

**HEIRS OF FELICIDAD DIZON, NAMELY, JULIANA A. DIZON AND GERARDA A. ABILLA, REPRESENTED BY THEIR ATTORNEY-IN-FACT, ROMEO A. VIRAY, PETITIONERS, VS. HON. JAIME D. DISCAYA, PRESIDIN...**

*G.R. No. 133502. February 15, 1999*

Ponente: PURISIMA, J.

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**PURISIMA, J.:**

At bar is a Petition for Review on Certiorari under Section 2(c) of Rule 41, in relation to Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision dated January 22, 1998 of the Regional Trial Court, National Capital Judicial Region, Branch 120, Kalookan City, in LRC Case No. C-3227.

The antecedent proceedings are well summarized by the Solicitor General's Comment[1] of November 23, 1998, as follows:

"1. Petitioners filed a petition dated June 26, 1991 for the reconstitution of TCT No. 75335 of the Registry of Deeds of Quezon City with the Regional Trial Court, National Capital Judicial Region, Caloocan City which was docketed as LRC Case No. 3237 and assigned to Branch 120.

2. On August 9, 1991, then Presiding Judge Arturo A. Romero issued an Order setting the initial hearing of the petition on October 14, 1991 and directing the publication and posting of copies thereof at places designated therein as well as their transmittal by registered mail to parties mentioned therein.

3. Petitioners filed an Amended Petition dated June 8, 1992 correcting the number of the subject TCT from 75355.

4. On October 7, 1992, an Amended Order was issued setting the hearing of the petition on December 10, 1992.

5. After several resettings of the hearing of the petition, the petition, upon motion of petitioners, was dismissed without prejudice in an Order dated April 13, 1993.

6. Upon petitioners' motion to revive the petition, an Order was issued on June 19, 1995 granting the same and setting the hearing of the petition on July 17, 1995.

7. In an Order dated July 29, 1996 of respondent Judge, the petition was dismissed for failure of petitioners to prosecute the case for an unreasonable length of time.

8. The order of dismissal was later set aside upon motion of petitioners for reconsideration dated January 6, 1997.

9. During the hearing of November 27, 1997, petitioners presented documentary evidence to show their compliance with the jurisdictional requirements and on December 2, 1997, they adduced ex-parte testimonial and documentary evidence in support of their petition before the branch clerk of court who was appointed as

Commissioner for the reception of petitioners' evidence.

10. On January 22, 1998, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the petition for failure to comply with the requirements of Section 2 of Act 26.

SO ORDERED.

(p. 2, Decision, Annex `A', Petition)

11. Petitioners filed a motion for reconsideration of the above Decision but the same was denied by the trial court in its Order dated April 8, 1998."

Having lost their case before the respondent court, petitioners have come to this Court for relief; ascribing as errors below, that:

## "I

THE TRIAL COURT HAD COMMITTED A SERIOUS ERROR IN APPLYING SECTION 2 OF REPUBLIC ACT NO. 26 IN THIS CASE, THE APPROPRIATE PROVISION APPLICABLE BEING SECTION 3 OF SAME ACT IN RELATION TO SECTION 12 THEREOF AND AS IMPLEMENTED UNDER PARAGRAPH 5 OF LRC CIRCULAR NO. 35 DATED JUNE 13, 1983.

## II

AS A COROLLARY TO THE FIRST ASSIGNMENT OF ERROR, THE TRIAL COURT COMMITTED SERIOUS ERROR IN UPHOLDING ITS QUESTIONED DECISION, DESPITE THE FACT THAT THE PETITIONERS HAD DULY CALLED THE ATTENTION OF THE TRIAL COURT OF ITS ERROR AND POINTING OUT THE SUFFICIENCY OF THE EVIDENCE OF THE PETITIONERS IN THEIR MOTION FOR RECONSIDERATION TO SAID QUESTIONED DECISION (sic), WHICH ACT IS A GRAVE ABUSE OF DISCRETION ON THE PART OF THE COURT AMOUNTING TO LACK OF JURISDICTION."

