

MANILA RAILROAD COMPANY, PETITIONER, VS. HON. JOSE M. MOYA, IN HIS CAPACITY AS JUDGE, COURT OF FIRST INSTANCE OF CAM. SUR, AND CONSUELO L. VDA. DE PRIETO, RESPONDENTS.

G.R. No. L-17913. June 22, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for certiorari and prohibition.

On May 21, 1958, the Manila Railroad Company filed with the Court of First Instance of Camarines Sur a petition to reconstitute Transfer Certificates of Title Nos. 38 and 12 covering three parcels of land situated in the municipalities of Baao and Bula, Camarines Sur. The petitioner submitted plans and technical descriptions of the said properties as the basis for the requested reconstitution.

The petition was given due course and after notice of hearing was published in the Official Gazette and posted on the bulletin board of the municipalities where the properties are located, an order was entered on January 20, 1959 granting the reconstitution of the titles.

Pursuant to said order, the "Register of Deeds of the Province thus issued TCT No. RT-43, in place of the allegedly lost TCT No. 38 covering the lot described under Plan SWO-25758 and TCT RT-44, in place of TCT No. 42 covering Lots 1 and 2 of Plan 11-3331 Amd. 2.

On or about June 28, 1960, herein respondent Consuelo L. Vda. de Prieto filed a motion to set aside the order granting reconstitution stating that she was never served with notice of the petition filed by the Manila Railroad Company, otherwise, she would have appeared to oppose the same with respect to Lot 2, 11-3331, Amd. 2, containing an area of 259,610 square meters; that as far as she can remember Lot 2, which belongs to her and her late husband Mauro Prieto, was never sold to the Manila Railroad Company; that it was only Lot 1, 11-3331, Amd. 2 in the same location containing an area of 84,739 square meters that she and her late husband had sold to the said company; that she has always been in possession of Lot 2 and leased some portions thereof to tenants; and that the lot in question is sought to be expropriated by the Government in Civil Case No. 4163 in the same court, entitled *Philippines vs. Consuelo L. vda. de Prieto*, upon petition filed by the tenants thereat, for which the Land Tenure Administration would pay the said widow the corresponding price thereof upon her presenting her title thereto.

The Manila Railroad Company answered the motion of herein respondent to set aside the decision, averring, on the other hand, that the said Mrs. Prieto can not claim that she was not duly served with notice of the hearing of the petition to reconstitute as said notice was duly published in the Official Gazette. The said company also moved to dismiss the petition to set aside on the ground that the order sought to be set aside had already become final, unappealable and executory.

The opposing parties both submitted memoranda to support their respective positions, and after a study by the

lower court, it issued an order, dated October 4, 1960, setting aside the order of January 26, 1959, only as to Lot 2, 11-3331 Amd., and set the case for hearing on November 18, 1960.

Motion for reconsideration of the order of October 4, 1960 having been denied by the lower court, the Manila Railroad Company has filed this petition seeking to annul the said order.

Provisions of the law governing reconstitution of original and transfer certificates of title (Republic Act No. 26) which are pertinent to this case are sections 3, 12 and 13 (hereof, quoted, respectively, to wit:

"Section 3. Transfer certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

- (a) The owner's duplicate of the certificate of title;
- (b) The co-owner's mortgagee's, or lessee's duplicate of the certificate of title;
- (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
- (d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;
- (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and
- (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title."

"Section 12. Petition for reconstitution from sources enumerated in section 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among Other things, the following: (a) * * *; (c) the names and addresses of the occupants or person, in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; * * *. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same; Provided, That in case the reconstitution is to be made exclusively from sources enumerated in section 2(f) and 3(f) of this Act, the petition shall be further accompanied with a plan and technical description if the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property.

"Section 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise, cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court."

Inasmuch as the petition filed by the Manila Railroad Company would have the transfer certificates of title reconstituted from the plans and technical descriptions the lots involved, which sources may fall properly under section 3(e) or 3(f) of the law, respondent vda. de Prieto, as possessor thereof, or as one who is known to have an interest in the property, should have been sent a copy of the notice at the expense of the petitioner, pursuant section 13 (italicized portions) of the cited law. As aptly observed by the lower court in its order setting aside the order of reconstitution, the Manila Railroad Company has admitted that vda. de Prieto has been in possession of the questioned Lot 2 and that she has leased portions thereof to various tenants.

In granting the petition to set aside, the lower court cited as authority the case of *Reyes vs. Pecson, et al.*, 86 Phil., 181; 47 Off. Gaz., 6133, wherein it was held that where the record of a case was reconstituted on petition of the plaintiff but no notice upon the adverse party was given and the other requirements of Act No. 3110 were not complied with, the order of reconstitution is void and may be set aside even though more than three years have elapsed since its promulgation for the reason that the order being ineffective, the judgment rendered in the case cannot become final and executory. In the other case cited by the same court, *Paluay vs. Dacudao, et al.*, 97 Phil., 561; 51 Off. Gaz., 5119, it was likewise ruled that even if the petition for the reconstitution of the record of an application is published in a newspaper of general circulation as required by Act No. 3110, if no notice of the date of hearing is served on an adverse claimant, he is deprived of his day in court and the order of reconstitution should be set aside in order that a new hearing may be had without notice to all the parties, notwithstanding the fact that more than one year had elapsed since the order directing the reconstitution of the record of the case.

In *Santiago Syjuco, Inc. vs. Philippine National Bank*, 86 Phil. 320, this Court held that if an order of reconstitution is issued without any previous publication, as Required by law, particularly section 13 of Republic Act No. 26, such order of reconstitution is null and void and of no effect, and naturally, anything done under said Order is void.

The first two cases, cited by the lower court, are certainly not, cases on reconstitution that involve certificates of title to land, but they deal with records of a case and application for registration. Nevertheless, We do not see any reason why the ruling in those cases may not be made to apply here, considering that the same principle is involved, namely, the strict compliance of notice requirements under statutes governing reconstitution. The more rigid should even be the application of those provisions on a case such as this which deals with title to property.

It is clear from section 13 of Republic Act No. 26 that notice by publication is not sufficient under the circumstances. Notice must be actually sent or delivered to parties affected by the petition for reconstitution. The order of reconstitution, therefore, having been issued without compliance with the said requirement, has never become final as it was null and void. The Manila Railroad cannot then complain that the motion to set aside was filed beyond the reglementary period.

WHEREFORE, the order of the lower court setting aside its order of reconstitution is hereby affirmed. Writ denied, but without pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

Writ denied.

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