

**GOVERNMENT OF THE PHILIPPINES, REPRESENTED BY THE
DIRECTOR OF LANDS, PLAINTIFF ANS APPELLEE, VS. BONIFACIO
ABIN, ET AL., CLAIMANTS, ANTONIO P. CHUA, MOVANT AND
APPELLANT.**

G.R. No. L-21885. August 03, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

In Cadastral Case No. 1, G.L.R.O. Record No. 866, Sorsogon, entitled "Government of the Philippines versus Bonifacio Abin, et al.", Apolinaria Tabuena appeared as claimant of Lot No. 3276. During the pendency of the cadastral proceedings she died. Settlement of her estate was brought under Special Proceedings No. 2259 in the Court of First Instance of Sorsogon. Enrique Tabuena, a son, was appointed special administrator. On April 26, 1928 the Cadastral Court awarded Lot No. 3276 to her heirs subject to the claims of creditors mentioned in its decision.

On September 21, 1928 Enrique Tabuena, as special administrator, sold Lot No. 3276 to the Sorsogon Chinese School for P2,281.60 in order to pay the claims of decedent's creditors. Said sum was deposited with the clerk of the probate court. The sale was approved by the probate court on October 27, 1928 which ordered the proceeds to be applied to the debts of the deceased Apolinaria Tabuena and the remainder to be distributed among the heirs.

On August 7, 1934 - before the Philippine Constitution took effect - the Sorsogon Chinese School sold Lot No. 3276 to Chua Mang, a Chinese national. On March 27, 1962 Chua Mang sold it to Antonio P. Chua, a Filipino citizen.

On January 7, 1963 Antonio P. Chua filed with the Cadastral Court a motion praying for an order to issue the final decree of registration of Lot No. 3276 in the name of the original applicant, the late Apolinaria Tabuena, subject to his rights as successor-in-interest. No notice of this motion was sent to the heirs of said Apolinaria Tabuena.

On January 19, 1963 the Cadastral Court denied Chua's motion on the ground that on July 16, 1928 it had ordered the issuance of the decree of title. On February 25, 1963 movant Antonio P. Chua filed a motion for reconsideration through the Land Registration Commission. Accordingly, the Land Registration Commissioner manifested on March 14, 1963 that no final decree has yet been issued, hence the decision of April 26, 1928 has not become final and may therefore still be amended.

No notice of the motion for reconsideration was given to the heirs of the late Apolinaria Tabuena.

On March 20, 1963 the Cadastral Court denied the motion for reconsideration on the ground that Antonio P. Chua has absolutely no right to be substituted since he did not derive his title from the awardees, the heirs of Apolinaria Tabuena. Chua filed another motion for reconsideration which was again denied for lack of merit. Antonio P. Chua, thereupon appealed to this Court on questions purely of law.

The records show that the heirs of the late Apolinaria Tabuena, namely, Eufracio Mendiola, the surviving spouse, Enrique, Josefa, Clemente, Paz, Pedro, Visitacion and Roque, all surnamed Tabuena, her children, to whom Lot No. 3276 was awarded by the Cadastral Court, were not given notice of Antonio P. Chua's motion and the subsequent motions for reconsideration. Consequently, the hearing on the motion of Antonio P. Chua and his motions for reconsideration was held in the absence of said heirs. At this stage therefore we deem it more in consonance with practical justice and the requirements of due process that the case be not decided upon the merits, until opportunity to be heard is given to the heirs in whose names the land was adjudicated.

In *Capio vs. Capio*, 94 Phil. 133, involving a similar petition to change the adjudication in a cadastral case, where the hearing on a motion for reconsideration, touching upon the merits of the petition, was held in the absence of the heir of a deceased adjudicatee, we directed the trial court to hold a regular and formal hearing of the case with notice to both parties. The same procedure should be followed in this case where the persons who had been declared owners of the property did not have notice of the proceedings below in question herein.

WHEREFORE, the appealed order is set aside and the court a quo is hereby ordered to hold a regular and formal hearing of the motion of Antonio P. Chua filed on January 7, 1963, with notice to the heirs of Apolinaria Tabuena, and thereafter to resolve said motion. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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