The respondent court dismissed subject petition for reconstitution for non-compliance with the requirements of Section 2[2] of Republic Act No. 26 ("RA 26"). It opined that while the petitioners presented as Exhibit "V" a Certification from the Land Registration Authority that the property involved is covered by Decree No. 4974, dated December 23, 1910, the said certification is not authenticated as required by RA 26.[3] Petitioners having anchored their petition for reconstitution on Section 2 (f) of RA 26, the respondent court ruled that the evidence adduced by petitioners did not suffice as a proper basis for reconstitution.

Petitioners fault the respondent court for applying Section 2 of RA 26, theorizing that it is Section 3[4] which is applicable, the petition being for reconstitution of a Transfer Certificate of Title. It is petitioners' submission that under Section 3 (f) of RA 26, any other document may be the basis for reconstituting a lost or destroyed certificate of title, and the documents contemplated thereunder are specified in paragraph 5 of LRC Circular No. 35, as follows:

"5. In case the reconstitution is to be made exclusively from sources enumerated in Sections 2 (f) and 3 (f) of Republic Act No. 26 in relation to section 12 thereof, the signed duplicate copy of the petition to be forwarded to this Commission shall be accompanied by the following:

(a) A duly prepared plan of said parcel of land in tracing cloth, with two (2) print copies thereof, prepared by the government agency which issued the certified technical description, or by a duly licensed Geodetic Engineer who shall certify thereon that he prepared the same on the basis of a duly certified technical description. Where the plan as submitted is certified by the government agency which issued the same, it is

sufficient that the technical description be prepared by a duly licensed Geodetic Engineer on the basis of said certified plan.

(b) The original, two (2) duplicate copies, and a xerox copy of the original of the technical description of the parcel of land covered by the certificate of title, duly certified by the authorized officer of the Bureau of Lands or the Land Registration Commission who issued the technical description.

(c) A signed copy of the certification of the Register of Deeds concerned that the original of the certificate of title on file in the Registry was either lost or destroyed, indicating the name of the registered owner, if known from the other records on file in said office."

Petitioners contend that after presenting their documents, the respondent court erred in not ordering the reconstitution of subject TCT No. 75355.

The issues for resolution here, are:

1. Whether Section 3 of RA 26 governs the petition for reconstitution of the petitioners?
2. Whether petitioners' presentation of the documents enumerated in paragraph 5 of LRC Circular No. 35 constituted a sufficient and proper basis for reconstitution under Section 3 (f) of RA 26?

Petitioners are correct that Section 3 of RA 26 governs petitioners for reconstitution of transfer of certificate of titles, while Section 2 of the same law applies when original certificates of title are at stake. This can be gleaned from the following provisions of Sections 2 and 3 of RA 26:

"Section 2. Original certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

x x x"

"Section 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

x x x"

Be that as it may, the Decision of the respondent court is right, under the attendant facts and circumstances, because the basis thereof is Section 2(f) of RA 26, which is the same as Section 3 of said law. Sections 2 and 3 of RA 26 are similar provisions except for the following differences, as indicated hereunder:

"Section 2. Original certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

- a) The owner's duplicate certificate of title;
- b) The co-owner's, mortgagee's or lessee's duplicate of the certificate of title;
- c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
- d) An authenticated copy of the decree of registration of patent, as the case may be, pursuant to which the original certificate of title was issued;
- e) A document, on file in the registry of deeds by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and,
- f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title."

"Section 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

- (a) The owner's duplicate of the certificate of title;
- (b) The co-owner's mortgagee's, or lessee's duplicate of the certificate of title;
- (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
- (d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed certificate of title was issued;
- (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and
- (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title." (Emphasis ours)

From the foregoing, it is beyond cavil that Section 2 differs from Section 3, as follows:

- As to applicability - Section 2 applies to original certificates of title while section 3 applies to transfer certificates of title;
- As to (d) of both Sections - While Section 2(d) requires an authenticated copy of the decree of registration or patent, section 3(d) requires the deed of transfer or other document in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed certificate of title was issued.

Petitioners predicate their petition for reconsideration on Section 3(f) of RA 26. Since the respondent court based the dismissal of the petition on Section 2(f), which was an exact reproduction of Section 3(f), the disposition of the case would still be the same, and the dismissal in question would have been a sound disposition, had Section 3(f) been applied. As stressed by the Solicitor General, whether Section 2(f) or Section 3(f) is applied to the case, the result would be the same.

