

**MANOLITA GONZALES DE CARUNGCONG, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF THE LATE MANUELA I. VDA.
DE GONZALES, PLAINTIFF AND APPELLANT, VS. JUAN COJUANGCO,
DEFENDANT AND APPEL...**

G. R. No. L-3761. April 20, 1951

Ponente: REYES, J.

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REYES, J.:

This is an appeal from an order of the Court of First Instance of Manila.

On November 30, 1945, Manuela I. Vda. de Gonzales filed a petition in said court for the reconstitution of the judicial record of a civil case instituted by her against Juan Cojuangco in 1944. The petition alleges that the said case was brought to compel acceptance of a tender of payment made by her in order to discharge a mortgage held by Cojuangco on a piece of land adjudicated to her in the proceeding for the settlement of her deceased husband's estate; that the tender having been refused, the necessary amount in PNB cashier's check was deposited by her in court; that after defendant had filed his answer and the case been heard the court rendered judgment about November, 1944, holding the tender of payment valid and declaring the mortgage paid and cancelled; and that thereafter the record of the case was destroyed in the battle for the liberation of Manila.

Acting on the petition for reconstitution, the court set the case for hearing and required the parties to present "all copies of motions, decrees, orders and other documents" in their possession having reference to the case. Unable to present any such copies notwithstanding the various extensions of time granted for that purpose, plaintiff, on August 14, 1946, filed a written manifestation entitled "Statement of the Case Reconstituted," setting forth her version of the pleadings filed, the proceedings had, and the decision alleged to have been rendered in the case, and asked that the record be declared duly reconstituted. The request was opposed by defendant and denied by the court in its order of November 6, 1946, which reads as follows:

"El 13 de Noviembre de 1945 fue archivada la peticion que encabeza estos autos, para la reconstitucion de su expediente original, que se ha perdido o destruido en la liberacion de esta ciudad, pero despues) de varias proposiciones para dar a la peticionaria oportunidad de presentar copias de los escritos y actuaciones que formaban el expresado expediente, solo ha pedido producir en 14 de Agosto ultimo el escrito titulado "Statement of the case reconstituted", que no incluye ninguna copia certificada de los escritos archivados en el expediente original, mucho menos de la sentencia que, segun se alega en el mismo, se ha dictado. A la admision de este "statement of the case reconstituted" el abogado del demandado se opone y pide que la peticion de reconstitucion sea denegada.

"Entre las actuaciones que el abogado de la demandante incluye en su 'State of the case reconstituted' esta la que se alega ser la decision dictada por el Juez Hon. Mamerto Roxas, Esta supuesta decision es lo que el abogado de la demandante llama decision dictada por el Juez Roxas, que no es valida para reconstituir una sentencia, segun el artculo 7 de la Ley No. 3110 que dice:

" 'Sec. 1. If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy * * *.' "

(La subraya nuestra.)

"Este mismo articulo 7 provee que cuando no se puede obtener copia certificada de la sentencia, el Juzgado tiene que dictar otra, corao si la causa no hubiera sido decidida con anterioridad.

"Mas para que se pulda dictar decision, es preciso que se cuente con los escritos de alegaciones y las pruebas aportadas duvarte la vista, y nada hay de ello en este expediente.

"El artfculo 6 de la misma Ley No. 3110 preceptua que, si no se puede obtener copia autentica de la transcription de las notas taquigraficas, ni las mismas notas por haberse destruido, la causa se vera. de novo.

"En su virtud, se resuelve que no procede la reconstitucion de esta causa y debe verse de nuevo, previa reproduccion o presentacion de alegaciones.

"Asi se ordena.

"Manila, Filipinas, 6 de Noviembre de 1946.

(Fdo.) M. L. de la Rosa

Juez"

No appeal was taken from this order. But more than three years after its promulgation, with Manuela I. Vda. de Gonzales already dead, her administratrix filed in the reconstitution proceeding a motion for the admission of a "complaint" filed on the same day, which was nothing more than a rehash or synopsis of the written manifestation entitled "Statement of the case Reconstituted" which had already been rejected by the coui:t as a substitute for authentic copies of the documents constituting the destroyed record, the complaint ending with the prayer that judgment be rendered in the premises, declaring the tender of payment valid and the mortgage in favor of Cojuangco discharged. Opposed by defendant, the motion to admit the so-called "complaint" was denied by the lower court, and the case is now here by way of appeal from the order of denial.

We see no merit in the appeal. Section 3 of Act No. 3110 provides that in the proceeding for the reconstitution of judicial record the court shall request the parties to present "all copies of motions, decrees, orders and other documents in their possession, having reference to the record or records to be reconstituted," while section 4 says that "in case it is impossible to find a copy of a motion, decree, order, document, or other proceeding of vital importance for the reconstitution of the record, the same may be replaced by an agreement on the facts entered into between the counsels or the parties interested, which shall be reduced to writing and attached to the proper record." In the present case the parties have not been able to comply with what is contemplated in either section, for they have neither presented copies of the documents constituting the record nor filed in lieu thereof a written agreement on the facts. The attempt at reconstitution has therefore failed, so that the legal provision applicable to the situation is section 30 of the Act, which says that when reconstitution is not possible by means of the procedure established in the Act or for any other reasons, "the interested parties may file their actions anew, upon payment of the proper fees, and such actions shall be registered as new actions and shall be treated as such." We think this is precisely what the lower court had in mind when in its order of November 6, 1946, it decreed that reconstitution was not in order or was improper (no procede) and that the cases should be tried anew "previa

reproduction o presentation de alegaciones." But appellant takes the position that the order does not require her to file her action anew, for it also permits the parties to merely "reproduce" their pleadings, and she thinks that she is complying with the order when she presents what she calls a complaint in the form of a synoptical exposition of what transpired or was done in the case to be revived (from the complaint to the decision)—a synopsis not agreed to by the opposing party, being in effect a reconstitution of the destroyed judicial record upon appellant's own terms so to speak. The position taken by appellant runs counter to the express mandate of the law and reduces the order to the absurdity of declaring the reconstitution improper or not possible and at the same time authorizing it to be done.

Appellant's plain recourse is to file her action anew and pay the proper fee, which action shall be registered as a new one and treated as such.

The order appealed from is therefore affirmed, with costs against the appellant.

Paras C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Jugo and Bautista Angelo, JJ., concur.

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