

**MIGUEL SOCCO REYES, IN HIS CAPACITY AS ADMINISTRATOR OF
THE ESTATE OF THE LATE MARTIN ALVAREZ SOCCO, PLAINTIFF,
VS. POTENCIANO PECSON, JUDGE OF THE COURT OF FIRST
INSTANCE OF MA...**

G.R. No. L-2879. April 21, 1950

Ponente: PADILLA, J.

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PADILLA, J.:

On 6 June 1945, petition was filed in the Court of First Instance of Manila by Miguel Socco Reyes, in behalf of Martin Alvarez Socco, for the reconstitution of the record of a case allegedly burnt. An attempt was made to notify one Francisco Espiritu, the alleged attorney for the defendants, but in the return of the sheriff it appears that attorney Francisco Espiritu could not be found at the address given by the attorney for Martin Alvarez Socco. In lieu of the service of notice upon the attorney for the defendants, there appears at the bottom of the petition for reconstitution the following note: "Rec'd. copy: (Signed) A. Pelayo, June 7, 1945." A judge presiding over one of the branches of the Court of First Instance of Manila set the hearing of the petition for the 27th day of June 1945, at which no one appeared except the attorney of Martin Alvarez Socco, and right then and there he submitted copies of the pleadings allegedly filed by the parties and a copy of the decision purportedly rendered by the court. As there was no objection, for there was no one to object, to the admission of the copies of such pleadings and decision, the court declared the record of the case reconstituted on 27 June 1945. The copy of the decision is dated 2 November 1941 and it ordered "the defendants to pay the plaintiff, jointly and solidarily, the sum of P75,000 plus 12 per cent interest from October 15, 1940 until the full amount is fully paid plus the sum of P7,500 for attorney's fees and costs." The judge who appears to have rendered the judgment is Arsenio Locsin. In the copies of the pleadings allegedly filed by the parties and of the decision purportedly rendered by the court, it appears that Martin Alvarez Socco brought an action against Tirzo Mori alias Teizo Mori, Pedro Anamura and Dr. Teodisio Yabe alias Dr. Tadashi Yabe, for the recovery or a sum of money, interest thereon, attorney's fees and costs. A motion for execution of the judgment purportedly rendered in the case, as it appears in the reconstituted record, was granted on 5 July 1945, and on the following day the writ of execution was issued. Pursuant to the writ the sheriff caused a levy upon execution on the properties of Teizo Mori, and on 13 July 1945 a memorandum of such levy was noted on the Torrens certificates of title on the properties in the name of Teizo Mori. No further action was taken on the writ of execution, in view of the request of the Enemy Property Custodian of the U. S. Army, who had seized the properties of the defendants, to hold the proceedings in connection with the writ of execution in abeyance until after an agency of the U. S. Government should have been set up to take over and administer alien enemy properties in the Philippines. The Enemy Property Custodian of the United States. On 31 January 1946, the last named officer vested in him (Vesting Order No. P-7) the properties of Teizo Mori. When the office of the Alien Property Custodian was abolished, the properties of Teizo Mori were transferred on 9 January 1947 to the Philippine Alien Property Administration. On 20 March 1947, Vesting Order No. P-7 was filed and recorded in the office of the Registrar of Deeds in and for the City of Manila and pursuant to an order of the Court of First Instance of Manila entered in the record of the Court of First Instance of Manila entered in the record of

