

DIRECTOR OF LANDS, PETITIONER, VS. THE HON. COURT OF APPEALS, CARMEN TIBUDAN, EUGENIA TIBUDAN, LOLITA TIBUDAN-SOLIS AND FRANCISCO TIBUDAN, RESPONDENTS.

G.R. No. L-47380. February 23, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a petition[1] for review filed by the Solicitor General, on behalf of Hon. Felipe P. de Vera, in his capacity as Presiding Judge of the Court of First Instance of Pangasinan, Branch XII, Dagupan, to review and set aside the decision of the Hon. Court of Appeals,[2] dated August 17, 1977, in CA-G.R. No. SP-04043-R, which reversed the assailed Order in Land Registration Case No. D-1337, LRC Record No. N-43762.[3]

The Court of Appeals culled the facts that matter, as follows:

"3. That on 12 March 1973, Tranquilino Tibudan filed an application for registration of title of one (1) parcel of land containing an area of Two-Thousand Six Hundred Seventy Five (2, 675) square meters, more or less, and situated in the Barrio of David, Municipality of Mangaldan, Province of Pangasinan, and docketed as Land Registration Case No. D-1337, LRC RECORD NO. N-43762. x x x

"4. The initial hearing of the said application of Tranquilino Tibudan was set by the court a quo on the 28th day of August, 1973. The notice of initial hearing was duly published in the Official Gazette. x x x

"5. That on 26 June 1973, before the date of initial hearing, herein petitioners filed their opposition to the aforesaid application on the ground that they are absolute owners and in actual possession of certain portions of the land subject-matter of the registration proceeding x x x.

"6. That on 17 July 1973, Lourdes Marmolejo, alleged wife of applicant Tranquilino Tibudan, filed a petition for substitution of applicant on the ground that the parcel of land subject-matter of the application of Tranquilino Tibudan is her paraphernal property having acquired it by purchase from a certain Maria Mendoza. x x x

"7. That on 18 July 1973, the court a quo issued an order allowing said Lourdes Marmolejo to be substituted as party applicant in lieu of her husband, Tranquilino Tibudan. x x x

"8. That on 22 August 1973, respondent Director of Lands, thru the Office of the Solicitor General, filed an opposition to the application for registration of title filed by Tranquilino Tibudan, substituted by Lourdes Marmolejo, praying that the land subject-matter of the registration proceeding be declared a public land. x x x

"9. That on 28 August 1973, the date of initial hearing, the court a quo issued an order of general (sic special) default against all persons with the exception of herein petitioners and respondents Director of Lands. x x x

"10. That after the initial hearing on 28 August 1973, the trial on the merits was postponed several times for one reason or another.

"11. That on 30 August 1974, the court a quo, acting on the urgent motion for postponement dated 29 August

1974 filed by applicant Lourdes Marmolejo, through counsel, issued an order resetting the hearing of the case to 23 September 1974. x x x

"12. That on 13 September 1974, before the scheduled hearing set on 23 September 1974, applicant Lourdes Marmolejo, thru counsel, filed an ex-parte motion to withdraw her application x x x.

"13. That on 16 September 1974, the court a quo, acting upon the ex parte motion to withdraw application x x x, issued an order allowing applicant Lourdes Marmolejo to withdraw her application. x x x

"14. That after the approval of the withdrawal of the application of Lourdes Marmolejo, the petitioners-oppositors and the Director of Lands became the only contending parties in the registration case, x x x"

xxx xxx xxx

"16. That on 23 September 1974, the date of hearing as fixed in the order of the court a quo dated 30 August 1974 x x x herein petitioners and their counsel appeared in court for the reception of their evidence to prove their title over the portions they claim, as they also prayed for affirmative relief in their opposition, but respondent Judge, Hon. Felipe P. de Vera, required herein petitioners, thru counsel, to move in writing that they have the right to adduce evidence x x x.

"17. That heeding the advice of respondent judge, Hon. Felipe P. de Vera, petitioners, thru counsel, filed on 1 October 1974 a motion to allow oppositors (petitioners) to adduce evidence x x x.

xxx xxx xxx

"18. That on 29 October 1974, respondent Judge, Hon. Felipe P. de Vera, with a grave abuse of discretion amounting to lack of jurisdiction denied the motion to allow oppositors to adduce evidence[4] x x x

xxx xxx xxx

"20. That on 11 January 1975, respondent Judge Hon. Felipe P. de Vera, with grave abuse of discretion amounting to lack of jurisdiction denied the motion for reconsideration (Annex `M') stating that "The court does not find oppositors contention tenable."

