

THE DIRECTOR OF LANDS, ET AL., PETITIONERS, VS. EMILIO BENITEZ, ET AL., RESPONDENTS.

G.R. No. L-21368. March 31, 1966

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In the cadastral proceedings undertaken by the Director of Lands before the Court of First Instance of Leyte during the period from May, 1925 to April, 1928, Emilio Benitez and Eulalia Brillo were declared owners of a parcel of land situated in the City of Tacloban known as Lot No. 2157 for which Original Certificate of Title No. 17507 of the Register of Deeds of Leyte was issued to them. Said lot was bounded on the NE by a road and contains an area of 14,548 sq.m. The decision of adjudication was rendered on December 29, 1932.

However, on June 19, 1958, or 26 years after the adjudication of Lot 2157 was made as above stated, Emilio Benitez and Eulalia Brillo filed a petition before the same cadastral court for reopening of the cadastral proceedings under Republic Act 931 claiming that through oversight, inadvertence and excusable neglect a portion of said Lot No. 2157 containing an area of 1,805 sq. m. has not been included in the original survey for which reason they prayed that said portion be designated as Lot No. 1 of the proposed subdivision plan, and that, after notice and hearing, it be adjudicated to them pursuant to Republic Act No. 931.

On July 12, 1958, the court a quo issued an order admitting the petition, as amended, and setting the same for hearing, and in a subsequent order issued on September 3, 1958, it likewise ordered that copies of the original as well as of the amended petition be furnished the Solicitor General, the Provincial Fiscal of Leyte, the City Fiscal of Tacloban City, and the Register of Deeds of the province, setting the case for hearing on October 18, 1958. When this date came, the court a quo, after hearing the parties, issued an order granting to Emilio Benitez and Eulalia Brillo the right to claim the portion which allegedly was not included in their original title while authorizing at the same time a licensed surveyor to make a survey of the portion that was then being claimed and submit a report thereon to the Director of Lands for his approval. Accordingly, the surveyor submitted on July 20, 1960 his report, and on April 14, 1962 the court a quo rendered judgment declaring Emilio Benitez and his wife owners of the additional portion which they claimed to be their own in their petition which this time was declared to contain an area of 3,745 sq.m.

This decision having become final, the spouses moved on June 7, 1962 for a writ of execution of the judgment and of possession of the additional portion of land that had been adjudicated to them, but having been informed of the filing of said motion, those who were then occupying the portion claimed which numbered about 62 by virtue of permits granted by the Director of Lands registered in due time their opposition disputing the validity of the decision rendered by the court on April 14, 1962.

On the other hand, the Solicitor General, on behalf of the Director of Lands, filed on July 25, 1962 a motion to set aside the same judgment on the ground, among others, that said decision was a nullity for the reason that the court a quo did not acquire jurisdiction to act on the petition of Emilio Benitez and his wife for the reopening of the

cadastral proceedings for lack of the requisite publication and notice as required by law. But the opposition, as well as the motion to set aside the judgment, were denied by the court in an order entered on August 6, 1962. The Solicitor General, as well as the counsel for the 62 oppositors who had adverse claims over the portion in controversy, filed separately motions for reconsideration, but the same were denied. Hence the present petition for certiorari filed by the Provincial Fiscal of Leyte on behalf of the Director of Lands and of the 62 adverse claimants already mentioned above.

There is no question that respondents Emilio Benitez and his wife may file a petition for reopening of the Cadastral Case No. 20 then pending before the Court of First Instance of Leyte concerning the survey and registration of all lands within the City of Tacloban pursuant to Republic Act No. 931 with a view to claiming such portion of land which they may have failed to include in their original petition for survey and registration as authorized by the Cadastral Act provided that the petition be filed within the period prescribed by said Republic Act No. 931, as amended. Indeed, said Republic Act No. 931 grants to a person claiming title to a parcel of land that has been the subject of a cadastral proceeding who at the time of the survey was in actual possession thereof but for some justifiable reason had been unable to file his claim in the proper court during the time limit established by law, the right to claim such land within a period of 10 years by filing the necessary petition for reopening under the provisions of the Cadastral Act. But, as already stated, the petition for reopening should be filed in the same cadastral proceedings where the original lands were surveyed and adjudicated and in pursuance of the procedure laid down in the Cadastral Act. Thus, besides filing the petition for reopening, it is necessary that notice thereof be given to those persons who claim an adverse interest in the land sought to be registered, as well as the general public, by publishing such notice in two successive issues of the Official Gazette, which shall likewise be posted in a conspicuous place on the new land to be surveyed, as well as in the municipal building of the city or municipality in which the same is situated, as required in Section 1 of the Cadastral Act (Act No. 2259).

It is for this reason that this Court has held that "An order of a court in a cadastral case amending the official plan so as to make it include land not previously included therein is a nullity unless new publication is made as a preliminary to such step. Publication is one of the essential bases of the jurisdiction of the court in land registration and cadastral cases, and additional territory cannot be included by amendment of the plan without new publication" (Philippines Manufacturing Company vs. Imperial, 49 Phil., 122; See also Escueta vs. Director of Lands, 16 Phil., 482).

Another factor that should be considered is the reservation which the very Republic Act No. 931 makes insofar as the right of a claimant to have an additional portion of land registered in his name is concerned in the sense that it can only be entertained if it does not refer "to such parcels of land as have not been alienated, reserved, leased, granted, or authorized provisionally or permanently disposed of by the Government." Here it appears that the additional portion of land claimed by respondents is actually occupied by persons who claim to be entitled to it by virtue of lease applications or permits granted to them by the Bureau of Lands, as may be gleaned from the following portions of the report submitted by the surveyor appointed by the court:

"Lot 1, is an integral part of the property of Attorney Emilio Benitez which was not included in the cadastral survey of Tacloban, but now occupied by squatters, who claimed that they have applied under lease applications and some under Revocable Permits which they have been paying for many years to the Bureau of Lands.

"The survey of Lot 1 as ordered by the Honorable Court was not finished, due to the fact that in surveying same it will result to not less than twenty lots, whose occupants and claimants are holders of permits to occupy their respective areas issued by the Bureau of Lands, and paid rentals to the government for many years. The squatters have introduced improvements (buildings) covering the total area shown as Lot 1 in the attached

sketch."

Because of these adverse claimants there is need that the matter be threshed out in an appropriate action with due notice to said claimants and to the Director of Lands from whom their title thereto is said to have emanated under the Public Land Act. Such matter, certainly, cannot be looked into in the present proceeding because of the limited jurisdiction of the cadastral court.

Wherefore, petition is hereby granted. The decision rendered by respondent court on April 14, 1962, as well as its orders issued to implement said decision, are hereby declared null and void and without effect. No costs.

Bengzon, C.J., Concepcion, Reyes, J. B. L., Barrera, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

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