

THE DIRECTOR OF LANDS, PETITIONER-APPELLANT, VS. JORGE ABECILLA, ET AL., CLAIMANTS-APPELLEES,

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision[1] dated March 9, 2012 of the Municipal Trial Court (MTC), Fourth Judicial Region, Gumaca, Quezon in Cadastral Case No. 102, LRC Rec. No. 1694, Lots Nos. 1110 & 1115 Gumaca Cadastre, entitled: "The Director of Lands, Petitioner, versus Jorge Abecilla, et al., Claimants, Roberta A. Caparros, Movant-Claimant.", the dispositive portion of which reads:

"WHEREFORE, confirming the order of general default entered earlier in the records of this case which showed that these lots Nos. 1110 and 1115, LRC Cad. Rec. No. 1694, located in Brgy. Villa Arcaya, Gumaca, Quezon with an area of 41,496 [square meters] more or less are registrable lots, the Petition is granted and the said lots are adjudicated in favor of Roberta Caparros, single, of legal age, Filipino citizen and resident of Brgy. Pipisik, Gumaca, Quezon as owner, free from liens and encumbrances except that may be imposed by existing law.

After this decision becomes final, let the corresponding decree of registration be issued as a matter of right and the certificate of title shall forthwith be issued, after payment of fees as required by law.

SO ORDERED."

The facts are:

On March 17, 2009, movant-claimant-appellee Roberta A. Caparros (Caparros for brevity) filed a Motion to Admit Answer and to Set Case for Hearing,[2] together with her Answer[3] to Cadastral Case No. 102, L.R.C. Record No. 1694, Lots Nos. 1110 and 1115, Gumaca Cadastre, which was filed by petitioner Director of Lands. In her answer, movant-claimant-appellee Caparros alleged in essence that: she is the owner and possessor from January 29, 2009 of the subject properties denominated as Lots Nos. 1110 and 1115, situated in Barrio Villa Arcaya, Gumaca, Quezon which has an area of 41,496 and an assessed value of P42,480.00; she inherited the subject properties from her predecessors who had been in possession thereof for sixty (60) years; and, the subject properties have no encumbrance of any kind whatsoever, nor is there any other person having interest therein to the best of her knowledge.

In an Order[4] dated April 30, 2009, the MTC of Gumaca, Quezon (lower court for brevity) set the petition for initial hearing on June 16, 2009 at 2:00 o'clock in the afternoon, ordered the posting of said order at the bulletin boards of the court and the municipal building of Gumaca, Quezon at least three (3) days before the date of hearing, and directed that the Director of Lands, Director of Forestry, the Solicitor General, the Administrator of the Land Registration Authority, the Regional Director of the Bureau of Lands, the Director of Lands (DENR), the District Land Officer, the OIC Community Environment and Natural Resources Officer, the Provincial Prosecutor, the District Engineer, the Municipal Mayor of Gumaca, Quezon, the Barangay Captain of Barangay Villa Arcaya and all adjoining owners where the lots are located be furnished with copies of said Order.

On the date of initial hearing, movant-claimant-appellee Caparros caused the marking of Exhibits "A" to "H" to prove compliance with jurisdictional requirements. On the same day, she also testified to substantiate her allegation that she is the owner of the subject properties she was applying for, but her testimony was not completed.

On July 27, 2009, the Office of the Solicitor General filed a Manifestation and Motion,[5] informing the lower court that it received a copy of the Order dated April 30, 2009, but it was not furnished with a copy of the petition with its annexes, thus it prayed that it be served with copies thereof, which the lower court granted.[6] On the same date, it also filed its Notice of Appearance[7] as counsel for the Republic of the Philippines and authorized the Provincial Prosecutor of Quezon to appear in this case.

In an Order[8] dated March 12, 2010, the case was ordered archived for failure of movant-claimant-appellee Caparros to complete the presentation of her evidence in support of her application for registration. On August 24, 2011, she filed a Motion to Lift from The Archive[9] which was granted in an Order[10] dated September 15, 2011.

Movant-claimant-appellee Caparros testified on June 16, 2009 and September 14, 2009 that: she is 89 years old, single and a retired nurse supervisor; she is the owner of the subject properties denominated as Lots Nos. 1110 and 1115 of Gumaca Cadastre, situated in Barangay Villa Arcaya, Gumaca, Quezon; said properties passed to her from her grandmother and her mother through a last will and testament; she had seven (7) siblings, but when they died, she executed a Salaysay ng Solong Pagmamana adjudicating unto herself the subject properties; the subject properties were earlier declared for taxation purposes in the name of her mother Lazara Arganda; she is the one paying for the realty taxes due on the subject properties which have not been mortgaged or encumbered; her mother died in 1930 after inheriting the subject properties from her grandmother; at present nothing is planted on the subject properties, nonetheless, she continues to pay for the realty taxes due thereon; there was really no last will and testament that her predecessor-in-interest executed in her favor, but she relies on the Kasulatan ng Solong Pagmamana as her evidence of ownership; while occupying the subject properties, she does not know of any adverse claimants and neither does anyone disturb her possession thereof; she has been in possession of the subject properties for thirty (30) years now, but her mother Lazara Arganda was already occupying the same even before the Japanese invasion.[11]

