

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE HON. COURT OF APPEALS, AND THE PHILIPPINE NATIONAL BANK, BATANGAS CITY BRANCH, RESPONDENTS.*G.R. No. 103746. February 09, 1993*

Ponente: GRIÑO-AQUINO, J.

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This is a petition for review of the Court of Appeals' decision dated January 24, 1992, affirming the Order dated October 9, 1990 of the Regional Trial Court of Calapan, Oriental Mindoro, which granted the petition of the Philippine National Bank (PNB) for reconstitution of certain titles.

On June 21, 1989, the PNB filed a verified petition for judicial reconstitution of Original Certificate of Title No. P-6666 and Transfer Certificate of Title No. T-22487 on the basis of the existing owner's duplicate copies in its custody and possession as mortgagee, because the originals on file in the Office of the Register of Deeds of Calapan, Oriental Mindoro, had been destroyed in the fire that gutted that office on August 12, 1977.

In an Order dated June 26, 1989, the lower court set the petition for hearing on October 30, 1989 and directed: (1) the publication of the Order in two successive issues of the Official Gazette; (2) the sending of said notice to all adjoining owners; and (3) the posting thereof in the court premises and in the Municipal Building of Pinamalayan, Oriental Mindoro, where the registered properties are located.

The Solicitor General entered his appearance on October 16, 1989 and deputized the Provincial Fiscal of Oriental Mindoro to appear in the case.

However, the hearing set on October 30, 1989 was cancelled on motion of the PNB because it did not have yet the certificate of publication to be presented at said hearing. The hearing was reset on February 15, 1990. This was again reset on February 21, 1990, on which date the PNB presented a Certificate of Publication issued by Luis M. Avecilla, Director of the National Printing Office (Exh. E) certifying to the fact that:

"Order relative to Petition No. 12,786 – In Re: Petition for Judicial reconstitution of OCT No. P-6666 and TCT No. T-22487, PHILIPPINE NATIONAL BANK, Batangas City Branch, petitioner, was published in the Official Gazette, to wit:

Volume

Number

Pages

Date of Issue

85

34

August 21, 1989 (supp.)

35

35

August 28, 1989 (supp.)

"August 28, 1989 Supp. issue was released for publication[*] on October 13, 1989." (pp. 29-30, Rollo.)

Neither the Solicitor General nor the provincial fiscal appeared at the hearing on February 21, 1990 despite due notice. On that date, the lower court issued the following Order:

"Considering that there is no opposition to the instant petition either verbal or written and the petitioner having complied with the jurisdictional facts, the same is hereby given due course and the Branch Clerk of Court is hereby authorized to receive the evidence for the petitioner and to submit his findings to the court for resolution." (p. 27, Rollo.)

The Solicitor General and/or the provincial fiscal were again absent at the scheduled hearing before the Commissioner on October 3, 1990. The reception of evidence proceeded nonetheless.

For the purpose of proving compliance with the jurisdictional requirements, the PNB presented in evidence the following documentary exhibits:

"A" - Petition

"B" - Certified True Copy of OCT No. P--6666.

"B-1" - Certified True Copy of TCT No. T-22487

"C" - Certificate of Posting

"D" - Notice of Hearing

"E" - Certificate of Publication issued by Luis M. Avecilla, Director of the Bureau of Printing

"F" - Certificate of Sale covering TCT No. T-22487

"F-1" - Certificate of sale covering OCT No. P-666

"G" - Certificate of the Acting Register of Deeds

"H" - Real Estate Mortgage executed by Primitiva Macatangay

"I" - Amendment of Real Estate Mortgage

As summarized by the trial court, the evidence presented on October 3, 1990 showed the following:

"From the evidence adduced by petitioner thru its attorney-in-fact (Exhibit 'K'), it appears that it is a government commercial banking corporation duly organized and existing under Executive Order No. 80, otherwise known as the Revised Charter of the Philippine National Bank with main office at PNB Escolta, Manila, and a branch office at Batangas City. The properties covered by Original Certificate of Title No. P-6666 covering a tract of agricultural land situated in the barrio of Balete, Municipality of Pinamalayan, Province of Oriental Mindoro, containing an area of 499,985 square meters and registered in the name of Primitiva Macatangay, married to Leopoldo Macatangay. (Exhibit 'B') and Transfer Certificate of Title No. T-22487 covering a tract of agricultural public land situated in the Municipality of Pinamalayan, Province of Oriental Mindoro, containing an area of 77,151 square meters, registered in the name of Spouses Leopoldo Macatangay and Primitiva M. Macatangay (Exhibit 'B-1') were originally mortgaged by said spouses with the Philippine National Bank, Batangas City Branch in the amount of P40,000.00 (Exhibit 'H'). The amount of mortgage was later on amended increasing it from P40,000.00 to P58,000.00 and was again amended increasing the amount of mortgage from P58,000.00 to P74,000.00. These amendments of mortgage were registered with the Office of the Register of Deeds of this province and annotated at the back of Original Certificate of Title No. P-6666 and Transfer Certificate of Title No. T-22487 (Exhibits 'B-1-a' to 'B-1-d', inclusive).

