to the facts found by the lower court and those set forth in the appellee's memorandum based on the reconstituted record, the appellees filed on November 3, 1933, a motion for the correction of the defective description of his old Certificate of Title, and the issuance in his favor of a new Certificate of Title including the disputed lots claimed by the oppositor-appellant Jose de Borja, who filed his amended opposition on September 12, 1936. The case was heard on November 16, 1939, and during the hearing the petitioners-appellees presented, as evidence Exhibit E, the original Certificate of Title No. 12377 and, as Exhibit (I), the plan Psu-99657 both of the appellant, and the witness Mr. Masanga, one of the surveyors of General Land Registration Office, who testified that the lots claimed by the oppositor-appellant are not included in the latter's Certificate of Title. After all the evidence of the appellee had been presented, the oppositor appellant asked for the transfer of the hearings on the ground, as stated by the court below, "de que no ha traído un agrimensor con quien pueda consultar sobre tecnicismos del plano y no está dispuesto a repreguntar al testigo de los mocionantes." After the lapse of fifteen days, the hearing was continued on December 1, 1939, and the oppositor appellant then renounced to present evidence and, without making any reservation, asked for the dismissal of the case; and the court decided the case holding in its order of January 25, 1940, the pertinent part of which was quoted in the order appealed from, that the lots claimed by the oppositor appellant are not included in the Certificate of Title No. 12377 of the oppositor, and dismissed the

petitioner's motion or petition.

As the oppositor-appellant did not appeal from said order this became final against him. The case was brought to this Court by the petitioners' appeal from the resolution of the court below of February 23, 1940, which amended the said order of January 25, 1940, dismissing the appellees' motion or petition, so as to declare "Entendiendose, sin embargo, que la resolucio[n] de este juzgado de fecha 25 de enero de este a[ño] solamente afecta a los lotes 4-A y 6, sin que la misma pudiera tener efecto en cuanto a los demas lotes ya decididos por este juzgado con mucha anterioridad." This Supreme Court on appeal revoked, by resolution of May 14, 1942, the appealed resolution and granted the motion of the petitioners with costs. The oppositor, now appellant, filed a motion for reconsideration which was denied by this Supreme Court on August 10, 1942, and now claims that in the resolution denying his second motion for reconsideration the pretended reservation was made.

Since the opposition filed by oppositor appellant claiming lots 4-A and 6 had already been decided against him, and the lower court's decision became final because the oppositor did not appeal therefrom, as clearly stated in the order, the reservation, which the appellant claims to have been made in the resolution of this Court on his second motion for reconsideration, of the right of the oppositor appellant to institute a separate civil action on the question of ownership of the lots claimed by him, would be contrary to the finality or conclusiveness of said order of January 25, 1941, and can not be given any legal effect; because this question had already been decided finally in said order of January 25, 1940, and was not, for it could not be, in issue in the appeal taken by the petitioners from the resolution of the lower court of February 23, 1940, as above stated. Such reservation should, therefore, be considered as mere surplusage and non-existent for all purposes (*Cabardo vs. Villanueva*, 44 Phil. 186, 191).

Wherefore, the order appealed from is affirmed with costs against the appellants.

Moran, C. J., Pablo, Bengzon, Tuazon, Montemayor, Reyes, Jugo and Bautista, JJ., concur.

RESOLUTION ON MOTION FOR RECONSIDERATION

March 29, 1951

FERIA, J.:

This is a motion for reconsideration of the decision of this Court, based on the ground that our decision or "judgment is premised on the assumption that the decision of the lower court affected adversely the rights of herein oppositor-appellant, and that, inasmuch as he did not appeal therefrom, the same had become final as to him, and hence, the admission of the depositions in question would only be expletive, and would serve no practical purpose."

The order of the Court of First Instance of Rizal appealed from dated June 23, 1947, reads in part as follows:

"Es mas, la resolucio[n] de este Hon. Juzgado de fecha 25 de enero de 1940 (No. 35 Reconstituci6n) en su parrafo 2, este Juzgado dijo:

'Practicadast las pruebas de los mocionantes, y de la declaracion del testigo Santiago T. Masanga, que es un agrimensor, se desprende que los Lotes 4-A y 6 reclamados por el opositor Jose de Borja no se hallan incluidos en el Certificado de Titulo No. 12377 de este, * * *.'

"De esta resolucidn firme no ha apelado ni siquiera se ha excep-cionado el opositor. Que derecho sobre estos lotes puede aun invocar el opositor? Aun suponiendo, sin admitir, la existencia de esa reserva de marras, se somete respetuosamente que ni aun la Corte Suprema puede revocar en 1942 ese pronunciamiento firme del Juzgado

inferior, hecho en 25 de enero de 1940. Otro hecho que arguye en contra de la reserva de accion mencionada en la deposition."

