

THE DIRECTOR OF LANDS, (BANILAD FRIAR LANDS ESTATE) APPELLANT VS. GAN TAN, PETITIONER-APPELLANT.

G. R. No. L-2664. May 30, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Cebu denying the petition for reconstitution of a certificate of title covering lots Nos. 2 and 8, block No. 36, subdivision plan FLS 1544-D, on the ground that petitioner is not qualified to acquire said lots under our Constitution in the light of the ruling in the Krivenko case.

Petitioner is a Chinese citizen. He bought the lots from the Cebu Heights Company, and obtained from the office of the register of deeds the corresponding certificate of title. The transfer took place on March 14, 1940. The title issued to the petitioner was lost during the last war. And so he filed this petition for reconstitution. The court denied the petition, hence this appeal.

This petition was filed under Republic Act No. 26, which authorizes the reconstitution of transfer certificates of title (section 3a). This Act provides that the petition may be filed either with the register of deeds (section 5), or with the court of first instance (section 10), and that it shall be accompanied with the necessary sources of reconstitution and with an affidavit of the registered owner stating, among other things, that no deed or other instrument affecting the property had been presented for registration, or, if there be any, the nature thereof, the date of its presentation, and the names of the parties, and whether the registration of such deed or instrument is still pending accomplishment (section 5). In the instant case, petitioner complied with all these requirements, and the petition was published in accordance with law. Section 15, of Republic Act No. 26, provides:

"If the court, after hearing, finds that the documents presented, as supported by parol evidence or otherwise, are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title, and that the petitioner is the registered owner of the property or has interest therein that the said certificate of title was in force at the time it was lost or destroyed, and that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title, an order of reconstitution shall be issued. The clerk of court shall forward to the register of deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but such dismissal will not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act." (*Italics supplied.*)

It therefore appears that if the court, after hearing, finds that the evidence presented is sufficient and proper to warrant the reconstitution of the lost certificate of title and that the petitioner is the registered owner of the property, and said certificate was in force at the time it was lost, the duty of the court is to issue the order of reconstitution. This duty is mandatory. The law does not give the court discretion to deny the reconstitution if all the basic requirements have been complied with.

But the lower court claims that petitioner, even if he complied with all the requirements of the law, is not entitled

to have his title reconstituted for the reason that, being an alien, he is not qualified to acquire the land covered by said title under our Constitution. However, we find this claim untenable in the light of the theory that a Torrens title cannot be collaterally attacked. The rule on this matter is that this issue can only be raised in an action expressly instituted for that purpose (*Legarda vs. Saleeby*, 31 Phil., 590). Moreover, it is a well known doctrine that a Torrens title, as a rule, is irrevocable and indefeasible (*Bachrach Motor Co. vs. Kane*, 61 Phil., 504), and our duty is to see to it that this title is maintained and respected unless challenged in a direct proceeding.

To our mind, the only issue here is whether there is a title to be reconstituted. That is the only purpose of the law (Rep. Act No. 26). If there is, then it is the duty of the court to comply with its mandate. Whether the petitioner has the right to acquire the land or not, is beyond the province of this proceeding. That should be threshed out in a proper action. The two proceedings are distinct and should not be confused.

Wherefore, the order appealed from is hereby set aside. Let the record be returned to the lower court for further proceedings.

Paras, C. J., Feria, Padilla, Tuason, Montemayor and Jugo, JJ., concur.

DISIDENTE

PABLO, M.,

Gan Tan que es un chino, compro en 14 de marzo de 1940 dos lotes de la Cebu Heights Company y obtuvo el certificado de transferencia de titulo correspondiente. Acudio al Juzgado de Primera Instancia de Cebu para pedir la reconstitucion del certificado que, segun el, lo perdio en la ultima guerra.

El articulo 4 delCodigo Civil dispone que son nulos los actos ejecutados contra lo dispuesto en la ley. La Constitucion no es una simple ley: es la ley fundamental del Estado. Bajo expresa disposicion constitucional, no hubo venta entre Cebu Heights Company, por una parte, y Gan Tan, por otra; quiero decir, no existe una venta legal. Gan Tan, por tanto, no obtuvo legalmente el terreno. Si despues fue inscrita la Venta, el Registrador de Titulos expidio el certificado de transferencia de titulo correspondiente, tales actuaciones son nulas porque provienen de un contrato nulo. De los contratos nulos no puede nacer derecho para obligar a los Tribunales para prestarle los servicios y privilegios a que tiene derecho un comprador legal. El infractor de la ley fundamental con mayor razon no se le debe conceder el mismo derecho que le asiste a uno que cumple la ley. El que acude a los tribunales debe tener las manos limpias.

Opino que Gan Tan no tiene derecho a pedir a los Tribunales de Filipinas la reconstitucion del certificado de transferencia de titulo que comprueba la obtencion ilegal de un terreno por el. Si se le concede este remedio que se concede a todos los que adquieren terrenos de acuerdo con la ley, entonces no se puede impedir en lo futuro la adquisicion de bienes inmuebles por extranjeros mediante maquinaciones mas o menos ingeniosas; ellos continuarian acaparando bienes inmuebles porque, despues de todo, obtienen proteccion de los tribunales.

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