

IN RE: JUDICIAL RECONSTITUTION AND ISSUANCE OF A SECOND OWNER'S COPY OF TCT NO. T-163354 OF THE REGISTRY OF DEEDS OF BULACAN,

Ponente: SADANG, J.

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SADANG, J.:

This is an appeal filed by oppositor-appellant Republic of the Philippines from the November 17, 2009 Order[1] of the Regional Trial Court of Malolos, Bulacan, Branch 16, in Civil Case No. P-89-2007, and the October 4, 2010 Order[2] denying the motion for reconsideration.

Antecedents of the Appeal

On February 2, 2007, petitioner-appellee Eladio Villarosa (hereafter, petitioner) filed a Petition for Judicial Reconstitution and Issuance of Second Owner's Copy of Transfer Certificate of Title (TCT) No. 163354[3] of the Register of Deeds of Bulacan (RD, for short) alleging that: he is the registered owner of two parcels of land in San Rafael, Bulacan, described in said TCT containing areas of 10,076[4] (Lot 376) and 15,657[5] (Lot 377) square meters (sq.m.); the owner's duplicate copy of the title was lost or misplaced and could not be found despite earnest efforts to that end;[6] the original copy of the title on file with the RD was burned during the fire that gutted said office on March 7, 1987; the lots were declared for taxation purposes; there is no deed or instrument affecting the properties and title which has been presented or pending registration in the RD; he is in possession of the land and there are buildings and improvements thereon which do not belong to him; and no co-owner's, mortgagee's, or lessee's duplicate copy thereof has been issued. Petitioner also stated the names and addresses of the adjoining landowners.

On October 9, 2007, the trial court issued an Amended Order[7] stating that petitioner's petition is sufficient in form and substance and setting it for hearing on February 15, 2008.[8]

On May 22, 2007, the Solicitor General, as counsel of the Republic of the Philippines, filed a Notice of Appearance.[9]

At the hearing[10] on February 15, 2008, petitioner marked the documents to establish the jurisdictional facts.[11]

To support his petition, petitioner offered ex parte[12] the following: 1) Exhibit F – Certified Survey Plan of Lot 376 and Lot 377;[13] 3) Exhibit G – Technical Description of Lot 376,[14] (10,293 sq.m.); and 4) Exhibit H – Technical Description of Lot 377,[15] (15,657 sq.m.); 5) Exhibit I – TD 2006-23029-01042;[16] 6) Exhibit I-1 – TD TD No. 2006-23029-01056;[17] 7) Exhibit J – Certification¹⁸ of the RD that “all titles, documents” were burned in the fire on March 7, 1987; 8) Exhibit K – Affidavit of Loss[19] executed by petitioner; and 8) Exhibit L – Tax Receipt[20] for annual realty tax.

In the assailed Order,[21] dated November 17, 2009, the RTC granted the petition. The decretal portion reads:

WHEREFORE, in the light of the foregoing, the Court hereby Grants the petition.

Accordingly, the Register of Deeds of Guiginto, Bulacan, is hereby directed, after payment of legal fees, to

reconstitute Transfer Certificate of Title No. T-163554 (sic), registered in the name of Eladio Villaroza, on the basis of the lot plan, technical description, tax declaration, and to issue another original owner's copy thereof, under the same terms and conditions, the same to be impressed with the same validity, as the original thereof. The lost original owner's copy of TCT No. T-163354 is hereby declared null and void and without any legal force and effect.

SO ORDERED.[22]

The Office of the Solicitor General (OSG), as counsel for oppositor Republic, filed a Motion for Reconsideration[23] to which petitioner filed a Comment and/or Opposition.[24]

In its Order,[25] dated October 4, 2010, the RTC denied oppositor's motion for reconsideration; hence, this appeal[26] on this alleged error:

THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR RECONSTITUTION ON THE GROUND THAT THE PIECES OF EVIDENCE PRESENTED ARE NOT SUFFICIENT BASES FOR RECONSTITUTION.[27]

Petitioner did not file appellee's brief on time. The notices and copies of court resolutions were returned unserved; thus, in the May 9, 2012 Resolution,[28] the case was deemed submitted for decision. However, on September 3, 2014, petitioner filed an Entry of Appearance with Motion to Admit Appellee's Brief.[29] In the greater interest of substantial justice, said pleading is admitted and shall be considered in this decision.

RULING

In essence, the OSG argues that the RTC erred in granting the petition for reconstitution merely on the basis of the lot plan, technical description and tax declaration and not on the sources enumerated in Section 3 in relation to Section 12 of RA 26.

Petitioner counters that aside from the aforesaid documents, the RTC considered other evidence that comply with Section 3 (f) of RA 26, namely, his affidavit of loss and the certification of the RD as to the then existence of the certificate of title. Petitioner contends that the RTC correctly exercised its discretion in considering these secondary evidence in granting the petition. It is his position that these documents fall under the phrase "other documents" under Section 3, RA 26.

We grant the appeal of the Republic.