Upon being called back to the witness stand on December 15, 2011, movant-claimant-appellee Caparros continued with her testimony, declaring that: of her seven (7) siblings, only one, Eufemio Caparros, had children, while the rest all died without children; and, each of the children of Eufemio Caparros executed an affidavit, waiving in her favor all their rights over and participation in the subject properties.[12]

Romia Garlan, a witness for movant-claimant-appellee Caparros declared that: she is 71 years old and a tenant of movant-claimant-appellee Caparros in her land at Villa Bota; when she was ten (10) to sixteen (16) years old, she learned that movant-claimant-appellee Caparros owned properties in Villa Arcaya because she would sometimes go there; during that time, the improvements on the subject properties consisted of coconut and a few banana trees and a house owned by a tenant of movant-claimant-appellee Caparros; the people in the community know movant-claimant-appellee Caparros to be the real owner of the subject properties and she does not know of anyone who has an adverse claim thereon; and, there is no military camp or any public building erected on the subject properties.

After the hearing, the lower court rendered the assailed judgment. Hence, this appeal, assigning this lone error:

The court a quo erred in proceeding with the hearing of the case despite claimant-appellee Roberta Caparros' failure to prove compliance with the mandatory publication requirement of the law.

The appeal is meritorious.

Petitioner-appellant Director of Lands argues that: the lower court erred in proceeding with the trial of the case despite the fact that there was no compliance with the publication requirement in the Official Gazette of the Order of initial hearing as required under Section 7 of Act No. 2259; movant-claimant-appellee Caparros, being the one who would benefit from the adjudication of the subject properties, had the burden of proving that there was compliance with the publication requirement, but in this case she failed to discharge said burden; and, for failure of movant-claimant-appellee Caparros to prove compliance with the jurisdictional requirements, the assailed decision of the lower court is void for lack of jurisdiction.

On October 29, 2013, movant-claimant-appellee Caparros filed her Comment on the Appellant's Brief with Motion to Dismiss for being the Wrong Mode of Appeal and as the Judgment is Final and Executory.[13] The motion to dismiss was denied in a Resolution[14] dated June 6, 2014.

In her Appellee's Brief,[15] movant-claimant-appellee Caparros counters that: she should not be made to suffer for the failure of the Commission on Land Registration to cause the publication of the petition in the Official Gazette; if such publication was necessary, the same should have been timely raised during the hearing, but the handling prosecutor did not raise the issue of lack of publication; if the publication of the order could not be dispensed with, the remedy is not to dismiss the case, but to have it remanded to the lower court for reception of further evidence; by appealing the assailed decision of the lower court directly to the Court of Appeals under Rule 41 of the 1997 Revised Rules of Civil Procedure, petitioner-appellant Director of Lands took a wrong mode of appeal, the correct mode of appeal being under Rule 40 of the same Rules, granting that the assailed decision is still appealable; and, the assailed decision is now final and executory, thus no longer appealable, as shown by the Certificate of Finality dated July 9, 2012 issued by the Clerk of Court of the lower court.

A careful perusal of the record shows that there was indeed no publication in the Official Gazette of the Order dated April 30, 2009 of the MTC of Gumaca, Quezon setting the date and time for the initial hearing of the petition. Even movant-claimant-appellee Caparros does not dispute the lack of compliance with the publication requirement which is mandatory under Section 7 of Act No. 2259, to wit:

"Sec. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition, the Commission on Land Registration Office shall cause notice thereof to be published twice, in successive issues of the Official Gazette, in the English language. The notice shall be issued by order of the court, attested by the Commissioner of the Land Registration Office, x x x."

