

**JOSE D. VILLEGAS AND RIZALINA SANTOS RIVERA,
OPPOSITORS-APPELLANTS, VS. ALFREDO FERNANDO, ANGUSTIA
IBAY, JUSTO IBAY AND VALENTIN BUENVIAJE, ET AL.,
PETITIONERS-APPELLEES.**

G.R. No. L-27347. April 28, 1969

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Appeals from two orders issued by the Court of First Instance of Rizal in its capacity as a land registration court.[1]

These twin cases arose from the following set of facts: On 27 October 1959, the heirs of Jose Miranda Sampedro and Leocadio Manahan, hereinafter referred to as appellants heirs,[2] petitioned the Court of First Instance of Rizal to approve their amended plan Psu - 697 - Amd. corresponding to a parcel of land situated in Macabud, Montalban, Rizal, and allegedly platted in accordance with a certain decision rendered by the Court of Appeals on 26 November 1938, and to direct the Land Registration Commission to issue in their name, as successors-in-interest of the original applicants Sampedro and Pedro Manahan,[3] a decree of registration for lot No. 1 of the same plan. In the copy of the decision appended to the petition the Court of Appeals affirmed a lower court's purported award of said lot to the original applicants with the modification that one-sixth of the same lot was to belong to the spouses Jose Villegas and Irene Santos[4] after excluding therefrom those portions of land encompassed by the forest zone, those covered by particular titled homesteads, and those occupied by the non-Christian tribes.

Noting that there was no objection on the part of the directors of the Bureau of Lands and the Bureau of Forestry, the original oppositors of record, the lower court issued an order on 2 December 1959 approving the plan, together with its technical descriptions, and directing the Land Registration Commission to issue the appropriate decree. Accordingly, Decree No. N-75048 was issued on 22 December 1959 with the spouses Villegas and Santos as the denoted owners of an undivided one-sixth portion of the lot and the two groups of appellants heirs as pro-indiviso owners, in two equal shares, of the remainder. The decree was transcribed two days later in the registration book of the Re-gister of Deeds of Rizal as Original Certificate of Title No. 2180.

Within one year from the issuance of the decree, several persons,[5] namely, Prudencio Angeles, Macario Bonifacio, Valentin Buenviaje, the heirs of Roberto Cruz, Severino Cruz, Juana Estanislao, Alfredo Fernando, Justo and Angustia Ibay, Julita Ocampo, Marcelino Ocampo, Dominador Ramos and Biviano Reynoso, Jose Salamat, Roman San Diego and Arcadio Tolentino filed petitions for review in the lower court. Claiming diverse interests prejudiced by the alleged undue inclusion of some tracts of land in lot No. 1, petitioners for review levelled against appellants heirs various charges commonly denominated by them as fraud in the procurement of the aforementioned decree of registration. They all prayed that said decree be reopened and, together with the Original Certificate of Title No. 2180, annulled; and that the tracts of land over which they claimed interests be

segregated and decreed Instead in their favor. The annul-ment of the order of 2 December 1959 was, by the way, also specifically prayed for by Angeles, Buenviaje, the heirs of Roberto Cruz Fernando, Justo and Angustia Ibay, Ramos and Reynoso, and San Diego.

Instead of filing an answer as required by the lower court, appellants heirs moved for the dismissal of the petitions for review on the grounds that petitioners Marcelino and Julita Ocampo's property were not included in the decree and that the rest of the petitioners were without personality to question said decree, they being mere homestead or free patent applicants whose interests were subsidiary to that of the government.

On 26 July 1961, the lower court issued an order setting for hearing the motion to dismiss the petitions for review of Marcelino and Julita Ocampo and denying the motion to dismiss those of the other petitioners. The lower court opined that homestead applicants were included in the phrase "any person deprived of interest therein" found in section 38[6] of Act No. 496 and, consequently, entitled to file petitions for review thereunder. A subsequent motion for reconsideration filed by appellants heirs was belatedly denied on 23 March 1963.

During one of the pre-trials in the lower court, it was discovered that the copy of the Court of Appeals decision submitted thereto by appellants heirs was merely a "certified copy of another copy in the office of the Land Registration Commission which in turn was copied from a copy of the Bureau of Lands". The record of the case, including the original of the Court of Appeals decision sup-posedly rendered therein, were allegedly lost or destroyed during the second world war.

