

VALENTIN BERMUDO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, FORMER SIXTH DIVISION; THE HONORABLE COURT OF FIRST INSTANCE OF LEYTE, BRANCH I AND THE CHINESE NATIONALIST PAR...

G.R. No. L-38622. October 26, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This special civil action for certiorari and prohibition stemmed from the decision of the then Court of First Instance of Leyte granting a petition for relief from its order directing the reconstitution of an original certificate of title covering a parcel of land.

Tom Chow and Go Se Pieng, claimants of Lot 776, a 505-square meter parcel of land located in Lopez Jaena Street, Tacloban City, obtained a judicial decree of registration No. 494657 on October 8, 1931 as co-owners pro-indiviso in fee simple thereof. They were issued Original Certificate of Title No. 10256 on November 3, 1932.

The record shows, however, that on June 27, 1931, before the issuance of said decree and title, Tom Chow and Go Se Pieng had renounced their interests, rights and privileges over Lot 776 in a document [Exh. 2] wherein they professed that they were mere trustees of the Chinese Nationalist Party of Tacloban, Leyte. The latter allegedly acquired said lot from the Philippine Refining Company, Inc. Consequently, on September 4, 1940, Transfer Certificate of Title No. 858 was issued to the Chinese Nationalist Party.

Almost twenty-four years later or on June 23, 1964, Valentin Bermudo filed in the Court of First Instance of Leyte, Branch I at Tacloban City, a petition for the reconstitution of the records of OCT No. 10256. He alleged therein that he was the "vendee to the extent of one-half [1/2] pro-indiviso" of Lot 776. Annexed to the petition was a certification of the Register of Deeds of Leyte and Tacloban City stating that the book containing said OCT No. 10256 "was completely destroyed", that a diligent and religious search thereof proved futile, and that "no owner's Duplicate Certificate of Title No. 10256 was ever issued in favor of anybody".[1]

As there was no opposition to said petition, the lower court, after the hearing, issued an order dated November 23, 1964 allowing the reconstitution of the records of OCT No. 10256. The lower court based its order on its findings that per an authenticated copy of the aforesaid judicial decree of registration No. 494657, Tom Chow and Go Se Pieng were the owners in fee simple thereof, and that by virtue of a deed of adjudication and absolute sale executed on June 3, 1964, Cristina Esperas Vda. de Chow transferred all the interests and participation of Tom Chow over Lot 776 to Bermudo.

Shortly thereafter or on December 8, 1964, TCT No. 1948 was issued to Bermudo and Go Se Pieng as owners of Lot 776 in "equal shares undivided".[2]

On January 23, 1965, the Chinese Nationalist party [hereinafter known as the Party] filed a petition for relief from

said order praying for its annulment and for the issuance of an order cancelling TCT No. 1948. It alleged that the reconstitution order was obtained through misrepresentation and fraud there being no notice of hearing of the petition for reconstitution in spite of the fact that Bermudo, who was residing adjacent to Lot 776, had personal knowledge that said lot had been owned and possessed by the Party for more than thirty years by virtue of TCT No. 858. It added that it came to know of the reconstitution order only on January 5, 1965 when the occupants of said lot informed its president that Bermudo had filed an ejectment case against them.[3]

In his opposition to said petition, Bermudo averred that notice of the hearing of his petition was duly published; that he did not know of any participation of the Party in said land; that the latter had no legal capacity to sue; that under existing laws, it could not own land; that the land allegedly titled in its name was not the same parcel of land subject matter of the case and that the petition for relief was pro forma and intended merely to delay the proceedings in the case.[4]

In its decision of January 6, 1968, the lower court set aside its order to reconstitute OCT No. 10256, annulled and cancelled TCT No. 1948 and declared TCT No. 858 to be in full force and effect.

The lower court found that Bermudo acted in bad faith in obtaining the reconstitution of OCT No. 10256. It noted that being a resident of the property adjacent to Lot 776, Bermudo could have known the possessor and owner of the lot. It stated that, after the Party had presented the widow of Tom Chow, Magdalena Esperas Vda. de Chow, Bermudo failed to rebut her testimony through his own predecessor-in-interest, Cristina Esperas Vda. de Chow, allegedly also a widow of Tom Chow. The lower court also ruled that OCT No. 10256 could no longer be reconstituted because it had been cancelled by TCT No. 858 in the name of the Party.

