

**CONSTANCIO ABAPO, PETITIONER, VS. HON. JUAN Y. REYES,
PRESIDING JUDGE OF BRANCH I, COURT OF FIRST INSTANCE OF
CEBU, THE HONORABLE LAND REGISTRATION COMMISSIONER,
ANTONIO A. ZOSA...**

G.R. No. L-47282. November 23, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Catalina Gabuya, Prudencio Gabuya, Felipa Jaca, Leonarda N. Tomakin, and Lucas Nadela filed a "Petition for Reconstitution of Lost Certificate of Title and/or Application for Registration of Title" of a parcel of land, more particularly identified as Lot 4673 of the Cadastral Survey of Cebu, situated in Cebu City, before the then Court of First Instance of Cebu, Branch I.

Constancio Abapo, herein petitioner, Jovencio Abapo, herein private respondent, and the Republic of the Philippines, represented by the Office of the Provincial Fiscal, opposed the petition.

Upon motion, Antonio A. Zosa, herein private respondent, was allowed by the court to intervene.

The required notice and publication were complied with and, after hearing, the lower court rendered a decision, dated August 24, 1973, the decretal portion of which reads -

"ACCORDINGLY, this Court dismisses the petition application for registra-tion. The Land Registration Commissioner is directed to immediately issue a reconstructed decree of registration of Lot No. 4673 under date of November 3, 1938 in the end that the Register of Deeds of Cebu City may issue the corresponding original certificate of title in the name of Juana Gabuya, and said Register of Deeds is hereby commanded and directed to register, pursuant to existing and pertinent provisions of the Land Registration Act, all subsequent tran-sactions affecting said property involving the rights and interests of Antonio A. Zosa and Remedios Abelgas in said original certificate of title especially with respect to portions or sublots therein conveyed to them upon presentation of the proper documents, reserving the right of the oppositors to institute a separate and appropriate civil action for recovery of possession of and/or ownership over the aforestated portion or sublots.

"Let the ownership and possession of the Government over Eighty-Five (85) square meters, which is now part of C. Padilla Street, otherwise known as the Cebu South Road by virtue of a road right of way agreement affecting the land, be noted in the original certificate of title to be issued pursuant to this decision, said right having been explicitly admitted by the parties in open court.

"No pronouncement as to costs." (Underlining supplied, pp. 51-52, Rollo)

Private respondent Antonio A. Zosa filed a "Motion for Reconsideration and/or for Clarification of the Dispositive Portion of the Court Decision," and the court a quo, on November 29, 1973, issued an order (decision), the dispositive portion of which states -

"For all the foregoing, this Court reconsiders its decision of August 24, 1973 and the disposition thereof is

hereby amended and/or altered so as to appear and read, as follows:

"ACCORDINGLY, this Court renders judgment:

"(1) Approving the application of Antonio A. Zosa, married to Remedios Abelgas, Filipino citizen, and a resident of Cebu City, Philippines, for registration of Lots Nos. 4673-C, 4673-D, and 4673-E, portions of Lots. No. 4673, of the Cadastral Survey of Cebu, containing areas of 1,673, 1,673, and 1,673 square meters, respectively, as described in the corresponding plans and technical descriptions, and ordering the confirmation and registration of titles to the aforesaid lots, including improvements thereon, in the name of said applicants;

"(2) Ordering the confirmation and registration of title to Lot No. 4673-A, portion of Lot 4673, Cebu Cadastral Survey, in favor of Constancio Abapo, single, resident of Cebu City and Jovencio Abapo, married to Faustina Cabaluna, likewise a resident of Cebu City, in equal undivided shares, including the improvements thereon.

"This decision shall be subject to the provisions of Section 39 of Act 496. Further, let the ownership and possession of the National Government over eighty-five (85) square meters, which is now part of C. Padilla Street, otherwise known as the Cebu South Road by virtue of right of way agreement, affecting Lot No. 4673 be noted in the original certificate of title, said right having been explicitly admitted and conceded by the parties.

"SO ORDERED."

(pp. 64-65, Rollo)

Herein petitioner Constancio Abapo appealed to the then Court of Appeals which, however, dismissed the appeal due to failure on his part to file the appeal brief. As a consequence, herein private respondent Antonio A. Zosa filed with the court a quo a "Motion for Issuance of Decree and for a Writ of Possession." The motion was granted by the court in its order, dated June 16, 1976, "adjudicating Lot No. 2, of the Sketch Plan of Lots 4673-A and 4673-B, to Jovencio Abapo, having an area of 906 square meters, and Lot No. 1, having an area of 907 square meters to Constancio Abapo," and ordering the Land Registration Commission to issue the corresponding and separate decrees for the respective shares of the aforementioned oppositor and co-oppositor. (p. 119, Rollo)

On March 9, 1977, the Land Registration Commissioner submitted a report to the court a quo that it can not comply with its order of June 16, 1976 because -

"1. x x x upon verification and examination of our Records Book Cadastral Lots, it was found that Decree No. 687556 was issued on November 3, 1938; for Lot No. 4673 of the Cadastral Survey of Cebu, Province of Cebu. Copy, however, of the aforesaid decree is no longer available in this Commission. Our records further show that this Lot No. 4673 is the subject of an annotation, to wit: 'R.A. 26, January 25, 1960.';