This discovery prompted Buenviaje, Fernando, and Justo and Angustia Ibay to file as they did file in March, 1963, separate petitions to set aside the order of 2 December 1959. In addition to their previous argument of fraud, they con-tended that the lower court had no jurisdiction to issue said order of 2 December 1959 considering that the rendition or the very existence of the Court of Appeals decision on which it was based was doubtful; that said decision was most probably fictitious, or, granting that it was genuine, that it was no longer en-forceable not only because it was barred by the statute of limitations but also because it had not been properly reconstituted pursuant to the provisions of Act No. 3110.[7]

In their opposition to the petition to set aside the order of 2 December 1959, appellants heirs pointed out to the lower court that said order was already final, and was in fact already executed, and therefore, already beyond the latter's control; that Act No. 3110 was not applicable to a decided case like the one under consideration; and that the record of the case, including the Court of Appeals decision in question which was of imprescriptible nature, were, in effect, vir-tually reconstituted upon the issuance of the aforesaid order.

On 23 August 1963, the lower court issued another order. Invoking lack of authority to issue the order of 2 December 1959 in view of the non-reconstitution of the record of the case as well as the Court of Appeals decision, it set aside said order of 2 December 1959.

Appellants heirs moved for reconsideration of the order of 23 August 1963. And, for the first time, Jose Villegas and the heir of Irene Santos, Rizalina Santos Rivera, appeared with a petition to set aside the same. The latter claimed that since they were not notified of the proceedings cul-minating in the issuance of the order of 23 August 1963, the same was a nullity insofar as their share in lot No. 1 was concerned. Both were denied, as per the lower court's order of 11 April 1964.

Appellants heirs appealed directly to the Supreme Court. Villegas and Rivera, on the other hand, went to the Court of Appeals which, in turn, certified their case involving purely questions of law to the Supreme Court.[8]

Imputed to the lower court are allegedly reversible errors consisting according to appellants heirs, (1) in holding mere homestead or free patent applicants included in the phrase "any person deprived of interest therein"

appearing in section 38 of Act No. 496, and (2) in setting aside the order of 2 December 1959 after the same became final and executory; and, according to appellants Villegas and Rivera, in addition to appellants heirs' second assigned error, (3) in entertaining and granting the petitions to set aside the order of 2 December 1959 which were not only filed after more than three years from the issuance of said order but were also based on charges not constituting the kind of fraud contemplated by section 38 of Act No. 496; (4) in not granting their petition to set aside the order of 23 August 1963 notwithstanding that the same was issued without notice to them; and (5) in holding that it had no authority to issue the order of 2 December 1959 by not dispensing with the reconstitution despite the confirmation by the Land Registration Commission of the existence of the Court of Appeals decision and the submission to the lower court of a certified copy of an alleged original duplicate thereof kept in the Bureau of Lands. Appellants accordingly pray that the two orders, respectively dated 23 August 1963 and 11 April 1964, be vacated; that the order of 2 December 1959 be reinstated; and that the various petitions for review be dismissed.

We shall consider the foregoing assigned errors in the order thus presented

(1) It is to be noted that the first error assigned does not refer to the orders of 23 August 1963 and 11 April 1964, which concern the annulment of the order of 2 December 1959 (directing the issuance of the decree) on the ground of non-reconstitution of the record of the case and the Court of Appeals decision. This first assigned error (assailing the personality of the appellees to ask for a review of the decision and decree in the registration case) is actually directed at an earlier order dated 26 April 1961 denying appellants heirs' motion to dismiss the petitions for review filed by the present appellees. And inasmuch as said order of 26 April 1961 is interlocutory,^[9] there being as yet no trial and decision on the merits of the petitions for review, it is premature to raise said assigned error in appellants heirs' instant appeal. We shall rule thereon only when the proper time comes, i. e., after the lower court shall have settled not only the still unresolved status and rights of the parties, particularly those of petitioners for review, now appellees herein, almost all of whom are claiming that they are not mere homestead or free patent applicants but patent or title holders, but also whether the original decision should be maintained or not. For the court below, after receiving the evidence and hearing the parties, may still conclude in favor of appellants herein.

(2) Neither do we find merit in the other assignments of error, mainly questioning the act of the court below in revoking the previous order for the issuance of a decree of registration for the reason that neither the records of the registration proceedings nor the decision of the Court of Appeals in 1938 had been properly reconstituted conformably to the law (Act 3110).

