

**APPLICATION FOR REGISTRA-TION OF TITLE. ELDRED FEWKES,
APPLICANT-APPELLANT, VS. NACITA VASQUEZ, DOMINGO
VASQUEZ, TRINIDAD GERARTE, HEIRS OF AUGUSTO ARAMBURO,
SIMEON ARAMBURO, RA...**

G.R. No. L-29075. June 10, 1971

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

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REYES, J.B.L., J.:

Appeal (before Republic Act 5440) from the order of the Court of First Instance of Albay (In Land Reg. Case No. N-434), dismissing an application for registration on jurisdictional grounds.

On 2 March 1967, Eldred Fewkes, an American citizen, commenced in the Court of First Instance of Albay a proceeding for the registration of 2 lots and the improvements thereon. It was alleged in the application that Fewkes acquired by purchase from Juan G. Velasco, Jr., Brigida C. Velasco and Trinidad G. Velasco two (2) parcels of land, referred to as Lot No. 21-A of Psu-61470 (a portion of Lot No. 1383, Libon PLs-763 D), with an area of 223,241 square meters more or less, and Lot No. 21-B (also a part of Lot No. 1383, Libon Pls-763 D), with an area of 11,283 square meters, situated in barrio Bubulusan (Bulusan), municipality of Libon, province of Albay; that applicant was in actual possession of the lots, and that said properties were free from any encumbrance. Attached to the application were the tracing cloth and blue print of plans Psu-61470 and the corresponding technical descriptions of Lots 21-A and 21-B of Psu-61470, the certified copies of the tax declarations on said land, and the two deeds of absolute sale dated 20 June 1966 and 27 January 1967, executed by the Velascos in favor of applicant.

On 31 March 1967, finding that the application did not contain the plans and technical descriptions of the parcels of land sought to be registered and the surveyor's certificate, the court required the applicant to submit the same. Upon compliance with the foregoing requirement, the applicant then submitted a motion praying the court that the Director of Lands and/or the Land Registration Commission be directed to approve subdivision plan Psu-61470, wherein it appeared that the lots sought to be registered are parts of a bigger lot identified in said subdivision plan as Lot No. 21.

In its order of 28 April 1967, the court denied the motion, reasoning that the application being for registration of land, it had nothing to do with the approval of the subdivision plan. On 2 August 1967, the court issued another order, this time for amendment of the application in order to include the respective postal addresses of the adjoining owners named therein.

On 23 February 1968, after the initial hearing of the case, the court issued an order dismissing the application for want of jurisdiction, based on the finding that the properties sought to be registered only formed part of a bigger tract of land which was described in the plan attached to the application, and that the notice of initial hearing did not delineate accurately the portions of the land involved in the registration proceeding. When the motion for reconsideration of the aforesaid dismissal-order was denied, applicant filed the present appeal.

Appellant's complaint in this instance actually is directed against the outright dismissal of the application. It is not denied that what was published in the Official Gazette at applicant's expense^[1] was not the description of the two lots subject of the registration proceeding but that of a bigger parcel of land identified as Lot No. 1383 of Libon Pls-763-D (referred to as Lot No. 21 of Psu-61470). It is here contended, however, that since the published description includes the portions being registered, then the court below erred in declaring itself without jurisdiction over the proceeding. In other words, according to appellant, as the description of the bigger parcel, Lot 1383 of Pls-764-D, of which the properties sought to be registered formed part, was already published, then there would have been no necessity for further publication of the aforesaid small portions in order to vest jurisdiction on the land registration court. The flaw in this argument lies in the assumption that by the publication of the bigger tract of land, jurisdiction over the said property was acquired by the court below. That is not correct.

Under Section 21 of the Land Registration Act, an application for registration of land is required to contain, among others, a description of the land subject of the proceeding, the name, status and address of the applicant, as well as the names and addresses of all occupants of the land and of all adjoining owners, if known, or if unknown, of the steps taken to locate them. When the application is set by the court for initial hearing, it is then that notice (of the hearing), addressed to all persons appearing to have an interest in the lot being registered and the adjoining owners, and indicating the location, boundaries and technical description of the land being registered,^[2] shall be published in the Official Gazette for two consecutive times. It is this publication of the notice of hearing that is considered one of the essential bases of the jurisdiction of the court in land registration cases,^[3] for the proceedings being in rem, it is only when there is constructive seizure of the land, effected by the publication and notice, that jurisdiction over the res is vested on the court. Furthermore, it is such notice and publication of the hearing that would enable all persons concerned, who may have any rights or interests in the property, to come forward and show to the court why the application for registration thereof is not to be granted.

It must be remembered that the application in this case filed in the court below was for registration, not of the big parcel of land (Lot No. 1383, Pls-764-D or Lot No. 21), but of certain portions thereof designated by applicant-appellant as Lots Nos. 21-A and 21-B. It is the technical description of these 2 smaller lots, therefore, that must be published in order that the persons who may be affected by their registration may be notified thereof. For, considering that the adjoining owners of Lot No. 21 would not be the same as the owners of the properties adjoining Lots 21-A and 21-B, the notification of the adjoining owners of the big lot would not be the notice to the adjoining owners or occupants of the smaller lots required by law. In short, it is the publication of the specific boundaries of Lots Nos. 21-A and 21-B that would actually put the interested parties on notice of the registration proceeding, and would confer authority on the land registration court to pass upon the issue of the registerability of said lots in favor of the applicant.

Appellant insists, however, that the lower court should have merely directed the amendment of the application or the approval by the Director of Lands of the subdivision plan, instead of issuing an order of dismissal. There is no merit in this contention. Considering that it has been duly apprised of the absence of the requisite survey plan and the technical description of the lots being registered, and of the inadequacy of the necessary publication and notice to the interested parties, and consequently of the existence of jurisdictional defects in the application, the lower court could not have taken any other course of action than to order the dismissal of the case. In *Escueta vs. Director of lands*, 16 Phil. 482, this Court ruled:

"It is not permissible to make amendments or alterations in the description of the land after its publication in the newspapers and after the registration of the property has been decreed, without the publication of new notifications and advertisements making known to everyone the said alterations and amendments. Otherwise, the law would be infringed with respect to the publicity which characterizes the procedure and third parties who have not had an opportunity to present their claims, might be seriously affected in their rights, through

failure of opportune notice."

Nor was the court below technically qualified to declare the subdivision plan true and correct, and compel its approval by the land authorities.

It may even be pointed out that on two occasions, the lower court had already directed appellant's counsel to submit necessary annexes and amend the application. It can not really be charged, therefore, that said court had been unfair or unduly harsh on the applicant-appellant when, finding the application to be still fatally defective, it ordered the dismissal of the case.

WHEREFORE, finding no error in the order appealed from, the same is hereby affirmed, with costs against the appellant. The dismissal of the application here is understood to be without prejudice to the filing of a proper application in conformity with the legal requirements.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.
Ruiz Castro and Villamor, JJ., took no part.

[1] Section 21, Act 496; *Parras vs. Land Registration Commissioner*, L-16011, 26 July 1960, 108 Phil. 1142.

[2] Section 31, Act 496.

[3] *Philippine Manufacturing Company vs. Imperial*, 49 Phil. 122; *Escueta vs. Director of Lands*, 16 Phil. 482; also *Director of Lands vs. Benitez*, L-21368, 31 March 1966, 16 SCRA 557.

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