"2. x x x in the order of the Court dated June 16, 1976, Lot No. 1 and Lot No. 2 of Ces-07-01-000011 (Before Lots 4673-A and 4673-B, Psd--6880 Amd.), were adjudicated to Constancio Abapo and Jovencio Abapo, respectively, and ordering as well the issuance of the corresponding decrees for the said adjudicatees; and

"3. x x x it will result to a duplication of decree and/or title." (p. 69, Rollo)

Whereupon, herein petitioner Constancio Abapo filed a motion praying that the court's order (decision) dated November 29, 1973, be set aside and the decision of August 24, 1973 be maintained.

The court denied the motion "for utter lack of merit, x x x the order (decision) of November 29, 1973 having already become final and executory." (p. 78, Rollo) Hence, the filing of this petition for certiorari, prohibition with preliminary and/or mandatory injunction seeking to annul and/or set aside the order of the lower court dated November 29, 1973, and to prohibit respondent court from proceeding with the petition for registration covering Lot No. 4673 of the Cebu Cadastre.

We find the petition to be meritorious and tenable.

The petition filed before the lower court was for reconstitution of lost certificate of title. In fact, paragraphs two, three and four of the said petition state:

"That sometime in 1938 or subse-quently thereto an original certificate of title No. (N.A.) was issued in favor of the following persons: Regina Gabuya, Rufino Gabuya, Catalina Gabuya and Matea Gabuya in equal shares and a portion measuring 140 square meters, more or less, on the right side of said land facing the Provincial Road to Epifania Gabuya;

"That the certificate of title which was issued was valid and existing but the same was lost and/or destroyed by reason of the operation of the last World War and despite diligent and repeated endeavors to locate them could not be found even up to the present;

"That the report of the General Land Registration Commission concerning the issuance of said certificate of title is hereto attached and marked annex 'C' and made a part of this petition;" (pp. 19-20, Rollo)

Thus, the only issue is whether there is a title to be reconstituted. "That is the only purpose of the law (Republic Act No. 26). If there is, then it is the duty of the court to comply with its mandate. Whether the petitioner has the right to acquire the land or not, is beyond the province of this proceeding. That should be threshed out in a proper action (Director of Lands vs. Gan Tan, 89 Phil. 184, 187)." And, as properly observed by the Solicitor General in his comment to the petition, "[i]n the case at bar, the evidence could not justify reconstitution. Proof of the certificate of title allegedly lost was wanting. The court a quo, therefore, correctly dismissed the petition in its Decision dated August 24, 1973. But when it reconsidered said decision by ordering the registration of the property per its order dated November 29, 1973, it patently transcended its jurisdiction and overlooked the doctrine above reproduced. It was an error to do so. For, as stated, the court a quo was limited to resolving whether reconstitution was proper or not." (pp. 178-179, Rollo)

Records of the Land Registration Commission show that Decree No. 687556 was issued on November 3, 1938, for Lot No. 4673 of the Cadastral Survey of Cebu, Province of Cebu. As aptly stated by the court a quo in its decision of August 24, 1973 -

"It cannot be denied however that there has been no original certificate of title which has been issued by the Register of Deeds of Cebu covering the aforesated property, and thus all subsequent dealings affect-ing such property could not be registered as provided by law. To declare that there has been no decree of registration would be to brush aside the certifica-tion of the Land Registration Commis-sion that Decree No. 687556 was issued on November 3, 1938 covering Lot 4673. This affirmation of the office in charge of the duties of issuing decrees of registration must be given weight and credibility. Hence, such decree of registration No. 687556 prevents this Court, by the principle of res judicata, from adjudicating the case anew because the aforesated decree of 1938 has already become conclusive upon all persons and against the whole world effective as of November 3, 1939 or thereabouts. The resultant effect of such decree was to bring the land under the Torrens Act which is an agreement running with the land, theoretically binding upon the appli-cant and all persons claiming title or an interest therein at the time of the original hearing of the registration proceedings. (See Nidlack, Analysis of the Torrens System, Sec. 60, p. 101; see also Section 45, Act No. 496). In the final legal analysis, this Court has no further authority or juris-diction to adju-dicate the case anew because the original decision and decree have already become final and conclusive. (Reyes vs. Borbon, 50 Phil. 791). To declare the non-existence of a decree which in fact was issued would moreover result in long drawn out confusion, multiplicity of suits, uncertainty of the statue of the lot in question, especially with respect to the persons who are at present claim-ing possessory or proprietary rights over the same." (pp. 48-49, Rollo)

It was an error on the part of the lower court to issue the order (decision) of November 29, 1973.

ACCORDINGLY, the order (decision) of November 29, 1973 is SET ASIDE and the decision of the court a quo, dated August 24, 1973, is reinstated. Respondent is hereby enjoined from further proceeding with the re-registration of Lot No. 4673 of the Cadastral Survey of Cebu.

SO ORDERED.

Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

Teehankee, J., (Chairman), in the result.

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