"The mortgagors defaulted in the payment of their obligation with the Philippine National Bank, Batangas City Branch which compelled petitioner to institute an extra judicial foreclosure proceedings and for which the properties covered by OCT No. P-6666 and TCT No. T-22487 were sold at public auction. The Philippine National Bank, Batangas City Branch being the highest bidder, Deputy Sheriff Emmanuel A. Latorza executed Certificates of Sale in its favor (Exhibits 'F' and 'F-1') which certificates of sale were pending registration up to this date with the Register of Deeds Office because of the destruction of the original copies of OCT No. P-6666 and TCT No. T-22487 on August 12, 1977.

"It appears further that there are no other liens and encumbrances presented for and pending registration to [t]his date with the Office of the Register of Deeds affecting these properties except the afore-mentioned certificates of sale, nor had there been other annotations made at the back of said except the aforementioned annotations of the Amendments of Real Estate Mortgage (Exhibits 'I' and 'I-1'); that the petitioner is in actual possession of these properties and it is the one paying the taxes due the government." (pp. 34-35, Records.)

On October 9, 1990, the court issued an Order granting the petition for reconstitution. The dispositive portion of the Order reads:

"ACCORDINGLY, finding the instant petition to be well-founded and there being no opposition to its approval, same is hereby granted. The Register of Deeds of this province is hereby directed to reconstitute the original and the owner's duplicate copies of OCT No. P-6666 and TCT No. T-22487 in the name of its registered owners, thirty days after receipt of this Order by the Register of Deeds of this province and the Administrator of the Land Registration Authority, and once reconstituted, to issue the new owner's duplicate certificate copies of the same to herein petitioner." (p. 26, Rollo.)

From said order, the Solicitor General, in behalf of the Republic of the Philippines, interposed an appeal to the Court of Appeals (CA-G.R. CV No. 30036), alleging that the trial court erred:

1. in proceeding with and rendering judgment in the subject reconstitution case despite patent lack of jurisdiction; and
2. in granting the petition despite appellee's non-compliance with the mandatory requirements of LRC Circular No. 35.

On January 24, 1992, the Court of Appeals affirmed the trial court's order on the grounds that:

"x x x. While copies of the Official Gazette containing the notice actually published would be the best evidence of such publication. We agree with appellee that there was sufficient compliance with the requirement of publication to confer jurisdiction upon the court. The certificate of publication issued by the Director of the National Printing Office certifying that the notice of the petition was actually published in the Official Gazette on August 21 and August 28, 1989 constitute prima facie evidence of the publication for purposes of conferring upon the Court jurisdiction to hear and decide the petition.

"While prima facie evidence may be contradicted or overcome by other evidence or upon proof that there was no such publication, appellant had adduced no evidence that the Official Gazette issues of August 21, 1989 and August 28, 1989 contained no such publication of the petition. In fact, as stated earlier, appellant did not file any opposition to the petition and did not appear during the reception of petitioner's evidence." (pp. 31-32, Rollo.)

In finding, for the appellee-bank, respondent court cited the case of *Sadang vs. GSIS*, 18 SCRA 491, where we held that:

"The customary affidavit of the editor of the 'Voz de Manila,' duly introduced in evidence, to the effect that the notice of sale had been published in said newspaper once a week for three (3) consecutive weeks, constitutes prima facie evidence of said fact. As the party alleging non-compliance with the requisite publication,

plaintiffs had the burden of proving said allegation. There being no evidence to the contrary, it is apparent that the same has not been substantiated."

The Solicitor General, however, argues that a mere certificate of publication is utterly inadequate as proof of the jurisdictional fact of publication.

We agree. The jurisdiction or authority of the Regional Trial Court to hear and decide a petition for reconstitution of title is conferred by Republic Act No. 26, entitled "An Act Providing A Special Procedure For The Reconstitution Of Torrens Certificate Of Title Lost Or Destroyed." The Act prescribes a special mode of procedure that must be followed in order that the court may act on the petition and grant the remedy sought. These requirements and procedure are mandatory and must strictly be complied with, otherwise, the proceedings will be utterly void (*Director of Lands vs. Court of Appeals, et al.*, 102 SCRA 370, citing the case of *Cal-tex, et al. vs. CIR, et al.*, 23 SCRA 492).

