

**IN RE: ORIGINAL CERTIFICATE OF TITLE NO. O-1385; SP. NO. 695;
BOOK1 NO. 1-5, PATENTEE—PAULINO P. GOCHECO. CESARIO
GOCHECO, PETITIONER AND APPELLANT, VS. FRANCISCO T.
ESTACIO, ET...**

G. R. No. L-15183. October 30, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

Cesario Gochecho is a legitimate son of Paulino P. Gochecc, registered owner of a parcel of land, with improvements in Margosatubig, Zamboanga del Sur, as evidenced by Original Certificate of Title No. O-1385 of the Register of Deeds for the said province. The owner's duplicate copy of the said original certificate of title was lost, and notwithstanding diligent search to ascertain its whereabouts, the said owner's duplicate copy has not been found. However, in the records of the Register of Deeds of Zamboanga del Sur, the original of the above number certificate No. O-1385 of title is found intact and complets in Sp. No. 695 Book No. I-5-patentee Paulino P. Gochecho.

On January 18, 1957, Cesario Gochecho, in his capacity as heir of the registered owner, filed a petition before the trial court to require the Register of Deeds for Zamboanga del Sur to issue another owner's duplicate copy of the O.C.T. No. O-1385, in lieu of the owner's copy which was lost, copy of which petition was served to the Register of Deeds, thru the Provincial Fiscal, on April 30, 1957. Francisco T. Estacio and others opposed the petition, claiming that they have been in continuous, peaceful, lawful, public and adverse possession of the property covered by O.C.T. No. O-1385. On June 1, 1957, petitioner replied, stating that the oppositors can not intervene in the petition for want of personality and that to allow them to claim ownership and/or possession of the subject property would defeat and destroy the indefeasibility of title guaranteed and protected by Act No. 496.

On June 29, 1957 petitioner appeared in Court and submitted his oral and documentary evidence. Notwithstanding notice of hearing served upon them, the oppositors or their counsel failed to appear. On the same day, however, the trial court entered an order suspending the hearing of the petition and required the petitioner to publish within 30 days his petition or to file a testate or intestate proceeding, and to secure the appointment of a legal representative to the estate of registered owner and the ultimate declaration of heirs. For failure of petitioners to comply with the order, on August 23, 1957, the oppositors filed an ex-parte motion to dismiss the petition. The Court, instead, on August 24, 1957 gave the petitioner 10 days within which to show cause why the petition should not be dismissed. On September 3, 1957, petitioner filed his "constancia" manifesting that he was submitting his case, on the evidences adduced in the hearing. On September 9, 1957, the trial court dismissed the petition against which petitioner interposed the present appeal.

Petitioner-appellant alleges that the trial court erred (1) in requiring him to publish the petition for the issuance of a new owner's duplicate copy of O.C.T. No. O-1385; (2) in requiring him to secure the appointment of a legal representative to the estate of the original registered owner, Paulino P. Gochecho and to obtain a judicial

declaration of his lawful heirs before giving due course to his petition and (3) in dismissing the petition.

The petition is only for the issuance of an owner's duplicate copy of O.C.T. No. O-1385, in lieu of the one that was lost. Section 109 of Act No. 496, as amended, provides:

"SEC. 109. If a duplicate certificate is lost or destroyed, or cannot be produced by a grantee, heir, devisee, assignee, or other person applying for the entry of a new certificate to him or for the registration of any instrument, a suggestion of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered. The court may thereupon, upon the petition of the registered owner or other person in interest, after notice and hearing direct the issue of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate for all the purposes of this act."

In view of the existence of the complete record in the register of Deeds of Zamboanga del Sur, of the original of the certificate of title in question, which appears in Book No. 1-5 of the said Register of Deeds Office (Exh. A) and of the fact that the present petition is not one for reconstitution as provided by Republic Act No. 26, there is no necessity for publishing notice of the hearing thereof. And the petition, coming as it does, under the provisions of Section 109, aforequoted, there is likewise no need to first secure the appointment of a legal representative of the estate and the declaration of the lawful heirs of the deceased Paulino P. Gocheco. The petition does not at all seek the distribution of the decedent's estate. The owner's duplicate copy to be issued will be only an owner's duplicate copy of O.C.T. No. O-1385 and the petitioner is a person in interest as he is a legal heir, according to his uncontroverted verifiel petition.

The oppositors-appellees, who had not chosen to file their brief, have no personality to intervene and their grounds of intervention, namely, that they have been in public, continuous, peaceful, adverse and lawful possession of the property is immaterial, impertinent and of no consequence, in the present proceeding. Their claim of ownership or possession of the property can be properly instituted in a separate, independent and ordinary civil action.

In view hereof, the order of June 29, 1957 of the Trial Court, appealed from, is set aside, and another entered, directing the Register of Deeds of Zamboanga del Sur, to issue to the petitioner a new owner's duplicate copy of the Original Certificate of Title No. O-1385, in lieu of the owner's copy which was lost. With costs on the oppositors-appellees.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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