The contention of appellants on this particular issue is that the provisions of Act 3110 (establishing the procedure to be followed in reconstituting pending cases the records of which have been destroyed) do not apply to Land Registration Case 1117 (G. L. R. O. Record No. 48237) because when the records were destroyed the case was no longer pending but had been finally decided by the pre-war Court of Appeals in 1938. This position we find to be untenable. So long as a decree of registration has not been issued, registration proceedings are still pending for the purposes of the pre-Commonwealth Act 3110, and, when lost or destroyed, must be reconstituted in conformity with said act. This is apparent from the provisions of section 9 thereof which reads:

"Sec. 9. Registration proceedings pending the issuance of decree shall be reconstituted by means of copies furnished by the Chief of the General Land Registration Office. It shall be the duty of this officer, immediately upon receipt of the notice provided for in section one of this Act, to direct fully certified true copies of all destroyed registration proceedings pending at the time of the destruction, and all decrees destroyed, to be sent to the Clerk of Court of First Instance concerned."

The record on appeal, pages 11-19, makes it clear that when the records of the case were destroyed no registration

decree had as yet been issued, because appellants precisely asked the court below to order the issuance of a decree, annexing thereto an alleged copy of the decision. The registration proceeding concerned was, therefore, still a pending one under section 9 of Act 3110, and should have been first reconstituted, as prescribed by that law. It does not appear that the copy of the decision in question (and upon which the revoked order was based) was a fully certified copy issued by the chief of the General Land Registration Office. The certification appended thereto (Record on Appeal, page 30) is to the effect that the same is "a true copy from a photostatic copy attached to the Record on (of) Civil Case No. 3726", issued by a deputy clerk of the Court of First Instance of Rizal, who did not even specify what said Civil Case was about. Hence, said copy can not be deemed properly attested by an officer having legal custody of the record, and did not afford, a proper basis for the order of 2 December 1959 to issue the corresponding decree. The court below did not, therefore, err in revoking said order on the basis that the pre-war decision of the Court of Appeals was not properly reconstituted, particularly in view of its undisputed finding (in the appealed order of 23 August 1963) that the copy attached to the petition for issuance of the decree merely "was a certified copy of another copy in the office of the Land Registration Commission, which in turn was copied from a copy of the Bureau of Lands" (Record on Appeal, page 268).

Appellants argue that their attaching a copy of the Court of Appeals' pre-war decision was substantially a step to reconstitute the records of the case. This argument deserves scant consideration, since there was no sufficient compliance with Act 3110, particularly section 2 thereof, providing for giving of notice of the destruction of the records to those persons who might be interested, such notice to be published for four consecutive weeks "in the Official Gazette and in one of the newspapers most widely read in the province"; nor with Section 3 of the same Act further prescribing that upon receipt of the application for reconstitution the Clerk of Court "shall send notice to all parties interested, or their counsel, of the day, hour and place when the Court may proceed to the reconstitution". Strict compliance of notice requirements under statutes governing reconstitution is the rule (*Manila Railroad Co. vs. Moya*, L-17913, 22 June 1965).

The records before us show that notice of the petition for approval of the amended plan and for issuance of the corresponding decree was given only to the Director of Lands and to the Director of Forestry. This was plainly insufficient, since 'the law requires notice to "all other persons as might be interested". There is no showing that notice of the motion was given to the petitioners-appellees, who are possessors of lands affected by the decree, or even to the persons whose lots were ordered excluded by the decision of the Court of Appeals. That petitioners-appellees are merely applicants for homesteads or free patents, as contended by appellants, does not excuse the lack of notice to them, considering the broad terms of sections 2 and 3 of the Reconstitution Act (No. 3110) requiring notice "to all persons as might be interested" through publication in the Official Gazette and in a newspaper widely read in the province.

The jurisprudence of this Court is to the effect that upon failure to re-constitute destroyed judicial records within the period prescribed by law (which expired in 17 June 1963, pursuant to Republic Act No. 3081) the parties "are deemed to have waived the effects of the decision rendered in their favor and their only alternative is to file an action anew for the registration in their names of the lots in question".[10] Appellants not having applied in due time for proper reconstitution of their registration proceedings, the court below had no recourse but to set aside the order for the issuance of the decree.