the corresponding cadastral case the Torrens certificates of title issued in the name of Teizo Mori on his properties were cancelled and in lieu thereof new certificated Nos. 12938 to 12945 were issued in the name of the Philippine Alien Property Administrator. On 9 June 1947, Miguel Socco Reyes, on behalf of the late Martin Alvarez Socco, filed a notice of claim for payment of debt with the Philippine Alien Property Administration, praying that the money judgment purportedly rendered in civil case No. 64287 be satisfied out of the properties formerly belonging to Tirzo Mori alias Teizo Mori, Pedro Anamura and Dr. Teodosio Yabe alias Dr. Tadashi Yabe, covered by Vesting Orders Nos. P-7, P-66 and P-149 respectively, Hearing thereon had already been held before the Vested Property Claims Committee, but no determination has yet been made by it. On 13 February 1948, the Philippine Alien Property Administration and Miguel Socco Reyes, in behalf of Martin Alvarez Socco, filed a joint petition in the reconstituted record of civil case No. 64287 praying that the order and writ of execution and the levy upon execution noted on the Torrens certificates of title on the properties formerly belonging to Teizo Mori be cancelled, which petition was granted by the court on 17 February 1948. On 24 April 1948, Miguel Socco Reyes, in behalf of Martin Alvarez Socco, filed a motion praying that the Philippine Alien Property Administrator be ordered to pay the claim of the estate of the late Martin Alvarez Socco, which petition was objected to by the Philippine Alien Property Administrator. On 29 April 1948, the last named officer sold the properties formerly belonging to Teizo Mori to the Heirs of D. Tuason, Inc. for P640,000 and the proceeds realized from the sale thereof are now in his possession, custody and control. On 25 August 1948, the Court of First Instance of Manila granted the motion for a writ of execution. On 10 September 1948, in answer to the notice of garnishment served upon him by the sheriff, the Acting Deputy Administrator of the Philippine Alien Property Administration stated that he had no property belonging to the defendant Teizo Mori under his control or proceeds realized from the sale thereof. On 13 September 1948, Miguel Socco Reyes, in behalf of Martin Alvarez Socco, filed a motion praying that the Philippine Alien Property Administrator be held guilty of contempt, examined in connection with the properties of Teizo Mori, and directed to satisfy or pay the money judgment rendered in civil case No. 64287 as reconstituted out of the property formerly belonging to Teizo Mori, or the proceeds realized from the sale thereof. At the hearing of the petition, the Philippine Alien Property Administrator admitted that the properties of Teizo Mori were vested in and transferred to him and later on sold for P640,000 to the Heirs of D. Tuason, Inc., and that the proceeds realized from the sale thereof were then in his possession, custody and control. On 25 November 1948 a motion similar to the previous one was filed praying that the Philippine Alien Property Administrator be ordered to pay within 24 hours from receipt of the order the money judgment to the estate of the late Martin Alvarez Socco. On 14 December 1948, both motions were denied, but the court authorized Miguel Socco Reyes, in behalf of the estate of the late Martin Alvarez Socco, to institute an action pursuant to section 41, Rule 39, of the Rules of Court. A motion for reconsideration of the previous order filed on 31 December 1948 was denied on 4 February 1949.

Thereupon, this petition was filed to annul the order of 14 December 1948 denying the motion of Miguel Socco Reyes filed in behalf of Martin Alvarez Socco which prayed that the Philippine Alien Property Administrator be held guilty of contempt, examined in connection with the properties of Teizo Mori, and directed to satisfy or pay the money judgment referred to out of the property formerly belonging to Teizo Mori, or the proceeds realized from the sale thereof, as well as the order of 4 February 1949 denying the motion for reconsideration of the previous order, on the ground that the money judgment rendered in civil case No. 64287, as it appears in the reconstituted record, having become final and executory, the orders complained of constitute an excess of jurisdiction or a grave abuse of discretion, and to direct the respondent court to order the Philippine Alien Property Administrator to satisfy or pay said money judgment.

The Philippine Alien Property Administrator, answering the petition, pleads that an action against him is in effect against the Government of the United States of America; that he can only be sued in the courts of the Republic of

the Philippines under and pursuant to the provisions of the Trading with the Enemy Act of 6 October 1917, as amended, and the Philippine Property Act of 1946, and in the manner and subject to the conditions therein provided for; that the proceedings for the reconstitution of the record of civil case No. 64287 were not done in accordance with law, for the adverse party was not notified of the petition for the reconstitution of the record; that the copy of the judgment purportedly rendered by Judge Arsenio Locsin on 2 November 1941 submitted to the court at the hearing for reconstitution bears on its face certain suspicious features not noticed at the time of the hearing on reconstitution of the record of civil case No. 64287 which render doubtful the existence or the rendition of such judgment on the date appearing on its face; that because of lack of notice and of the doubt about the existence or rendition of the money judgment referred to engendered by such suspicious features appearing on the copy of the judgment, the order of the court declaring the record of the case reconstituted is null and void; that inasmuch as at the time of the reconstitution of the record of the civil case referred to, the alleged plaintiff therein was already dead, his attorney could not have asked for the reconstitution thereof without the substitution of the administrator of the estate of the deceased duly appointed by the court or his heirs for the deceased party, as provided for in section 17, Rule 3; that even if the judgment of 2 November 1941 in the reconstituted record of civil case No. 64287 had really been rendered and had become final and executory, it could not be executed by means of a motion, such as that presented by the petitioner on 24 April 1948, for the reason that more than five years had already elapsed since the date the judgment sought to be executed had become final and executory.