"21. That in denying the aforesaid motion to allow oppositors (petitioners) to adduce evidence x x x to prove their registerable title over the portions they claim in the land applied for registration, as well as the motion for reconsideration x x x respondent Judge, Hon. Felipe P. de Vera, acted with grave abuse of discretion amounting to lack of jurisdiction and unlawfully neglected and or refused to perform a clear duty enjoined upon him by Sec. 37 of Act 496, as amended by act No. 3621, and the doctrine laid down in the case of Nicholas vs. Pre, 97 Phil 766.

x x x

"22. That there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law against the aforementioned orders (Annexes "L" and "N") of respondent Judge, x x x except this petition for certiorari and mandamus." [5]

Acting on the Petition for Certiorari and Mandamus brought by the private respondents herein, the Court of Appeals came out with its decision of August 17, 1977 annulling the challenged orders of the trial court of origin; disposing thus:

"WHEREFORE, the petition is granted, declaring the questioned orders (Annexes `L' and `N') null and void for having been issued with grave abuse of discretion. The respondent Judge is hereby ordered to continue the proceedings in Land Registration Case No. T-1337, LRC Rec. No. N-43762, with notice to Lourdes

Marmolejo, the former applicant."

With the denial of his motion for reconsideration[6], petitioner resorted to the present petition, raising the issues:

FIRST, WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ERRED IN DECLARING NULL AND VOID THE ORDER OF HEREIN PETITIONERS DATED OCTOBER 29, 1974, DISALLOWING PRIVATE RESPONDENTS TO ADDUCE EVIDENCE IN SUPPORT OF THEIR OPPOSITION AFTER APPLICANTS WITHDREW THE APPLICATION IN LAND REG. CASE NO. D-1337, LRC REC. NO. N-43762.[7]

SECOND, WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE PETITION FOR CERTIORARI AND MANDAMUS DOCKETED AS CA-G.R. NO. SP-04043-R INSPITE OF THE FACT THAT THE PRINCIPAL PARTY, APPLICANT LOURDES MARMOLEJO IN LRC CASE NO. D-1337, REC. NO. N-43762, WAS NOT INCLUDED AS PARTY THEREIN.[8]

On the first issue posed, it is petitioner's submission that in view of the withdrawal of the application of Lourdes Marmolejo in Land Registration Case No. D-1337, LRC Record N-43762, before the introduction of evidence in said case below, no further proceedings could be pursued, for the reason that the conflicting interest involved ceased to exist. Petitioner theorized that the oppositors (now the private respondents) should not be permitted to introduce their evidence in the said case to substantiate their opposition to subject application for land registration, without first seeking the reinstatement of the application of Lourdes Marmolejo.

Section 37 of the Land Registration Act (Act No. 496), the law then in force, reads:

"SEC. 37. If in any case without adverse claim the court finds that the applicant has no proper title for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may withdraw his application at any time before final decree, upon terms to be fixed by the court: Provided, however, That in case where there is an adverse claim, the court shall determine the conflicting interests of the applicant and the adverse claimant, and after taking evidence shall dismiss the application if neither of them succeeds in showing that he has proper title for registration or shall enter a decree awarding the land applied for, or any part thereof, to the person entitled thereto, and such decree, when final, shall entitle to the issuance of an original certificate of title to such person: Provided further, That if the adverse claim covers only a portion of the lot and the said portion is not properly delimited on the plan attached to the application, the court, upon pronouncing judgment, in case the same be in favor of the adverse claimant, shall order the latter to file a plan of the portion awarded to him, duly approved by the Director of Lands: And Provided Finally, That the court shall in its judgment determine the strictly necessary expenses incurred by the applicant for fees for the registration of his application in the office of the clerk of court and for the publication thereof, and shall order the adverse claimant to whom a portion of the land applied for has been awarded to pay to the applicant such part of said expenses as may be in proportion to the area awarded to said adverse claimant, unless the court finds that the applicant, upon filing his application, acted in bad faith or knowing that he had no right to the land awarded to another, in which case he shall not be entitled to any refund. In case the adverse claim is for the entire lot, the refund of expenses to which the applicant is entitled as provided in this Act shall also include the actual cost of making the plan of the lot in question. (As amended by Sec. 2, Act No. 3621.) [Underscoring supplied]