Judicial reconstitution of lost original certificates of title (OCT) and transfer certificates of title (TCT) is governed by Sections 2 and 3 of RA 26.[30] The purpose of an action for reconstitution is merely to have the OCT or TCT reproduced in the same form they were when the loss or destruction occurred. It does not pass upon the ownership of the land covered by the lost or destroyed title. It must be stated, that registering land under the Torrens system is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership of title over the covered property.[31]

A reading of the petition shows that what is sought to be reconstituted is an alleged lost owner's duplicate of a TCT. Sections 2 and 3 of RA 26, as amended by RA 6732,[32] enumerate the respective sources upon which the reconstitution of OCTs and TCTs shall be granted, thus:

Section 2. Original certificates 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) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original 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. (underscoring supplied.)

Section 3. Transfer certificates 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. (underscoring supplied.)

Further, RA 26 provides:

SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 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 x x x x x Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, [now Commission of Land Registration] or with a certified copy of the description taken from a prior certificate of title covering the same property. (underscoring supplied)

There can be no question that the petition is not based on the sources stated from sub-paragraphs (a) to (e) of Section 3, RA 26. Rather, it is based on a lot plan, technical description, tax declaration and, as pointed out by petitioner, his affidavit of loss and the certification about the fire that gutted the office of the RD.

There is no merit in the contention of petitioner that the foregoing documents fall under the phrase "other documents" in Section 3 (f) of RA 26. It is settled that when Section 3 (f), or, for that matter, Section 2 (f), speak of "any other document," they refer to similar documents previously enumerated therein or documents ejusdem generis as the documents earlier referred to.[33] These are documents that emanate from official sources which recognize the ownership of the owner and his predecessor-in-interest.[34]

In Republic v. El Gobierno De Las Islas Pilipinas,[35] the petitioner therein offered in evidence the same

documents relied upon by herein petitioner – lot plan, technical description and certification by the RD that the subject OCT on file with said office was lost during the last world war. He theorized that these documents, which are mentioned in paragraph 5 of LRC Circular No. 35, are the “other documents” referred to in Section 3 (f) of RA 26. Paragraph 5 of LRC Circular No. 35 provides:

5. In case the reconstitution is to be made exclusively from sources enumerated in Sections 2(f) and 3(f) of Republic Act No. 26 in relation to Section 12 thereof, the signed duplicate copy of the petition to be forwarded to this Commission shall be accompanied by the following:

(a) A duly prepared plan of said parcel of land in tracing cloth, with two (2) print copies thereof, prepared by the government agency which issued the certified technical description, or by a duly licensed Geodetic Engineer who shall certify thereon that he prepared the same on the basis of a duly certified technical description. Where the plan as submitted is certified by the government agency which issued the same, it is sufficient that the technical description be prepared by a duly licensed Geodetic Engineer on the basis of said certified plan.

(b) The original, two (2) duplicate copies, and a xerox copy of the original of the technical description of the parcel of land covered by the certificate of title, duly certified by the authorized officer of the Bureau of Lands or the Land Registration Commission who issued the technical description.

(c) A signed copy of the certification of the Register of Deeds concerned that the original of the certificate of title on file in the Registry was either lost or destroyed, indicating the name of the registered owner, if known from the other records on file in said office. (underscoring supplied)

However, the Supreme Court, citing *Heirs of Felicidad Dizon v. Discaya*,^[36] ruled that the foregoing documents are not the “other documents” referred to in Section 2 (f) of RA 26 but are mere additional documents that will accompany the petition to the Land Registration Authority. It was stressed that there is nothing in said circular to support petitioner's stance that the aforesaid documents are those referred to in Section 3 (f) of RA 26.

Further, the court notes that petitioner did not come to court to personally testify on the previous existence of his title and the circumstances surrounding the loss thereof. Instead, he sent an attorney-in-fact, Christian Austria, to testify on his behalf. A perusal of Austria's testimony shows that he did not testify on the existence of the owner's duplicate title and the circumstances of its loss. He merely identified the affidavit of loss of petitioner which has no probative value. The affidavit is hearsay evidence where its affiant or maker did not take the witness stand^[37] and was not cross-examined.

The OSG correctly cites *Republic v. Santua*^[38] which ruled that, at most, tax declarations are prima facie evidence of a claim of ownership which, however, is not the issue in a reconstitution proceeding. A reconstitution of title does not pass upon the ownership of land covered by the lost or destroyed title but merely determines whether a re-issuance of such title is proper.^[39]

We therefore find that the RTC erred in granting the petition.

WHEREFORE, the appeal is GRANTED. The November 17, 2009 Order of the Regional Trial Court of Malolos, Bulacan, Branch 16, in Civil Case No. P-89-2007, and the October 4, 2010 Order, are REVERSED and SET ASIDE. Judgment is rendered DISMISSING the petition for reconstitution in Civil Case No. P-89-2007 for lack of merit.

Let a copy of this decision be served on the Register of Deeds of Bulacan.

SO ORDERED.

Librea-Leagogo, J., Chairperson, and [*]Valenzuela, JJ., concur.

