

GABINO BACHOCO, PETITIONER AND APPELLANT, VS. IGNACIA ESPERANCILLA, ET AL., OPPOSITORS AND APPELLEES.*G.R. No. 11785. March 31, 1959*

Ponente: REYES, A., J.

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In Cadastral Case No. 27, L. R. C. (G.L.R.O.) Cad. Rec. No. 284, a petition was, on February 23, 1956, filed by Gabino Bachoco in the Court of First Instance of Occidental Negros, asking for the reconstitution of the Original Certificate of Title No. 25977 issued in the name of Juana Montinola for lot No. 106 of the Sagay Cadastre on the basis of the decree of registration entered in that case, the reconstitution to be made in accordance with Republic Act No. 26 from a copy of said decree on file in the office of the Register of Deeds. The petition alleged, among other things, that the lot in question was adjudged to Juana Montinola in said cadastral case on May 31, 1923 and the corresponding original certificate of title therefor (OCT No. 25977) was subsequently issued in her name pursuant to the decree of registration issued by the Chief of the Land Registration Office on December 7, 1928; that Juana Montinola was married to Nicolas Batusing and upon her death she left four children with him as her only heirs, one of whom was Cresencia Batusing; that Cresencia Batusing's share in the lot in question was by her conveyed to petitioner through a deed of sale dated January 17, 1925 and acknowledged before a notary public; that due to the loss or destruction of the original certificate of title to the lot as well as the owner's duplicate copy thereof, the deed in question had remained unregistered; and that—to quote from the petition—"it is the desire of petitioner that the said original certificate of title be reconstituted so that, not only may he then be able to register his deed of sale affecting the portion of Cresencia Batusing, but that he be able to secure a certificate of title covering his portion of said lot No. 106."

As provided in Republic Act No. 26, which is the law invoked by petitioner, the petition was set for hearing with notice to interested parties, and in due time Ignacia Esperancilla and Tomasa Esperancilla, children of Cresencia Batusing, appeared and opposed the petition, claiming that they had no knowledge of the existence of the deed alleged to have been executed by their late mother and that, in any event, the said deed, which was alleged to have been executed more than three years before the issuance of the decree of registration on December 7, 1928, was ineffective and did not convey to petitioner any interest which would entitled him to ask for the reconstitution of the certificate of title.

After hearing, the court, having found the facts to be as alleged in the petition, ordered the register of deeds of the province to reconstitute the original certificate of title (No. 25977) for the lot in question, as well as the owner's duplicate of said certificate, on the basis of the decision rendered in the cadastral case and the decree issued by the General Land Registration Office. And the court further ordered that once the reconstitution had been accomplished, a second owner's duplicate certificate of title be issued to petitioner. But on a motion for reconsideration on the grounds (1) that the alleged sale was ineffective as against a decree of registration subsequently issued and (2) that as the certificate of title was not lost in petitioner's possession, the reconstituted owner's duplicate certificate of title should not be delivered to him, the court reconsidered its order and denied the

petition for reconstitution.

Appealing from the order of denial, petitioner raises various questions; but under our view of the case not all of them need be considered.

Under Republic Act No. 26, a petition for the reconstitution of a lost or destroyed original certificate of title for registered land may be filed with the Court of First Instance "by the registered owner, his assigns or any person having an interest in the property." Petitioner claims to have such interest, and as the validity of the claim is disputed, it would be most convenient for the proper resolution of that claim that the missing certificate of title be first reproduced. Insofar, therefore, as petitioner merely asks for the reconstitution of the original certificate of title, we can see no reason why his petition may not be granted, and, as a matter of fact on page 23 of the record on appeal, there is an allegation, which has not been challenged, to the effect that the oppositors in open court had expressly manifested that they were not opposing the reconstitution of the title of Juana Montinola and that what they were opposing was the delivery of said title to petitioner for him to hold and possess¹ once it was reconstituted.

It appears, however, that it is not merely the reconstitution of Juana Montinola's original certificate of title that petitioner wants. For as already stated, the petition avers that he wants the said certificate reconstituted so that he may have the deed in his favor registered and secure for himself a certificate of title covering his portion of the lot in question, and in his brief he also prays that the previous order of the court authorizing the reconstitution of the original certificate and the issuance to him of the second owner's duplicate thereof be carried out, all of which would involve a material change in the original certificate of title, a change which, not being consented to by the other parties whose interest will be affected thereby, cannot be authorized under the summary proceedings for reconstitution prescribed in Republic Act No. 26. Reconstitution of a lost or destroyed certificate of title under that Act is limited to the reconstitution of the certificate as it stood at the time of its loss or destruction and should not be stretched to include changes which alter or affect the title of the registered owner. A change of that nature, specially when urged on the basis of a disputed deed and opposed by other parties in interest, raises an issue which should be ventilated and decided in an ordinary action.

And it may be well to state here that not even the proceedings authorized in section 112 of the Land Registration Act could be availed of for the end which appellant has in view, for such proceedings apply only "if there is unanimity among the parties or there is no adverse claim or serious objection on the part of any party in interest"; otherwise the matter in controversy should be threshed out "in an ordinary case or in a case where the incident belongs" (*Enríguez, et al. vs. Atienza, et al.*, 100 Phil., 1072 and cases therein cited).

This view of the case dispenses with the necessity of discussing appellant's objection to the order appealed from on the ground that the said order does not contain a statement of the facts or the law upon which it is based.

Conformably to the above, the order appealed from is modified in the sense that appellant's petition for reconstitution is granted only insofar as it orders the reconstitution of the original certificate of title issued in the name of Juana Montinola, without prejudice to the filing, once the said title is reconstituted, of the proper action to have appellant's alleged interest recorded in said certificate. Without special pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia JJ., concur.

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