

RECONSTRUCTED LAND REGISTRATION CASE NO. 687. EUGENIO PALUAY, APPLICANT AND APPELLEE, VS. CELESTINO BACUDAO, ET AL., OPPOSITORS AND APPELLANTS.

G.R. No. L-7553. September 22, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Sometime before the last war, Eugenio Paluay filed a petition for the registration of five parcels of land situated in the municipality of Barotac Viejo, Province of Iloilo, known as lots Nos. 1, 2, 3, 4 and 5 of plan Psu-109870, in the Court of First Instance of Iloilo. The petition was opposed by the Director of Lands, Juan Bacudao, Lourdes Bacudao and Celestino Bacudao. After due trial, the court on March 31, 1942 rendered decision awarding lots Nos. 1, 2 and 5 to the applicant and lots Nos. 3 and 4 to oppositors Juan Bacudao and the heirs of Lourdes Bacudao.

The Court of First Instance of Iloilo was reorganized on March 22, 1945, four days after the American forces liberated the island of Panay. The clerk of court, in accordance with Act No. 3110, submitted a report to the court stating that all the court records were destroyed or burned as a result of the battle for liberation and so the court issued an order on June 7, 1945 directing their reconstruction which was published in two leading newspapers in the City of Iloilo once a week for six months.

Taking notice of the court order, Eugenio Paluay filed on July 16, 1945 a motion with the court praying for the reconstitution of the registration case concerning the five lots applied for by him, and on the next day, July 17, he filed another motion wherein he prayed for the issuance of a decree ordering the registration in his name of lots Nos. 1, 2 and 5 adjudicated in his favor in the decision rendered by the court on March 31, 1942. Copies of these two motions were served on the provincial fiscal who was at the same time notified that said motions would be heard on July 21, 1945. The hearing however was postponed to July 28, 1945.

On August 8, 1945, after the hearing of said two motions which was held in the absence of the original oppositors, the court issued an order declaring the registration case reconstituted and ordering the Chief of the General Land Registration Office to issue the final decree and title for lots Nos. 1, 2 and 5, with all the improvements existing thereon, in favor of spouses Eugenio Paluay and Maria Pelobello, free from all liens and encumbrances.

On September 27, 1946, oppositor Celestino Bacudao, who came to Iloilo City for the first time since liberation to investigate the status of the case, and came to know that not only a decision has already been rendered but that the case has been reconstituted and an order for the issuance of final decree issued, filed a motion for new trial with the end in view of securing their nullification, but later withdrew said motion and filed instead a petition for review on November 9, 1946 when he discovered that the title to the lots had already been issued in the name of the applicant. Oppositor Bacudao attached to this petition two affidavits of merit, one subscribed to by him and another by his counsel Claro Gasendo wherein they averred that they never received a copy of the decision rendered in the registration case, nor of the motion filed by the applicant for the reconstruction of said registration

case. as required by law. The petition for review was submitted to the court on December 21, 1946, but it was never acted upon, and on August 9, 1947, oppositor Bacudao filed an amended petition for review praying for a similar relief, to which applicant Eugenio Paluay filed a written opposition.

On April 1, 1952, oppositor Bacudao filed a motion praying that his amended petition for review be set for hearing since the same has never been acted upon while the applicant is in possession of the property and has been enjoying it as owner to his prejudice. The applicant vigorously opposed this motion and on June 19, 1952 the court denied the petition for review mainly on the ground that the movant failed to urge the court to act upon his petition for a period of more than five years. The court also found in addition that the claim of fraud of petitioner has no merit because it is not the fraud contemplated in Section 38 of the Land Registration Act (Act 496). This is the order now subject of the present appeal.

The law which provides for the reconstitution of court records when they are lost or destroyed either totally or partially is Act No. 3110, Said Act provides that "after the occurrence of any fire or other public calamity resulting in the loss of all or part of the records of judicial proceedings" the clerk of court shall "send a notice by registered mail, among other officers, to the judge of the province "and all lawyers who may be "interested" in the proceedings (section 1), and upon receipt of such notice, the court shall issue a general notice which shall be addressed and sent by registered mail to said lawyers and to such other persons as might be interested advising them of the destruction of the records. This notice shall be published in the Official Gazette and in one of the newspapers of wide circulation in the province once a week for four consecutive Weeks (section 2). Said Act likewise provides that any interested party, or his counsel, shall appear and file within thirty days after having been notified of the destruction as above stated, an application for the reconstitution of the record of said case, "and the clerk of the court, upon receiving such application, shall send notice to other parties interested, or their counsels, of the day, hour, and place when the court will proceed to the reconstitution." (Section 3).

The foregoing in brief is the procedure laid down by law for the reconstitution of a court record in case of loss or destruction. Has this procedure been followed in the present case?

