

JOHN M. MILLER AND EMILIO ESPINOSA, JR., APPLICANTS APPELLEES, VS. THE DIRECTOR OF LANDS, ET AL., OPPOSITORS; ANSELMO IRENEA, ET AL., PRIVATE OPPOSITORS AND APPELLANTS.

G.R. No. L-16761. October 31, 1964

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BENGZON, J. P. J:

A parcel of land in Tigbao, Milagros, Masbate which after survey, appeared to contain 411 hectares as per plan PSU-143798 was applied for registration in the Court of First Instance of Masbate on June 18, 1956 by John M. Miller and Emilio Espinosa, Jr. ;

After notice and publication, initial hearing was held on June 20, 1957. The Director of Lands and Bureau of Public Highways filed written oppositions. Thirty-five individuals appeared and expressed verbal oppositions. All persons, except the abovementioned oppositors, were declared in default on July 8, 1957.

On July 24, 1958 applicants started presenting evidence and the private oppositors were given five days to file written opposition (tsn., p. 5). Of the 35 oppositors 28 filed written but unverified opposition on July 29, 1958. On August 20, 1958 applicants finished adducing evidence and rested their case.

On August 27, 1958 the private oppositors presented their first witness. After his cross-examination, counsel for applicants called the court's attention to the lack of verification in the opposition filed by the private oppositors and moved to dismiss the same.

The private oppositors offered to verify their opposition. After parties had filed memoranda, the court issued an order on January 13, 1959 dismissing the unverified opposition, without pronouncement as to costs (Rec. on App., p. 26). Motion for reconsideration was denied by order dated November 18, 1959. The private oppositors have appealed from both orders.

The requirement of verifying oppositions in land registration proceeding is based on Sec. 34 of Act 496—

"Any person claiming an interest, whether named in the notice or not, may appear and file an answer on or before the return day, or within such further time as may be allowed by the court. The answer shall state all the objections to the application, and shall set forth the interest claimed by the party filing the same and apply for the remedy desired, and shall be signed and sworn to by him or by some person in his behalf."

Applicants failed to invoke this provision seasonably. Without objecting to the unverified opposition, they proceeded with the trial, presented evidence and rested their case. Only after the first witness of the private oppositors had testified and applicants' counsel had cross-examined him, was the defect of lack of verification brought up. By that time, applicants had waived the defect—

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"Lack of, or defect in the verification of a pleading may be waived by the adverse party's failure to make a proper and timely objection thereto * * * Where a party proceeds with the case as though his adversary's

pleading were verified, he waives the lack of verification of such pleading.

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"The act of * * * proceeding to trial on the merits without objection, is generally a waiver of all uncertainties, ambiguities, irregularities, formal defects, or faults or defects of any kind in the pleadings of the adverse party.

"By * * * going to trial without objection, * * * a party may waive the right to urge that his adversary's pleading is not subscribed or verified * * * ." (46 C. J. S. 1120, 1129, 1133, 1137.)

Applicants contend that the defect could not be waived because it resulted in the private oppositors' lack of standing in the case from the start.

This Court has already held unverified oppositions sufficient to confer standing in court to oppositors.

In *Malagum vs. Pablo*, 46 Phil. 19, a written opposition not made under oath was dismissed by the lower court. When oppositors sought from this Court mandamus to have their opposition reinstated, this Court denied the same for the reason that petitioners "had appeared in the case, had therefore standing in court, and the order excluding their answer was in effect a final determination of their rights" so that appeal and not mandamus was their proper remedy.

In *Nicolas vs. Director of Lands and Camungao*, L-19147-8, December 28, 1963, the lower court dismissed a petition for review of its judgment adjudicating the land to an applicant, filed by an oppositor who was not notified; of the hearing, for the reason that—

"In the first place, the opposition filed by him was not a valid opposition because it was not sworn to as required. by the Land Registration Act. It was simply a written appearance. In other words, he failed to file his answer; in due form."

On appeal this Court held.—

"The written appearance with opposition presented by petitioner herein, on November 7, 1951 (R.A.) was a valid one and sufficient to give him legal standing in court and would entitle him to notice, as a matter of right. The lower court erred in choosing to ignore the written appearance with opposition, which was a substantial compliance with the law, that requires a formal answer."

For purposes of record, the private oppositors should be allowed, as they had requested, to verify their opposition because, in any event, the supposed defect is deemed waived.

Wherefore, the orders appealed from are set aside and the case is remanded to the court a quo for further proceeding, without costs. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

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