"In view of the foregoing observations which court finds well taken the court considers that justice and equity would not be served by the admission of the profered depositions and hereby declares that the proceedings and resolutions sought to be established thereby are non-existent.

"So ordered."

As the oppositor-appellee did not raise any question, either in his assignment of error or in his brief, as to the correctness of the above quoted finding of the lower court, we had, under the law, to assume that it is correct without necessity of verifying it, and to base in part our decision sought to be reconsidered mainly on said finding, and said appellee can not now for the first time assail the above quoted finding in the order appealed from.

But for equity's sake, we shall consider the first ground of the motion for reconsideration, because the second does not deserve further consideration.

The oppositor-appellant contends that the said finding is erroneous because the petitioners-appellees filed a motion for reconsideration of the order of January 25, 1940, and the court amended it stating that "it should be understood, however, that the resolution of this court dated January 24, 1940, affects only the lots 4-A and 6, and not the other lots already decided before by this court"; and "as said decision affected adversely the rights of the petitioners and appellees, and not those of the oppositor-appellant, it was, therefore, incumbent upon the former to interpose an appeal, and, in fact, they did appeal to this Supreme Court."

Said order of January 25, 1940, reads in part as follows:

"Practicadas las pruebas de los mocionantes, y de la declaracion del testigo Santiago T. Masanga, que es un agrimensor, se desprende que los lotes 4-A y 6 reclamados por el opositor Jose de Borja no se hallan incluidos en el Certificado de Titulo No. 12377 de este, pero aun suponiendo ya que dichos lotes esten fuera realmente del titulo de dicho opositor, con todo, el Juzgado no puede proveer a la moción que ahora ae ventila, porque de aprobarse el referido Piano Psu-96841 y de ordenarse la cancelacion de dichos Certificados de fransferencia de Titulo Nos. 938, 1430 y 6982 de los mocionantes, cambiarian y alterarian necesariamente el aspecto de estos titulos, no solamente en cuanto a la descripcion de los lotes comprendidos en los mismos, sino tambien en cuanto a su area, puesto que la unica facultad que la pueda a este Tribunal despues de inscrito un terreno o despues de quedarse firme su decreto es la conferida por el articulo 112 de la Ley No. 496, y considerando que la mocion que nos ocupa ahora no cae bajo las disposiciones del citado articulo 112 de dicha Ley No. 496, este Tribunal deja de tener competencia a resolverla, por falta de jurisdiccion.

"En cuando a la expedicion de un Certificado de Transferencia de Titulo del Lote No. 6, no ha lugar porque el Juzgado cree que los documentos Exhibits A y A-I no son pruebas competentes para demostrar al pretendido dominio de los aqui mocionantes sobre dicho lote.

"Asi se ordena."

As it is seen there are three (3) findings in the above quoted resolution, to wit: (1) That according to the evidence the lots in question are not included in the Certificate of Title of the oppositor Jose de Borja as claimed by him; (2) that assuming that said lots are not covered by the oppositor's Certificate of Title, the court had no power to grant the petitioners' motion that his plan No. Psu 96841 be approved and the petitioners' Certificates of Title Nos. 938, 1430 and 6982 be cancelled and new certificates in lieu thereof issued, because the court had no power to grant said motion under article 112 of Act No. 496; and (3) that Exhibits A and A-I are not admissible as evidence to show that lot No. 6 belongs to the petitioners.

The petitioners filed a motion for reconsideration of said order,[1] in so far as it held that the court had no jurisdiction or rather power to grant the petition of the petitioners and rejected the admission of Exhibits A and A-I as evidence, inviting the attention of the court to its resolution of December 5, 1935, and order of December 18, 1930, and September 18, 1935, which, according to the petitioners, have already passed upon those question, and are final. In view of the fact that the lower court in its order of February 23, 1940, had denied the petitioners' petition in their motion for reconsideration in its order of February 23, 1940, stating only that "the order of January 25, 1940 should be understood to affect only Jots 4-A and 6, and not the other lots already decided before by this court," the petitioners appealed from the order of January 25, 1940, as amended by the order of February 23, 1940.

On appeal the Supreme Court, through Justice R. Paras, reversed the decision of the lower court and held the following:

"In G. R. R. O. Record No. 917 a petition was filed by Carlos N. Francisco and Ceferino Francisco praying that a new plan covering certain parcels of land, titles to which had been decreed before by the court, be approved and that new certificates be issued in favor of the said petitioners.

"Jose de Borja objected to the petition on the ground that some of the lots mentioned therein form an integral part of his land covered by Transfer Certificate of Title No. 12377, but according to the evidence and the findings of the lower court his claim is utterly unfounded because the said lots are outside of the limits covered by the title in his name. The said court, however, denied the petition on two grounds—First, that it has no jurisdiction to act thereon as the title to the land had been decreed long before by the court and, second, that Exhibit "A", the deed of transfer from the former owner to the petitioner is not competent evidence to show any title in favor of the latter.