After receiving a copy of said decision, Bermudo filed a notice of appeal to this Court.[5] As the original record of the case was transmitted to this Court, We required Bermudo to file the proper petition for review on certiorari pursuant to Republic Act No. 5440.[6]

The petition, which was docketed as L-30730, "Valentin Bermudo vs. Chinese Nationalist Party, et al.", was denied by the Court for non-compliance with the Rule requiring a verified statement of material dates and proof of service of the petition on the lower court.[7] Bermudo's motion for reconsideration of said denial resolution was granted by the Court in the resolution of September 24, 1969 but, it appearing that the petition involved mixed questions of law and fact, the Court transmitted the petition to the Court of Appeals.[8]

In its decision of December 11, 1972, the Court of Appeals* dismissed the petition, ruling that Bermudo did not acquire a legal and valid title over Lot 776 from his predecessor-in-interest, Cristina E. Vda. de Chow, and hence, he is not entitled to seek reconstitution of the title covering said land. It underscored the fact that OCT No. 10256 was no longer in force when the reconstitution order was issued because as early as September 4, 1940, said title had been cancelled and in lieu thereof TCT No. 858 was issued in favor of the Party. It also upheld the Party's capacity to sue on the ground that by virtue of the old Civil Code, specifically Articles 1667 and 1356 thereof, it was possessed of juridical personality.

Bermudo elevated said decision to this Court through another petition for review on certiorari. Docketed as L-36156, "Valentin Bermudo vs. Court of Appeals, et al.", said petition was denied for lack of merit on January 29, 1973.[9] His motion for the reconsideration of the denial resolution was likewise denied for lack of merit.[10]

Undaunted, Bermudo filed the instant petition for certiorari and prohibition. He asserts that the Court of Appeals acted beyond its power and authority when it affirmed the lower court's decision setting aside its order directing the reconstitution of OCT No. 10256, after the said order had been executed and enforced.[11]

From the procedural standpoint, We agree with the petitioner that the Court of Appeals acted beyond its authority

in upholding the lower court's decision. When the Party filed its petition for relief, the order of reconstitution had not only become final and executory. Said order was already executed by the issuance of the reconstituted OCT No. 10256 which resulted in the subsequent issuance of TCT No. 1948 to Bermudo. As a petition for relief from judgment is proper only when the court is still in control of the proceedings,[12] the lower court should not have entertained the Party's petition because by that time, it was already deprived of its jurisdiction over the case. Furthermore, the lower court should have considered the fact that premised on equity, relief from judgment is granted only in exceptional cases and, being an act of grace, it is not regarded with favor.[13]

For its part, in choosing a remedy for the allowance of the reconstitution of OCT No. 10256 and the subsequent issuance of TCT No. 1948, the Party should have considered the fact that it was, by its own admission, not served notice of the judicial reconstitution proceeding. Rule 38 cannot be applied when the one deprived of his right was never made a party to the case for lack of the requisite notice.[14]

Under the circumstances, the Party should have availed of the remedy provided for in Republic Act No. 26 which states:

"SEC. 19. x x x x x: Provided, however, That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above with respect to memoranda or new liens or encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens or encumbrances, if any, as may have been made on the latter, after the issuance thereof."

The procedure referred to in said provision with respect to memoranda of new liens or encumbrances annotated on a reconstituted certificate of title, consists of the filing of a petition with the proper Court of First Instance "for the annotation of such right or interest on said reconstituted certificate of title and the court, after notice and hearing, shall determine the merits of the petition and render such judgment as justice and equity may require." [15]

The Party's improper remedy notwithstanding, We are not prepared to uphold Bermudo's claim to one-half interest over the undivided lot. Extant from the records are proofs that Bermudo, as correctly found by both the lower court and the Court of Appeals, acted in bad faith in seeking the reconstitution of OCT No. 10256.

Bermudo has not denied the fact that he was residing adjacent to Lot 776 when he filed the petition for reconstitution of title and yet, he failed to give notices of the hearing on the petition for reconstitution even to its actual occupants. Such failure manifested an attempt to prevent any opposition to his petition, not realizing that it would prove fatal to his case considering that notice and the procedural requirements of Republic Act No. 26 are mandatory.[16] Thus, courts must exercise utmost caution in entertaining petitions for reconstitution and should make sure that the indispensable parties, i.e., the actual owners and possessors of the lands involved, are duly served with actual and personal notice of the petition, and not by mere general publication.[17]

Moreover, it is possible that Bermudo could have bought an interest in Lot 776 from the wrong Mrs. Chow. He should not have relied on the testimony of Mrs. Magdalena Esperas Vda. de Chow that she could not personally locate and identify Lot 776. He should have presented anew as witness his alleged predecessor-in-interest, Mrs. Cristina Esperas Vda. de Chow to rebut Magdalena's testimony and to prove the authenticity of Cristina's claim over the property. In the light of these factual findings, Bermudo's right to a one-half interest over Lot 776 is therefore unclear and doubtful.

On the other hand, the Party's claim over Lot 776 appears to be as nebulous as Bermudo's. It allegedly acquired the lot from the Philippine Refining Company, Inc, but two trustees [who, by their Chinese names might have

been aliens] obtained an original certificate of title over it. It is worth noting, however, that the judicial decree of registration in favor of said trustees did not indicate that they claimed their right over Lot 776 as such trustees even if they had renounced their rights as such trustees before the issuance of both the judicial decree of registration and the original certificate of title.