The specific requirements and procedure laid down by Republic Act No. 26, are found in Sections 9 and 10, which read:

"Sec. 9. A registered owner desiring to have his reconstituted certificate of title freed from the encumbrance mentioned in section seven of this Act, may file a petition to that end with the proper Court of First Instance, giving his reason or reasons therefor. A similar petition may, likewise, be filed by a mortgagee, lessees, or other lien holder whose interest is annotated in the reconstituted certificate of title. Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing, shall determine the petition and render such judgment as justice and equity may require. The notice shall specify, among other things, the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. The petitioner shall, at the hearing, submit proof of the publication and posting of the notice: Provided, however, That after the expiration of two years from the date of the reconstitution of a certificate of title, if no petition has been filed within that period under the preceding section, the court shall, on motion ex parte by the registered owner or other person having registered interest in the reconstituted certificate of title, order the register of deeds to cancel, proper annotation, the incumbrance mentioned in section seven hereof.

"Sec. 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five of this Act directly with the proper Court of First Instance, based on sources enumerated in sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act: Provided, however, That the Court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine hereof: And, provided, further, That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in section seven of this Act."

The jurisdictional requirement of publication of a petition for reconstitution of title, refers to the actual publication of the notice of initial hearing of the petition in two successive issues of the Official Gazette (with the required posting and notice by registered mail or otherwise to specified persons) and its release for circulation at least thirty (30) days before the scheduled hearing (*Zuñiga vs. Hon. Vicencio*, 153 SCRA 720). The purpose of such publication is to apprise the whole world that such a petition has been filed and that whoever is minded to oppose it for good cause may do so within thirty (30) days before the date set by the court for hearing the petition. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it (*Register of Deeds of Malabon vs. RTC of Malabon, M.M., Branch 170*, 181 SCRA 788).

The Certificate of Publication revealed that the August 28, 1989 Supplement issue of the Official Gazette was

released for circulation on October 13, 1989, which was only seventeen (17) days before the scheduled hearing set by the court on October 30, 1989. Clearly, the jurisdictional requirement of publication in accordance with law had not been met, for the law specifically requires that the "court shall cause a notice of the petition to be published at the expense of the petitioner x x x at least thirty days prior to the date of hearing x x x." (Sec. 13, R.A. No. 26.) The purpose of the thirty-day-notice is to give interested parties ample time to intervene in the proceeding. Because the mandatory 30-day-notice of hearing was not given, and because the PNB did not produce the copies of the Official Gazette where the notice was published, the Bank was constrained to move for the postponement of the October 30, 1989 hearing to February 15, 1990 (See Motion To Cancel Hearing, p. 19, Records) and still later to February 21, 1990.

In *Director of Lands vs. Court of Appeals, et al.*, 102 SCRA 370, we ruled that the requirements of Republic Act No. 26 must be "interpreted strictly" and "must be applied rigorously with exactness and precision."

Strictly speaking, there had been no publication of the notice of the (actual) hearing of the petition on February 21, 1990 for the notice that was published in the Official Gazette was of the hearing that was set on October 30, 1989.

Courts must exercise great care and extreme caution in entertaining petitions for reconstitution of title (*Director of Lands vs. Court of Appeals, et al.*, 102 SCRA 370). In view of the defect in the publication of the notice of hearing of the petition for reconstitution, the trial court did not acquire jurisdiction to hear the petition (*Register of Deeds of Malabon vs. RTC, Malabon, M.M.*, Br. 170, *supra.*, citing the case of *Po vs. Republic*, 40 SCRA 37). In this case, not only was the notice of hearing published less than thirty (30) days prior to the date of hearing fixed in the notice as required by law, but the hearing was actually held on a different date which had not been published at all.

The purpose of publishing the date of hearing of the petition for reconstitution of title is to enable interested parties, who have read the notice, to appear at the hearing either to oppose the petition or assert a claim to the property in question. That purpose will be defeated if the court may actually hear the petition on a different date from that which appeared in the published notice of hearing.

WHEREFORE, the petition for review is GRANTED. The impugned decision of the Court of Appeals in CA-G.R. CV No. 30036 and the order for the reconstitution of OCT No. P-6666 and TCT No. T-22487 of the Registry of Deeds of Calapan, Oriental Mindoro, are hereby SET ASIDE for lack of jurisdiction. Costs against the private respondent.

SO ORDERED.

Cruz, (Chairman), Padilla, and Bellosillo, JJ., concur.

[*] Meaning "circulation."

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