"It appears that the old title was based on a plan which was never approved by the Bureau of Lands, the surveys not having been made under the modern system which is more scientific. When the land covered by the old title was resurveyed and subdivided into lots, the total area in the new plan did not tally with that contained in the old one. However, the boundaries remained the same. As regards Lots Nos. 4-A and 6 or Plan Exhibit F, it appears that either through omission or error they were not included in the subdivisions although as a matter of fact they were within the boundaries of the whole land covered by the old certificate of title. The correction of this omission is now sought in the petition.

"There is absolutely no valid reason why the court should deny the approval of the new plan and the consequent issuance of a new certificate of title corresponding thereto as recommended by the Chief of the General Land Registration Office. No right of a third party is affected. There is no change in the identity of the land. When surveys under the old system are not correct and differ from the result obtained by the modern and more scientific way of surveying, corrections of errors contained in the old plan should be permitted by the court so long as the boundaries laid down in the description as enclosing the land and indicating its limits are not changed. If they are not allowed in the expediente of the case, no other remedy may be resorted to by which errors or imperfections in the old plan can be cured and to permit a decree based on such erroneous survey to stand would be absurd. The decree is not reopened and thereby modified. It is the new plan that is made to conform to the decree, which procedure should be allowed and even encouraged in these Islands where, as court records show many certificates of title are still based on the old and highly defective surveys. Such correction is authorized by section 112 of Act No. 496.

"In regard to Exhibit A, suffice it to state that it is a public document whereby the conveyance of the property (Lot No. 6) is duly confirmed by the legal representatives of the former owner, the Compania Agricola de Ultramar. As stated above, the oppositor has not shown any right or interest in the lots covered by the new plan. His objection to the admission of the document as evidence should therefore be overruled.

"Wherefore, the decision appealed from is reversed and the remedy prayed for in the petition is hereby granted,

with costs against appellee."

The above quoted decision was promulgated on May 14, 1942, and on August 7, 1942, this Supreme Court rendered the following resolution on the motion for reconsideration filed by the appellee Jose de Borja:

"Upon consideration of the motion of the attorney for the oppositor and appellee in G. E. No. 48390, Carlos N. Francisco et al., movants-appellants, vs. Jose de Borja, oppositor-appellee, praying, for the reasons therein stated, that this Court reconsider its decision, and/or reserve to appellant the right to file the corresponding civil action, and/or amend the dispositive part of its decision in the sense of ordering the lower court to continue with the trial of the case, receiving the evidence of the oppositor-appellee and thereafter to render another decision in conformity with the evidence, and considering the answer interposed by the appellants and of appellee's reply thereto it appearing that the appellee Jose de Borja failed to produce the evidence he had previously offered to present on the day set by the court below, at his own request, for the reception of such evidence; motion denied."

In view of the above quoted decision and resolution of this Supreme Court, it is evident that the appealed resolution of June 23, 1947, which held that the finding in the order dated January 25, 1940, to the effect that the lots Nos. 4-A and 6 claimed by the oppositor are not included in his certificate of title No. 12377, has become final is correct, not because the oppositor had not appealed therefrom, but because it was affirmed by this Court. The above quoted decision and resolution held that, "according to the evidence and findings of the lower court his (oppositor-appellant Jose de Borja) claim is utterly unfounded because the said lots (in question) are outside of the limits covered by the title in his name," and denied the oppositor's motion for reconsideration which prays, "for the reasons therein stated, that this court reconsider its decision and/or reserve to appellant the right to file the corresponding civil action, and/or amend the dispositive part of its decision in the sense of ordering the lower court to continue with the trial of the case, receiving the evidence of the oppositor and thereafter to render another decision in conformity with the evidence."

Besides, in view of the above quoted decision and resolution of this Court, the reservation in question, whether made or not, in the alleged resolution of the second motion for reconsideration, is of no legal consequence. If under the decision and the law the oppositor-appellant has no right to litigate in a separate action the ownership of the lots No. 4-A and 6, such reservation could not grant the oppositor-appellant such right. Otherwise, or if the oppositor-appellant has said right, he could litigate in a separate action the ownership of said lots even though there was no such reservation. The courts can not change the legal effects of its decision by such reservation, unless they are expressly granted by law the power to do so, as in the cases provided for in Rule 30 of the Rules of Court, and others. Such reservation or a statement in a court's order or decision that this is without prejudice to the right of a party to institute another action or litigate again the same question, is a mere surplusage.

Wherefore, the motion for reconsideration is denied.

Moran, C. J., Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, J.J., concur.

[1] Main decision, promulgated January 18, 1951, not published.

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