Sec. 7 of Act No. 2259, otherwise known as the Cadastral Act, and Sec. 35 of P.D. No. 1529, otherwise known as the Land Registration Decree, provide for the publication of the application for registration and the schedule of the initial hearing. This is so since judicial cadastral proceedings, like ordinary administrative registration, are in rem, and are governed by the usual rules of practice, procedure, and evidence. Due publication is required to give notice to all interested parties of the claim and identity of the property that will be surveyed.[16]

While it is true that it was the Government that should cause the publication of the Order setting the time of initial hearing and that it failed to do so in this case, the lower court should have seen to it that there was compliance therewith before proceeding with the initial hearing and hearing on the merits. Even if the handling prosecutor failed to interpose an objection to the holding of the initial hearing due to lack of publication, the government is not estopped from questioning the erroneous action of the lower court. Indeed, in *Cruz, Jr. v. Court of Appeals*,[17] the Supreme Court declared:

"... Estoppel does not lie against the government because of the supposedly mistaken acts or omissions of its agents. As we declared in *People v. Castañeda*, "there is the long familiar rule that erroneous application and

enforcement of the law by public officers do not block subsequent correct application of the statute and that the government is never estopped by mistake or error on the part of its agents."

As correctly pointed out by the Solicitor General, the MTC of Gumaca, Quezon did not acquire jurisdiction over the petition due to lack of publication of the order setting the time of initial hearing. Movant-claimant-appellee Caparros failed to prove compliance with the jurisdictional requirements, thus the proceeding before the lower court including the assailed decision, is void for want of jurisdiction. In *Director of Lands, et al. v. Benitez, et al.*,^[18] the Supreme Court categorically stated that publication is essential to establish jurisdiction in land registration and cadastral cases, without which the court cannot acquire jurisdiction thereon or obtain any authority to proceed therewith.

Contrary to the stance of movant-claimant-appellee Caparros, the notice of appeal filed by petitioner-appellant Director of Lands under Rule 41 of the 1997 Revised Rules of Civil Procedure is the correct remedy. This matter was the subject of movant-claimant-appellee Caparros' motion to dismiss which was resolved by this Court in a Resolution^[19] dated June 6, 2014, a copy of which was received by her counsel on June 25, 2014. This Court deems it unnecessary to reiterate its ruling which denied movant-claimant-appellee Caparros' motion to dismiss. Thus, insofar as said issue is concerned, the same is already final and executory and may no longer be revived by reiterating the same in her appellee's brief. There is also no showing that the denial of said motion to dismiss was questioned by movant-claimant-appellee Caparros before the Supreme Court.

With respect to the argument of movant-claimant-appellee Caparros that the assailed decision is now final and executory and is no longer appealable, this Court, on the contrary, finds that the notice of appeal was seasonably filed, despite the issuance of a Certificate of Finality^[20] by Clerk of Court II, Leah P. David. Notably, the content of said Certificate of Finality was contradicted by the Presiding Judge herself in an Order^[21] dated October 15, 2012 giving due course to the appeal, stating that the appeal was "taken by the Solicitor General within the reglementary period." Needless to say, as between the Certificate of Finality issued by the Clerk of Court and the Order dated October 15, 2012, the latter prevails. Besides, movant-claimant-appellee Caparros failed to refute the statement of the Office of the Solicitor General in its Notice of Appeal^[22] that it received a copy of the assailed decision on September 18, 2012. The record shows that the notice of appeal was filed by registered mail on September 27, 2012.

As regards the plea of movant-claimant-appellee Caparros that this case be remanded to the lower court for further proceedings, this Court, while empathizing with the present condition of movant-claimant-appellee Caparros who is already of advanced age, is not inclined to grant the same. Since the proceeding before the lower court is void and said court did not acquire jurisdiction over the petition, no further reception of evidence can be had and the defect could not be cured without starting all over again. At any rate, since the assailed decision was rendered without jurisdiction, movant-claimant-appellee Caparros may refile her application for registration without violating the principle of *res judicata*.

WHEREFORE, the appeal is GRANTED. Accordingly, the assailed Decision of the MTC of Gumaca, Quezon in Cadastral Case No. 102, L.R.C. Rec. No. 1694, Lots Nos. 1110 & 1115 Gumaca Cadastre is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the same.

SO ORDERED.

Garcia and Bueser, JJ., concur.

[1] Record, pp. 59-64

- [2] Record, pp. 1-2
- [3] Record, pp. 3-6
- [4] Record, p. 8
- [5] Record, pp. 32-43
- [6] Record, p. 38
- [7] Record, p. 35
- [8] Record, p. 43
- [9] Record, p. 40
- [10] Record, p. 44
- [11] TSN, June 16, 2009 and September 14, 2009
- [12] TSN, December 15, 2011
- [13]. Rollo, pp. 51-57
- [14] Rollo, pp. 96-98
- [15] Rollo, pp. 109-116
- [16] Heirs of the Late Jose de Luzuriaga, vs. Republic of the Philippines, G.R. No. 168848, June 30, 2009

[17] 194 SCRA 145 (1991).

- [18] G.R. No. L-21368, March 31, 1966, 16 SCRA 557.
- [19] Rollo, pp. 96-98
- [20] Record, p. 66
- [21] Record, p. 72
- [22] Record, p. 67

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