The fact that the Party acquired TCT No. 858 in 1940 when the 1935 Constitution was in full force and effect further beclouds its right to acquire title over Lot 776. While at that time the Party might have acquired a juridical personality if We are to go by the finding of the Court of Appeals, it is still unclear whether it was also qualified to acquire or hold lands considering the provision of the 1935 Constitution limiting the acquisition of land only to corporations or associations at least sixty per cent of the capital stock of which is owned by Filipino citizens.[18] Although the Party had no capital stocks as it was allegedly a "civil association", it cannot escape said Constitutional mandate because the purpose and spirit of the 1935 Constitution "demands that in the absence of a capital stock, the controlling membership should be composed of Filipino citizens".[19] Nowhere in the record does it show that the Party fulfills said "sixty per centum" requirement.

But granting that the Party is qualified to hold or own private land, still, there is the question of whether ownership of Lot 776 is indispensable to its activities as a "civil association". A corporation's right to hold or own lands is further delimited by the provision of the Corporation Law[20] Section 13[5] of which states that no corporation shall be "permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it is created". Hence, it is still imperative for the Party to prove that ownership of Lot 776 was necessary when it acquired title over it in 1940, in order that it could undertake its aims as a "civil association".

Worth noting is the fact that it was only on November 29, 1966, while its petition for relief from judgment was pending resolution in the lower court, that the Party reorganized itself, reincorporated under the new name Leyte Kuomintang Cultural Association, Inc. and registered with the Securities and Exchange Commission. We view such belated move as aimed at obtaining documentary evidence of its juridical existence to supplement the testimonial proof of its juridical personality which was questioned by Bermudo.

Furthermore, in his memorandum, Bermudo also alleged that aside from the fact that the Party presented only a photograph of TCT No. 858 with a certification from the office of the Register of Deeds that it was a true copy, the Register of Deeds of Leyte found three transfer certificates of title bearing the same number in the names of the Party, one Feliciano Labastida, and the Tacloban Electric and Ice Plants Co., Inc.[21] The Party failed to rebut said allegation.[22]

The existence of three transfer certificates of title all numbered 858 in the same locality is an anomaly that requires investigation and correction. That anomalous situation, coupled with Our finding that it is very possible that both at the time of the Party's acquisition of Lot 776 and the issuance in its favor of TCT No. 858, it was not qualified to hold and own private land under the 1935 Constitution and pertinent laws, compel Us to consider the Party's ownership over Lot 776 as questionable.

To remove all doubts over the Party's right over Lot 776 and to settle the question of who really should be entitled to register said lot in his name, We are convinced that an escheat proceeding under Section 5, Rule 91 of the Rules of Court must be initiated by the government. All interested parties, especially the actual occupants and the adjacent lot owners including petitioner Bermudo, shall be personally notified of the proceeding and given the opportunity to present their valid claims over Lot 776 otherwise it will be reverted to the State.

WHEREFORE, the petition for certiorari and prohibition is hereby dismissed. The Solicitor General or his representative is hereby directed to immediately file an escheat proceeding pursuant to Section 5, Rule 91 of the

Rules of Court in the proper Regional Trial Court which shall give priority to the case and decide it at the earliest possible time.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Record on Appeal in L-30730, "Valentin Bermudo vs. Chinese Nationalist Party, et al.", pp. 2-10; Rollo, p. 132

[2] Rollo, p. 84

[3] Record on Appeal, supra, at pp. 14-16

[4] Supra, at pp. 33-34

[5] Record on Appeal, supra, at p. 193

[6] Rollo, p. 101

[7] Rollo, p. 102

[8] Rollo, p. 103

* Penned by Justice Hermogenes Concepcion, Jr., and concurred in by Justices Eulogio S. Serrano and Lourdes P. San Diego

[9] Rollo, p. 127

[10] Rollo, p. 129

[11] Petition, p. 13

[12] See Ong vs. Court of Appeals, L-33436, June 22, 1984, 129 SCRA 608

[13] Dirige vs. Biranya, L-22033, July 30, 1966, 17 SCRA 840

[14] Lagula vs. Casimiro, 98 Phil. 102

[15] Sec. 8, Republic Act No. 26

[16] Tahanan Development Corporation vs. Court of Appeals, L-55771, November 15, 1982, 118 SCRA 273; Metropolitan Waterworks and Sewerage System vs. Sison, L-40309, August 31, 1983, 124 SCRA 394

[17] Concurring opinion, Teehankee, J., Director of Lands vs. Court of Appeals, L-45168, January 27, 1981, 102 SCRA 370, 456

[18] Art. XIII, Sec. 1

[19] Register of Deeds vs. Ung Siu Si Temple, 97 Phil. 58, 61

[20] Act No. 1459

[21] Rollo, pp. 237-238

[22] Rollo, pp. 254-260

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