[*] Vice J. Amy C. Lazaro-Javier, who is on leave, per Office Order No. 38-15-RSF dated February 3, 2015.

[1] Penned by Acting Judge Ma. Theresa V. Mendoza Arcega, rollo, pp. 8-9, Records, pp. 79-80.

[2] Id. at 44-45; 97-98.

[3] Records, pp. 1-2.

[4] Annex A, id. at 4.

[5] Annex A-1, id. at 5.

[6] Annex B, also Exh. K (Affidavit of Loss), id. at 6.

[7] The original Order dated April 10, 2007 setting the hearing on July 12, 2007 at 8:30AM (id. at 9-10) was, upon motion of appellee (id. at 15), reset to November 15, 2007 at 8:30AM (id. at 17-18) in the Amended Order dated July 24, 2007. At the instance of appellee's Manifestation with Motion for Another Amended Order, the trial court again reset the hearing on February 15, 2008 at 8:30 AM, per October 9, 2007 Amended Order (Exh. A and A-1, id. at 21-22).

[8] Id. at 22.

[9] Exh. D and D-1, id. at 23.

[10] Order dated February 15, 2008, id. at 28; Formal Offer dated June 17, 2008, id. at 48-49.

[11] 1) Exhibit A – RTC's Amended Order dated October 9, 2007 resetting the hearing to February 15, 2008, Records, p. 12; 2) Exhibit B – Certificate of Posting, dated January 7, 2008, prepared by Sheriff IV Leo B. Erina, certifying that he personally posted copies of the RTC's October 9, 2007 Amended Order at the main entrance of the Provincial Capitol Building at Malolos, Bulacan and on the bulletin board of the Municipal Hall of San Rafael, Bulacan; 3) Exhibit C – Certificate of Publication dated November 29, 2007 certifying that the RTC's October 9, 2007 Amended Order was published in the Official Gazette on November 19, 2007 and November 26, 2007, or for two (2) consecutive weeks, and the last issue has been officially released by the National Printing Office on November 29, 2007; and 4) Exhibit D – Notice of Appearance by the Solicitor General as counsel of the Republic of the Philippines and that while the Provincial Prosecutor of Malolos City has been authorized to appear, the Solicitor General retains supervision and control of the representation.

[12] Order dated April 8, 2008, Records, p. 34; Order dated April 17, 2008, Records, p. 43; Formal Offer dated June 17, 2008, id. at 48-49.

[13] Id. at 37.

[14] Id. at 38.

[15] Id. at 39.

[16] Id. at 40.

[17] Id. at 41.

[18] Annex C, also Exh. J, id. at 7. Note: the certificate mentions TCTs that were not burned but TCT No. 163554 is not mentioned

[19] Id. at 6.

[20] Id. at 42.

[21] Supra note 1.

[22] Records, pp. 9, 80.

[23] Id. at 86-94.

[24] Id. at 95-96.

[25] Rollo, pp. 44-45; Records, pp. 97-98.

[26] In the Order dated February 28, 2011 (Record, p.108), the trial court granted the appellant's Notice of Appeal which was filed on February 25, 2011 (id. at 103-104).

[27] Rollo, pp. 33-34.

[28] Id. at 84.

[29] Id., no page numbers in Rollo.

[30] "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed."

P.D. No. 1529 provides:

Sec. 110. Reconstitution of lost or destroyed original of Torrens title. – Original copies of certificates of title lost or destroyed in the offices of Registers of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. xxx

[31] Heirs of De Guzman Tuazon v. Court of Appeals, G.R. No. 125758, January 20, 2004, 420 SCRA 219, 228; cited in Republic v. Hon. Mangotara, G.R. No. 170375, July 7, 2010; Heirs of Abadilla v. Galarosa, G.R. No. 149041, July 12, 2006; and Macabalo-Bravo v. Macabalo, G.R. No. 144099, September 26, 2005.

[32] Entitled, "An Act Allowing Administrative Reconstitution Of Original Copies Of Certificates Of Titles Lost Or Destroyed Due To Fire, Flood And Other Force Majeure, Amending For The Purpose Section One Hundred Ten Of Presidential Decree Numbered Fifteen Twenty-Nine And Section Five Of Republic Act Numbered Twenty-Six," Approved On July 17, 1989.

[33] Republic v. Holazo, 480 Phil. 828 (2004), at 840, cited in Republic v. Lorenzo, G.R. No. 172338, December 10, 2012 and Republic v. Tuatumban, supra.

[34] Republic v. Lagramada, G.R. No. 150741, June 12, 2008.

[35] G.R. No. 142284, June 8, 2005 citing Heirs of Felicidad Dizon v. Hon. Discaya, G.R. No. 133502, February 15, 1999.

[36] 303 SCRA 197.

[37] *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013.

[38] 564 SCRA 331.

[39] *Republic v. Heirs of Julio Ramos*, G.R. No. 169481, February 22, 2010, citing *Republic v. Santua*, G.R. No. 155703, September 8, 2008, 564 SCRA 331, 338-339 and *Heirs of Felicidad Dizon v. Hon. Discaya*, *supra* at 545.

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