We now tackle the theory that the "other documents" mentioned in Section 3(f) of RA 26 refer to those enumerated in paragraph 5 of LRC Circular No. 35 dated June 13, 1983, to wit:

"5. In case the reconstitution is to be made exclusively from sources enumerated in Sections 2 (f) and 3(f) of Republic Act No. 26 in relation to section 12 thereof, the signed duplicate copy of the petition to be forwarded to this Commission shall be accompanied by the following:

- (a) A duly prepared plan of said parcel of land in tracing cloth, with two (2) print copies thereof, prepared by the government agency which issued the certified technical description, or by a duly licensed Geodetic Engineer who shall certify thereon that he prepared the same on the basis of a duly certified technical description. Where the plan as submitted is certified by the government agency which issued the same, it is sufficient that the technical description be prepared by a duly licensed Geodetic Engineer on the basis of said certified plan.
- (b) The original, two (2) duplicate copies, and a xerox copy of the original of the technical description of the parcel of land covered by the certificate of title, duly certified by the authorized officer of the Bureau of Lands or the Land Registration Commission who issued the technical description.

(c) A signed copy of the certification of the Register of Deeds concerned that the original of the certificate of title on file in the Registry was either lost or destroyed, indicating the name of the registered owner, if known from the other records on file in said office."

Petitioners maintain that since they submitted before the lower court Exhibits "N"[5], "S"[6] and "S-1"[7], and "T"[8], consisting of the certification from the register of Deeds, technical descriptions, and tracing cloth plan, respectively, their petition for reconstitution should have been granted by the lower court.

Untenable is petitioner's contention. Paragraph 5 of LRC Circular No. 35 specifically states that "[i]n case the reconstitution is to be made exclusively from sources enumerated in sections 2(f) and 3(f) of Republic Act No. 26, in relation to section 12 thereof, the signed duplicate copy of the petition to be forwarded to this Commission shall be accompanied by the following: x x x." From the foregoing, it is clear that subparagraphs (a), (b), and (c) of paragraph 5 of LRC Circular No. 35 are merely additional documents that must accompany the petition to be forwarded to the Land Registration Commission (now land Registration Authority). There is nothing in LRC Circular No. 35 to support petitioners' stance that the documents therein enumerated are those referred to in Section 3(f) of RA 26.

It has been held by the Court that when Section 2(f) of Republic Act No. 26 speaks of "any other document," the same must refer to similar documents previously enumerated therein[9], that is, those mentioned in Sections 2(a), (b), (c) and (d). Having failed to provide a sufficient and proper basis for reconstitution, petitioners cannot assail the respondent court for dismissing their petition for reconstitution.

WHEREFORE, the Decision of the respondent court, dated January 22, 1998, is AFFIRMED, with the MODIFICATION that Section 3(f) of Republic Act No. 26 governs petitioners' Petition for reconstitution of TCT No. 75355. No pronouncement as to costs.

### **SO ORDERED.**

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, pp. 57-69.

[2] Section 2. Original Certificate of Title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

- a) The owner's duplicate certificate of title;
- b) The co-owner's mortgagee's or lessee's duplicate of the certificate of title;
- c) A certified copy of the title previously issued by the register of deeds or by a legal custodian thereof;
- d) An authenticated copy of the decree of registration of patent, as the case may be, pursuant to which the original certificate of title was issued;
- e) A document, on file in the registry of deeds by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said d document showing that its original had been registered; and
- f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

[3] See Decision dated January 22, 1998, Rollo, pp. 37-38.

[4] Section 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

- (a) The owner's duplicate of the certificate of title;
- (b) The co-owner's, mortgage's or lessee's duplicate of the certificate of title;
- (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
- (d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed certificate of title was issued;
- (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and
- (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

[5] Rollo, p. 40.

[6] Ibid., p. 42.

[7] Ibid., p. 43.

[8] Ibid., p. 41.

[9] Republic v. Intermediate Appellate Court, 157 SCRA 62, 67.

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