We discern from the aforecited provision of law nothing to support the stand of petitioner. On the contrary, it can be gleaned therefrom that the trial court should have granted the motion of the herein private respondents, as oppositors in the case, to be allowed to adduce evidence on their claim over the land sought to be registered. The disquisition of the Court of Appeals in its decision under scrutiny is in point, to wit: "There is no question that under Section 37 of Act No. 496, as amended by Act No. 3621, the withdrawal of the application does not

terminate the registration proceeding when there is an adverse claim. It is provided thereunder that "The applicant may withdraw his application at any time before final decree: Provided, however, that in a case where there is an adverse claim, the court shall determine the conflicting interest of the applicant and the adverse claimant." [9] Thus, petitioner's stance that there must first be a motion for reinstatement of the case is devoid of any legal basis. The interpretation by the Court of Appeals accords with what this court ruled in *Nicolas vs. Pre. et al.* [10] on a similar issue, to wit:

"xxx It is now the contention of appellant that this action of the trial court was in violation of section 37 of Act No. 496 because, after having dismissed the registration proceeding upon the motion of appellant, the court could no longer continue the hearing without requiring the appellees to file a new application for registration so that they may comply with the law as regards publication as if it were an original application. And the court having failed to follow this procedure, its ulterior proceeding is null and void, upon the theory that the court acted without jurisdiction or in violation of the law.

We do not find merit in this contention as it ignores the amendment wrought in the registration law by Act No. 3621. Before the amendment the purpose of an answer to a registration case was simply to disclose the oppositor's objections to the application, or his reasons showing why the applicant should be denied the relief applied for. The oppositor could not ask for any affirmative relief or that the land be registered in his name in the same proceeding it being the sole purpose of the answer to prevent the registration of the land in the name of the applicant. The power of the court was limited to determining whether the applicant had a title proper for registration (*City of Manila vs. Lack*, 19 Phil., 324). However, when the law was amended in 1929, with the enactment of Act No. 3621, the procedure was changed in the sense of allowing the oppositor not only to allege in his answer his objections to the application but to ask for any affirmative relief he may desire. Under the amendment, an oppositor who claims ownership over the property covered by the application, or a part thereof, may now claim in his answer that the land be registered in his name in the same proceeding. This is clearly reflected in section 37 of Act No. 496, as amended by section 2 of Act NO. 3621, wherein it is provided that "in case where there is an adverse claim, the court shall determine the conflicting interests of the applicant and the adverse claimant, and after taking evidence shall dismiss the application if neither of them succeeds in showing that he has proper title for registration, or shall enter a decree awarding the land applied for, or any part thereof, to the person entitled thereto." The only condition prescribed for this variation is that the court "shall order the adverse claimant to whom a portion of the land applied for has been awarded to pay to the applicant such part of said expenses as may be in proportion to the area awarded to said adverse claimant." This is what the trial court has done It ordered the oppositors to pay the applicant his proportionate share in the expenses. It is, therefore, evident that the claim of appellant that the trial court acted contrary to law in acting on the adverse claim of the oppositors has no legal basis. (Underscoring supplied for emphasis)

Petitioner also theorized that with the withdrawal of the application for registration in the main case, the conflicting interest between the applicant and the oppositors was obliterated, thereby effectively terminating the case itself. This theory of petitioner cannot be sustained in view of the pronouncement in *Ng Sam Bok vs. Director of Lands* [11], that:

"As the Director of Lands has registered herein an adverse claim, the lower court was bound to determine the conflicting interest of said claimant and the applicant-appellee; and in case neither succeeds, under the evidence, in showing proper title for registration, it may dismiss the case. x x x"

An opposition presented by the Director of Lands is, for all intents and purposes, a conflicting interest as against that of the applicant or of the private oppositors, asserting a claim over the land sought to be registered. Consequently, the withdrawal by either the applicant or any of the private oppositors from the case does not ipso facto obliterate the conflicting interests in the case. Neither is the case terminated because under the abovesited law, as amended, the trial court is required to resolve the claims of the remaining parties, the withdrawal of the

application by the applicant and/or some private oppositors notwithstanding.