As a last argument, appellants vigorously contend that the court below had jurisdiction to determine the authenticity and reliability of the copy of the Court of Appeals decision submitted to it, and to act thereon; that having accepted said copy as authentic in its order of 2 December 1959, the court, could not backtrack and set aside that finding by its order of 23 August 1963, because the preceding order by then had become final. This plea is un-availing against herein appellees, for the latter had not been given notice of the petition, and were not heard

on its merits. The order of 2 December 1959 never acquired finality as to said appellees, and the latter were free to contest the propriety and correctness thereof. For the same reason, the court below was not barred from reexamining its previous position and could legally reach the conclusion that the previous order, being erroneous, should be set aside.

(3) Appellants in Case G. R. No. L-27347, Jose Villegas and Rizalina Santos Rivera, stress that anyway the Office of the Land Registration Commissioner confirmed the existence of the original decision of the pre-war Court of Appeals in a report to the lower court dated 10 December 1959. Submitted after the issuance of the revoked order of 2 December 1959, this report can not dispense with the need of proper reconstitution, there being no showing that notice and opportunity was given to all the interested persons to make known their objections thereto.

(4) Anent the claim of appellants that the fraud averred in the petition for review is not the fraud contemplated in Section 38 of the Land Registration Act, suffice it to say that the court below provisionally ruled otherwise when it denied the motion to dismiss the petition for review on 26 April 1961. Such resolution by a court having jurisdiction is not appealable, as already observed in our discussion of the first assignment of error; hence, any pronouncement now on the merits of this claim of appellants would be altogether premature and improper. For aught we know, the court below may find, after hearing on the merits, that the petition for review should be denied.

Nor is there any inconsistency between the resolutions setting aside the order of 2 December 1959, directing the issuance of a decree of registration, and proceeding ahead with the petition for review. It is a doctrine settled by previous decisions of this Supreme Court that a petition for review under section 38 of the Land Registration Act (Act 496) may be filed any time after the rendition of the court's decision and before the expiration of one year from the entry of the final decree of registration (*Rivera vs. Moran*, 48 Phil. 836, 839-840; *Director of Lands vs. Aba, et al.*, 68 Phil. 85, and cases cited therein).

WHEREFORE, finding no reversible error in the appealed orders of 24 August 1963 and 11 April 1964, the same are hereby affirmed. As to the order of 26 April 1961, denying the motion to dismiss the petition for review, the appeal therefrom is dismissed for being premature. Let the records be remanded to the court of origin for further proceedings. Costs shall be paid in solidum by appellants in both cases, G. R. Nos. L-27347 and L-24901.

Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.

Castro, J., on leave, did not take part.

Capistrano, J., did not take part.

Concepcion, C.J., voted in favor of this opinion before going on leave.

[1] Land Registration Case No. 1117, General Land Registration Office Record No. 48237.

[2] Appellants in G. R. No. L-24901.

[3] The heirs of Leocadio Manahan claimed that Pedro Manahan transferred to them the latter's right, participation and interest in the lot.

[4] Villegas and the heir of Irene Santos, Rizalina Santos Rivera, are present appellants in G. R. No. L-27347.

[5] Appellees in both G. R. Nos. L-24901 and 27347.

[6] "Sec. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. . . . Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected

thereby, nor by any proceeding in any court for reversing judgments or decrees: subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest.” (Emphasis supplied)

[7] Entitled "An Act to provide an adequate procedure for reconstitution of the records of pending judicial proceedings and books, documents, and files of the office of the register of deeds, destroyed by fire or other public calamities, and for other purposes" and approved on 19 March 1923.

[8] Court of Appeals resolution, dated 14 February 1957, in its C.A. - G. R. No. 36160-R.

[9] The order of the trial court denying the motion to dismiss is merely interlocutory which can not be the subject of appeal. The proper procedure in such a case is to continue with the trial on the merits and, if the decision is adverse, to reiterate the issue on appeal. *Bautista, et al. vs. De la Cruz, et al.*, G. R. No. L-21107, 24 December 1963.

[10] *Mayol vs. Piccio*, 99 Phil. 404; *Ambat vs. Dir. of Lands*, 92 Phil. 567; *Carungcong vs. Cojuangco*, 88 Phil. 527.

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