The answer of the respondent judge is substantially the same as that of the respondent Philippine Alien Property Administrator. He pleads further that the copy of the judgment purportedly rendered by the court on 2 November 1941, as it appears in the reconstituted record of civil case No. 64287, is fake, fictitious and spurious; that there was no notice served upon the adverse party of the petition for the reconstitution of the record, nor was there such notice served upon the adverse party of the petition for the reconstitution of the record, nor was there such notice of the motion for execution; that the writ of execution draws its life from the legality and validity of the order declaring the record of the case reconstituted; and that the latter being illegal for lack of service of notice of the petition for reconstitution upon the adverse party, the writ of execution must of necessity be without any validity and legal effect.

To determine whether the orders complained of constitute an excess of jurisdiction or a grave abuse of discretion, there seems to be no necessity of passing judgment upon several questions raised by the parties in their pleadings. For instance, there is no need for us to decide whether a suit against the Philippine Alien Property Administrator is in effect against the Government of the United States of America; whether the petitioner's claim in behalf of the estate of the late Martin Alvarez Socco is a title or a debt claim, as provided for in section 9 and 34, respectively, of the Trading with the Enemy Act of 6 October 1917, as amended; and whether the money judgment in the reconstituted record of civil case No. 64287 was in fact rendered, for a pronouncement on these points would bind the court which will later on try and decide the controversy.

We are, however, satisfied that the proceedings held for the reconstitution of the record of civil case No. 64287 were irregular for lack of notice of the petition for reconstitution upon the adverse party or his attorney. It does not appear that the clerk of the Court of First Instance of Manila had sent to Miguel Socco Reyes a notice of the loss or destruction of the record of civil case No. 64287, as provided for in section 1, Act No. 3110; neither does it appear that upon receipt of such notice, the court had issued or caused to be issued a general notice addressed and sent by registered mail to all lawyers and interested parties, advising them of such loss or destruction and of the time fixed by Act No. 3110 for the reconstitution of lost or destroyed records, and that such notice had been published in the Official Gazette and in one of the newspapers most widely read in the City of Manila, once a week, for four consecutive weeks, as provided for in section 2, Act No. 3110; nor does it appear that within thirty days after receipt of the notice, Martin Alvarez Socco or his attorney had appeared and filed an application for the

reconstitution of the record of civil case No. 64287, and that the clerk of court, upon receipt of such application, had sent notice to the adverse party or his attorney of the day, hour and place when the court was to proceed with the reconstitution, as provided for in section 3, Act No. 3110. What appears in the petition for reconstitution is a service of a copy of the petition not by the clerk of the court of first instance but by Miguel Socco Reyes and not upon the attorney for the alleged defendants but upon one "A. Pelayo." Who is this individual? Did he represent any party to the case the record of which was to be reconstituted? Is he a real or fictitious person? All these questions remain unanswered. This lack of notice upon the adverse party or his attorney and non-compliance with the express provisions of Act No. 3110 vitiate the reconstitution proceedings and render the order declaring the record reconstituted ineffective. The last mentioned order being illegal, the judgment purportedly rendered in the case cannot become final and executory.

In refusing to hold the Philippine Alien Property Administrator in contempt of court and in denying the motion to direct the said Administrator to satisfy or pay the money judgment purportedly rendered in the reconstituted record of civil case No. 64287 out of the property formerly belonging to Teizo Mori, or the proceeds realized from the sale thereof, the Court did not exceed its jurisdiction nor did it commit a grave abuse of discretion, because the said Administrator was not a judgment debtor in said case (section 34, Rule 39), neither was he a debtor of the judgment debtor, nor was he in possession of any property of the judgment debtor (section 35, Rule 39). The Philippine Alien Property Administrator was not a debtor of Teizo Mori, because the latter had been divested of any title or interest in the properties formerly owned by him and registered in his name after the vesting order No. P-7 had been executed, and because the said properties after the vesting order No. P-7 had been executed, and after they had been sold, the proceeds realized from the sale thereof, belonged to the Government of the United States of America.

Petition for a writ of certiorari and mandamus denied, with costs against the petitioner.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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