The next error ascribed to the respondent court questions the propriety of the petition for certiorari and mandamus which it gave due course to. Petitioner theorized that with the non-inclusion of applicant Lourdes Marmolejo as a party respondent in CA-G.R. No. SP-04043-R[12], the decision rendered in the said case was null and void for non-compliance with Section 5, Rule 65 of the Revised Rules of Court.[13]

This contention is untenable. It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings. Thus, the Rules require that a motion attacking a pleading or proceeding must include all objections then available and all objections not so included shall be deemed waived.[14] Records on hand reveal that the petitioner brought out the said issue for the first time in the motion for reconsideration of the decision dated August 17, 1977 of the Court of Appeals although petitioner was not without opportunity to object to the sufficiency of the petition on said ground, when he sent in the Comment in CA-G.R. No. SP-04043. Consequently, such objection was deemed waived. Furthermore, it is worthy to note that petitioner's idea to belatedly assign the same as error, in the motion for reconsideration and in this petition, was apparently inspired merely by the dissenting opinion of the then Court of Appeals Associate Justice Pacifico P. De Castro, which is not binding in this Court.[15] Besides, it is settled that liberal construction of the Rules may be invoked in situations wherein there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and connotes at least a reasonable attempt at compliance with the Rules.[16] The rules of procedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.[17]

The above doctrine is particularly applicable in the case under consideration and supportive of the action of respondent court in giving due course to the petition it appearing that the omission of private respondents to implead applicant Lourdes Marmolejo in the petition is wholly excusable. Verily, private respondents were justified in concluding that applicant Lourdes Marmolejo had already ceased to be a party-in-interest in the case, having withdrawn her application. Conformably, in *Nicolas vs. Pre*, supra, the Court ruled:

"In the legal contemplation and, strictly speaking, the applicant, as far as his application for registration was concerned, had already lost his standing in court when the oppositors presented their evidence before the Clerk of Court, and for this reason, his assault against the legality of the action of the court in authorizing its Clerk to receive the evidence of the oppositors cannot now be sustained, x x x. "

WHEREFORE, the Petition is DENIED and the Decision of the Court of Appeals AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.
Vitug, on official leave.

[1] Originally entitled as Hon. Felipe P. de Vera, in his capacity as Presiding Judge of the Court of First Instance of Pangasinan, Branch XII, petitioner, versus The Hon. Court of Appeals, Carmen Tibudan, Eugenia Tibudan, Lolita Tibudan-Solis and Francisco Tibudan, Respondents. However, in its resolution dated July 31, 1978, the Court ordered that the Director of Lands be deemed impleaded as party petitioner and duly represented by the Solicitor General who filed the petition at bar; Rollo, p. 179.

[2] Special Fifth Division; Penned by Justice Luis B. Reyes with Justices Mariano Serrano and Nestor B.

Alampay, concurring and Justices Pacifico P. de Castro and Hugo E. Gutierrez, dissenting.

[3] Resolution of the Court dated October 14, 1996, par. No. 1; Rollo, p. 179.

[4] Underscoring supplied for emphasis.

[5] Court of Appeals Decision, pp. 49-56.

[6] Resolution dated November 2, 1977, Rollo, p. 1.

[7] Resolution dated October 14, 1996, Rollo, p. 181. The correct date of the order of denial to present evidence is October 29, 1974. The order of September 16, 1974 was the order allowing the withdrawal of the application of Lourdes Marmolejo. See also Rollo p. 28.

[8] Rollo, p. 28.

[9] Rollo, p. 58., underscoring supplied for emphasis.

[10] 97 Phil. 766.

[11] 104 Phil 965.

[12] The petition in the Court of Appeals was entitled CARMEN TIBUDAN, EUGENIA TIBUDAN, LOLITA TIBUDAN-SOLIS and FRANCISCO TIBUDAN, Petitioners, versus HON. FELIPE P. DE VERA, in his capacity as Presiding Judge of the Court of First Instance of Pangasinan, Branch XII, and DIRECTOR OF LANDS, Respondents., Rollo, p. 48.

[13] Rule 65, Section 5. "Defendant and costs in certain cases. - When the petition filed relates to the acts or omissions of a court or judge, the person or persons interested in sustaining the proceedings in court; and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceeding, and costs awarded in such proceedings in favor of the petitioner shall be against the person or persons in interest only, and not against the court or the judge.

[14] Cabaero vs. Cantos, 271 SCRA 391; citing Section 8 Rule 15 of the Revised Rules of Court.

[15] Ibid. pp. 60-66.

[16] Republic vs. Hernandez, 253 SCRA 509.

[17] Marcopper Mining Corporation vs. Garcia. 143 SCRA 178, citing Francisco's Civil Procedure, Vol. 1. 2 ed., 1973.

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