

## THE DIRECTOR OF LANDS, PETITIONER, VS. ALEJO ABISIA ET AL., CLAIMANTS, FILOMENA LLANDA AND LUCIA LLANDA, PETITIONERS AND APPELLANTS.

*G.R. No. L-71. February 26, 1946*

Ponente: HILADO, J.

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### HILADO, J.:

On September 15, 1921, Original Certificate of title No. 8809 of the Property Registry of the province of Cebu was issued, covering Cadastral Lot No. 7482 of the City of Cebu, in favor and in the names of Antonia, Remedios Antolina, Jose, and Juan, all surnamed Brigaudit, the first as the owner of 4/8 and the last four as the owners each of 1/8 undivided interest in the land together with the improvements existing thereon. These registered owners were brothers and sisters who had inherited the said parcel of land and its improvements from their deceased parents. In the course of time they also successively died, leaving no will, nor descendants, nor ascendants, with the exception of Antonia Brigaudit who left two legitimate daughters, the presait appellants jfilomena Llanda and Lucia Llanda

On June 20, 1945, Filomena Llanda, by counsel, filed with the Court of xiirst instance of Cebu a verif led petition, praying, upon the grounds therein alleged., that after the proper proceedings the said Original Certificate of title No. 8809 be ordered cancelled and in its stead a new one issued by the register of needs in favor and in the names of the said jfilomena llanda and her sister Lucia Llanda, share and. share alike, ins Court of First Instance of Cebu ordered the publication of the proper notice in the newspaper Morning Times of Cebu, advising the whole world, particularly any interested persons, of the filing of said petition, and setting the hearing thereof for the 23d of July, 1945. The notice was published in the said newspaper once a week for three consecutive weeks prior to the date of the hearing; and. on the 23d of July, 1945, at the hour fixed in the notice, the Hearing was held, no opposition to the petition having been presented,

The said Court after receiving the evidence of the petitioners, granted their petition, and ordered the Register of Deeds of the Province of Gebu to cancel the said Original Certificate of title no. 8809 covering said Lot No. 7482 and, in its stead, to issue a new one in the names of Filomena Llanda, of legal age, married to Guillermo Villostubo, Filipina, and. resident in the City of Cebu, and Lucia Llanda, of legal age, married to Faustino Velez, Filipina, and Resident in the City of Cebu, share and share alike, subject to the following condition:

" Este pronunciamiento estará sujeto a la reclamacion de cualquier heredero, acreedor, legatario o de cualquiera persona interesada, dentro del glazo de dog años desde la fecha de esta decisión. "

Counsel for Filomena Llanda and Lucia Llanda, in their behalf, riled on July 27, 1945, a motion for reconsideration, praying that the foregoing condition upon which the said court had granted their petition of June 20, 1945, be eliminated from the court's decision. That motion for reconsideration having been denied, this appeal has been interposed in forma pauperis by the said petitioners, which appeal raises the single, question of whether or not the lower court erred in subjecting its order to the aforesaid condition.

Section 112 of Act No. 496 contains the following provisions pertinent to the question thus presented:

"\* \* \* Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, Aether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; \* \* \* and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest and may order the entry of a new certificate, \* \* \* or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper; \* \* \*" (Italic supplied.)

In the case of *Government of the Philippine Island vs Serafica*, (61 Phil. 93, 102), which in all essential respects is similar to the one at bar, this Court laid down the following procedure, which the lower Court in the case at bar has followed:

"However, the Justices who concur in this decision are of the opinion that, in order to better safeguard the rights of those who may have an interest in the land, the trial court should proceed to the publication of the petition in the manner provided in section 597 of the Code of Civil Procedure and that a guardian ad litem. should first be appointed to legally represent the minor Veronica Abalos. if after the said publications and the subsequent hearing, the material and essential allegations of the petition appear to have been proven, then the said court shall grant the said petition, approve the subdivision plan, cancel original certificate of title No. 7154. and require the register of deeds to issue new certificates of title to the new lots in favor of the respective actual owners thereof."

If the petitioners herein had resorted to the procedure laid down in the Rules of Court for the summary settlement of estates of small value, any adjudication in their favor would have been subjected to the conditions and limitations provided in Rule 74, sections 3, 4 and 5. instead of doing so, they directly filed their petition in the cadastral case under section 112 of Act No. 496, and the lower Court rightly required the adoption of the same, safeguards for the protection of any creditors, heirs or other parties in interest, if any there should be, as in the case of such summary settlement and adjudication under the Rules of Court. Besides, the very law under which their petition was presented, section 112 of Act No. 496, supplies ample authority for the requirement imposed by the lower court

The appealed judgment is affirmed without costs.

Ozaete, De Joya, Perfecto, and Bengzon, JJ., concur.

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