It is true that the clerk of court, soon after liberation, sent a notice to the judge then presiding the Court of First Instance of Iloilo informing him of the destruction of all court records in the province and that, acting thereon, the judge immediately issued an order for their reconstitution which was published in two newspapers of general circulation in the City of Iloilo once a week for six months. This is a substantial compliance with the law even if it does not appear that no notice of the destruction was ever served by registered mail to all the lawyers or persons who appear to be interested in the cases affected. But we notice that the applicant herein, Eugenio Paluay, in filing his application for reconstitution of the present registration case, merely served a copy thereof on the provincial fiscal, and not on the oppositors of record, or their counsel. Neither does it appear, that the clerk of court, upon receiving such application, has sent a notice to all interested parties therein, or their counsel, of the date, hour and place of hearing of the petition for reconstitution. The only thing that the record discloses is that the applicant only notified the provincial fiscal of the date and hour of the hearing, and when this was postponed, the court notified the provincial fiscal and the applicant of the postponement (pages 3, 5, and 11, Record on Appeal). Had the applicant sent a copy of his petition for reconstitution to the oppositors or their counsel in order that they may be notified of the date and place of hearing thereof, even if the clerk of court had not notified said oppositors or their counsel of the date of hearing, the action of the applicant would have been a substantial compliance with the law for in that case the oppositors could not be heard to complain of lack of service of the requisite notice regarding the hearing of the petition for reconstitution. But here both notices are conspicuously absent with the result that the oppositors were not given their day in court. The hearing for the reconstitution took place in their absence, and they only came to know of the action taken months later, or after the expiration of the period within which they

could appeal from the order of reconstitution. This is a substantial error which should be corrected because it affected adversely the rights of the oppositors.

Because of the lack of the requisite notice as above adverted to, the hearing of the motion for reconstitution took place at the back of the oppositors and so only the movant was able to present his evidence. And so it is not strange that in the order of the court there should appear a statement to the effect "that all the parties concerned in the case were duly notified and facilitated copies of the aforesaid decision of the court", which fact is precisely disputed by the oppositors.

It should be recalled that in the first petition for review presented by oppositors they attached two affidavits of merit wherein they averred that they had never received a copy of the decision of the court because at that time there was already a state of confusion in the Island of Panay in view of the impending advance of Japanese forces. Because of their inability to appear, for lack of the requisite notice, they were not able to prove this allegation. This is a part of due process, because if it turns out that they have never been notified of the decision, they would have been deprived of the right to appeal within the reglementary period, or of such remedy as they may avail of to protect their interest. Since they were not present when the hearing for the reconstitution took place, nor were they notified of the order of the Court of August 8, 1945, they cannot therefore be bound by the finding that they were furnished with a copy of the decisions of the court on the merits.

There is merit in the contention that the claim of fraud alleged by the oppositors in their two petitions for review is not the fraud contemplated in Section 38 of the Land Registration Act (Government of the Philippine Island vs. Tombie Triño, 50 Phil., 708; Ruiz vs. Lacsamana, 32 Phil, 653), because that fraud is merely predicated on the lack of notice of the petition for reconstitution and the failure to receive a copy of the decision on the merits, being matters that have taken place not before or during the trial, but subsequent thereto. But we are not concerned here with the review of the original decision but of the final decree which was ordered issued by the court after the ex-parte hearing of the petition for reconstitution, and, in our opinion, the alleged fraud claimed by the oppositors which consists in the deliberate failure of the applicant to notify them of the hearing, may serve as enough ground to justify the review, it being an undisputed fact that because of such failure or of the lack of notice required by law they were deprived of their day in court. The lower court, for that reason, should have set aside the order of reconstitution and should have set the motion anew giving the oppositors an opportunity to be heard.

Capital is made of the fact that oppositors failed to urge the court to act on their two petitions for review within a reasonable time and only did so after the lapse of five years, an attitude which, it is claimed, indicates abandonment or lack of interest on their part and which in itself may justify denial of the relief, but we find that the cause of the delay cannot be entirely attributed to oppositors it appearing that they set for hearing the first petition on two occasions and the court failed to take action thereon. The second petition is but a reiteration of the first with a slight modification as to the interest of the parties, and while it was not set for hearing, copy thereof was served on the applicant. The court also failed to take action on this petition. We feel that it is unfair to dismiss these two petitions simply because they were not acted upon by the court in due time. This delay or inaction cannot entirely be attributed to oppositors.

Wherefore, the court hereby sets aside the order of the lower court of June 19, 1952, as well as its order of August 8, 1945, and orders that this case be remanded to the lower court in order that a new hearing may be had, with notice to all parties, relative to the reconstitution of the record of this case, for the purpose merely of giving the oppositors an opportunity to present their evidence. In the meantime, the validity of the final decree issued by the General Land Registration Office and of the Original Certificate of Title No. 69243 issued by the Register of Deeds of Iloilo should be held subject to the outcome of the rehearing.

No pronouncement as to costs.

Bengzon, Acting C. J., Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion and Reyes, J.B.L., JJ., concur.

Orders set aside; case remanded for new trial.

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